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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	3 September 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
Subject:	ANNEX 1 - PART 3/4 ANNEX to the Proposal for a COUNCIL DECISION on the conclusion, on behalf of the European Union, of the Political, Economic and Cooperation Strategic Partnership Agreement between the European Union and its Member States, of the one part, and the United Mexican States, of the other part

Delegations will find attached document COM(2025) 810 annex.

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ANNEX 1 – PART 3/4

ANNEX

to the

Proposal for a COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Political, Economic and Cooperation Strategic Partnership Agreement between the European Union and its Member States, of the one part, and the United Mexican States, of the other part

CHAPTER 16

TELECOMMUNICATIONS SERVICES

ARTICLE 16.1

Definitions

For the purposes of this Chapter:

(a) "associated facilities" means services, physical infrastructures and other facilities associated with a telecommunications network or service which enable or support the provision of services via that network or service or have the potential to do so;

(b) "end user" means a final consumer of, or subscriber to, a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

(c) "essential facilities" means facilities of a public telecommunications network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(d) "interconnection" means linking the public telecommunications networks of suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by any supplier that is either involved or has access to the network;

(e) "intra-corporate communications" means telecommunications through which an enterprise communicates within the enterprise or with or among its subsidiaries, branches and, subject to the law of the Party concerned, affiliates, but does not include commercial or non-commercial services that are supplied to enterprises that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers;[1]

(f) "leased circuits" means telecommunications services or facilities, including those of a virtual or non-physical nature, between two or more designated points that are set aside for the dedicated use of, or availability to, a user;

(g) "licence" means any authorisation that a Party may require of a natural person or an enterprise, in accordance with its law, in order to offer a telecommunications service, including but not limited to concessions, permits, registrations or notifications;

[1] For the purposes of this definition, the terms "subsidiaries", "branches" and, where applicable, "affiliates" have the meaning for a Party as defined by its law.

(h) "major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation, having regard to price and supply, in a relevant market for public telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;

(i) "network element" means a facility or equipment used in supplying a telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;

(j) "non-discriminatory" means complying with most-favoured-nation treatment as defined in Articles 10.8 (Most-Favoured-Nation Treatment) and 11.7 (Most-Favoured-Nation Treatment) and national treatment as defined in Articles10.7 (National Treatment) and 11.6 (National Treatment), as well as according treatment no less favourable than that accorded to any other user of like public telecommunications services in like situations, including with respect to timeliness;

(k) "number portability" means the ability of end users of public telecommunications services who so request to retain, at the same location in the case of a fixed line, the same telephone numbers when switching between the same category of suppliers of public telecommunications services.

(l) "public telecommunications network" means a telecommunications network used for the provision of public telecommunications services between network termination points;

(m) "public telecommunications service" means a telecommunications service that is offered to the public generally;

(n) "reference interconnection offer" means an interconnection offer by a major supplier that is made publicly available, so that any supplier of public telecommunications services willing to accept the offer may obtain interconnection with the major supplier on that basis;

(o) "telecommunications" means the transmission and reception of signals by wire, radio, optical or any other electromagnetic means;

(p) "telecommunications network" means transmission systems and, where applicable, switching or routing equipment and other resources, including inactive network elements, which permit telecommunications;

(q) "telecommunications regulatory authority" means the body or bodies responsible for the regulation of telecommunications networks and services covered by this Chapter;

(r) "telecommunications service" means a service which consists wholly or mainly in the transmission and reception of signals over telecommunications networks, including over networks used for broadcasting, but does not include services providing, or exercising editorial control over, content transmitted using telecommunications networks and services;

(s) "universal service" means the minimum set of services that must be made available to all users in the territory of a Party, the scope of which is defined by that Party; and

(t) "user" means a consumer or a service supplier using a public telecommunications network or service.

ARTICLE 16.2

Scope and Principles of the Regulatory Framework

1. This Chapter sets out principles of the regulatory framework for the provision of telecommunications networks and services, liberalised pursuant to Chapters 10 (Investment) and 11 (Cross-Border Trade in Services), and applies to measures adopted or maintained by a Party affecting trade in public telecommunications services.

2. For greater certainty, this Chapter does not apply to measures adopted or maintained by a Party affecting services providing, or exercising editorial control over, content transmitted using telecommunications networks or services.

ARTICLE 16.3

Telecommunications Regulatory Authority

1. Each Party shall ensure that its telecommunications regulatory authority is legally distinct and functionally independent from any supplier of public telecommunications networks or services, or telecommunications equipment. With a view to ensuring the independence and impartiality of telecommunications regulatory authorities, each Party shall ensure that its telecommunications regulatory authority does not hold a financial interest or maintain an operating or management role in any supplier of public telecommunications networks or services, or telecommunications equipment. A Party that retains ownership or control of suppliers of telecommunications networks or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. Each Party shall ensure that regulatory decisions and procedures of its telecommunications regulatory authority, related to this Chapter, are impartial with respect to all market participants.

3. Each Party shall ensure that its telecommunications regulatory authority acts independently and does not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it under the law of a Party to enforce the obligations set out in Articles 16.5, 16.6, 16.7, 16.9 and 16.10.

4. Each Party shall ensure that its telecommunications regulatory authority has the regulatory power, as well as adequate financial and human resources, to carry out the tasks assigned to it in order to enforce the obligations set out in this Chapter. Such power shall be exercised in a transparent and timely manner. The tasks of the telecommunications regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

5. Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of telecommunications networks or services provide it, promptly upon request, with all the information, including financial information, which is necessary to enable the telecommunications regulatory authority to carry out its tasks in accordance with this Chapter. Information received shall be treated in accordance with the applicable confidentiality requirements of the Parties.

6. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision of the telecommunications regulatory authority has the right to challenge that decision before a body that is independent of the telecommunications regulatory authority and of the parties affected by the decision[2]. Pending the outcome of this procedure, the decision of the telecommunications regulatory authority shall stand, unless interim measures are granted in accordance with the law of the Party concerned.

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[2] For Mexico, the general rules, acts or omissions of the Telecommunication Regulatory Commission (Comisión Reguladora de Telecomunicaciones (CRT)) may only be challenged through an indirect *amparo* trial before federal courts specialised in competition, broadcasting and telecommunications and shall not be subject to a suspension order.

ARTICLE 16.4

Licensing Procedures

1. If a Party requires a supplier of public telecommunications networks or services to have a licence, it shall ensure that the following information is publicly available:

(a) the types of telecommunications services requiring licences;

(b) all the licensing criteria and procedures it applies;

(c) the period of time it normally requires to reach a decision concerning an application for a licence if a decision is required; and

(d) the terms and conditions generally applicable to a licence.

2. A Party requiring a supplier of public telecommunications networks or services to have a licence shall decide upon the granting of the licence within a reasonable period of time so as to allow the supplier to start providing its telecommunications networks or services without undue delay.

3. Any licensing criteria, applicable procedures and, if imposed, obligations or conditions, shall be related to the telecommunications services provided, objective, proportionate, transparent and non-discriminatory.

4. Each Party shall ensure that an applicant or a licensee receives, as a procedural requirement or upon request, the written reasons for:

(a) denial of a licence;

(b) imposition of supplier-specific conditions or obligations on a licence;

(c) revocation of the licence; or

(d) refusal to renew a licence.

5. Any administrative fees imposed on suppliers shall be objective, transparent, non-discriminatory and proportionate to the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Chapter.[3]

ARTICLE 16.5

Interconnection

Each Party shall ensure that a supplier of public telecommunications networks or services has the right and, when requested by another supplier of public telecommunications networks or services, the obligation to negotiate interconnection for the purposes of providing public telecommunications networks or services.

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[3] Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

ARTICLE 16.6

Access to and Use of Public Telecommunications Networks and Services

1. Each Party shall ensure that any service supplier of the other Party is accorded access to, and use of, public telecommunications networks or services, including leased circuits, offered in its territory or across its borders on reasonable and non-discriminatory terms and conditions, for the supply of a service liberalised pursuant to Chapters 10 (Investment) and 11 (Cross Border Trade in Services). This obligation shall be implemented, inter alia, by complying with paragraphs 2 to 6.

2. Each Party shall ensure that a service supplier of the other Party is permitted to:

(a) purchase or lease and attach terminal or other equipment which interfaces with a public telecommunications network;

(b) provide services to individual or multiple end users over leased or owned circuits;

(c) connect private leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier; and

(d) use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications services to the public generally.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such service suppliers, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may adopt or maintain measures that are necessary to ensure the security and confidentiality of communications, subject to the requirement that those measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services other than necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their public telecommunication services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services;

6. Provided that they satisfy the criteria set out in paragraph 5, the conditions for access to and use of public telecommunications networks and services may include:

(a) restrictions on resale or shared use of those services;

(b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with those networks and services;

(c) requirements, if necessary, for the interoperability of those services and for encouraging the achievement of the goals set out in Article 16.18;

(d) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of that equipment to those networks;

(e) restrictions on interconnection of private leased or owned circuits with those networks or services or with circuits leased or owned by another service supplier; or

(f) notification, registration and licensing requirements.

ARTICLE 16.7

Resolution of Disputes on Telecommunications

1. Each Party shall ensure that in a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations set out in this Chapter, its telecommunications regulatory authority issues at the request of either party involved in the dispute, a binding decision to resolve the dispute within the timeframe stipulated in the law of that Party.

2. Each Party shall ensure that the decision issued by the telecommunications regulatory authority is made available to the public, having regard to the requirements of business confidentiality. Each Party shall ensure that the parties involved in the dispute receive a full statement of the reasons on which the decision is based and have the right to challenge that decision in accordance with Article 16.3.6.

3. Paragraphs 1 and 2 shall not preclude a party involved in the dispute from bringing an action before the judicial authorities.[4]

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[4] For Mexico, the general rules, acts or omissions of the Telecommunication Regulatory Commission (Comisión Reguladora de Telecomunicaciones (CRT)) may only be challenged through an indirect amparo trial before federal courts specialised in competition, broadcasting and telecommunications and shall not be subject to a suspension order.

ARTICLE 16.8

Competitive Safeguards on Major Suppliers

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services that, alone or together, are a major supplier from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 include in particular:

(a) engaging anticompetitive cross-subsidisation;

(b) using information obtained from competitors with anticompetitive results; and

(c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which is necessary for them to provide services.

ARTICLE 16.9

Interconnection with Major Suppliers

1. Each Party shall ensure that a major supplier of public telecommunications networks and services in its territory provides interconnection with suppliers of public telecommunications services of the other Party:

(a) at any technically feasible point in the network of that major supplier;

(b) on non-discriminatory terms and conditions including as regards rates, technical standards, specifications, quality and maintenance;

(c) of a quality no less favourable than that provided for its own like services, or for like services of its subsidiaries or other affiliates;

(d) in a timely fashion, and on terms and conditions, including rates[5], technical standards and specifications, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers of public telecommunications services do not need to pay for network components or facilities that they do not require for the service to be provided; and

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[5] Nothing in this paragraph shall preclude a Party from requiring that a major supplier provides interconnection at cost-oriented rates. "Cost-oriented rates" means rates based on cost, which may include a reasonable profit, and may involve different cost methodologies for different facilities or services.

(e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of the necessary additional facilities.

2. Each Party shall ensure that major suppliers in its territory make publicly available, as appropriate, either:

(a) a reference interconnection offer or another standard interconnection offer containing the terms and conditions, and rates that the major supplier offers generally to suppliers of public telecommunications services; or

(b) the terms and conditions of an interconnection agreement in effect.

3. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

ARTICLE 16.10

Access to Essential Facilities

1. Each Party shall ensure that a major supplier in its territory grants access to its essential facilities to suppliers of public telecommunications networks or services on reasonable, transparent and non-discriminatory terms and conditions based on a generally available offer for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of market conditions conducted by the telecommunications regulatory authority. The essential facilities of a major supplier may include network elements, leased circuits services and associated facilities.

2. Each Party shall provide its telecommunications regulatory authority with the power to determine the essential facilities required to be made available in its territory by a major supplier, and to what extent those essential facilities are to be unbundled. Such determination shall be based, among others, on the objective of achieving effective competition and the benefit of the long-term interest of end users.

3. If a Party requires a major supplier to offer its public telecommunications services for resale, it shall ensure that the major supplier does not impose unreasonable or discriminatory conditions on the resale of its public telecommunications services.

ARTICLE 16.11

Scarce Resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner and in pursuit of general interest objectives, including the promotion of competition. Procedures, and conditions and obligations attached to rights of use, shall be based on objective, transparent, non-discriminatory and proportionate criteria.

2. Each Party shall ensure that the current use of allocated frequency bands is made publicly available, but detailed identification of radio spectrum allocated for specific government purposes is not required.

3. A Party may rely on market-based approaches, such as bidding procedures, to assign radio spectrum for commercial use.

4. Measures of a Party allocating and assigning radio spectrum and managing frequency are not *per se* inconsistent with Articles 10.6 (Market Access) and 11.4 (Market Access). Each Party retains the right to adopt and maintain spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided those measures are consistent with other provisions of this Agreement. This right includes the ability to allocate frequency bands taking into account current and future needs and radio spectrum availability.

ARTICLE 16.12

Number Portability

Each Party shall ensure within its territory that suppliers of public telecommunications services provide number portability on a timely basis, without impairment of quality, reliability or convenience, and on reasonable and non-discriminatory terms and conditions.

ARTICLE 16.13

Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.

2. Each Party shall administer any universal service obligation in a manner that is transparent, non-discriminatory and neutral with respect to competition. Each Party shall ensure that any universal service obligation it imposes is not more burdensome than necessary for the kind of universal service that it has defined. Universal service obligations defined according to these principles shall not be regarded *per se* as anticompetitive.

3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or services. The designation shall be made through an efficient, transparent and non-discriminatory mechanism.

4. If a Party decides to compensate the suppliers of universal services, it shall ensure that such compensation does not exceed the needs directly attributable to the universal services obligation, as determined through a competitive process or a determination of net costs.

ARTICLE 16.14

Confidentiality of Information

1. Each Party shall ensure that suppliers of public telecommunications networks or services that acquire information from another supplier of public telecommunications networks or services, in the process of negotiating arrangements pursuant to Articles 16.5, 16.9 or 16.10 use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of that information.

2. Each Party shall ensure the confidentiality of telecommunications and related traffic data transmitted in the use of public telecommunications networks or services, subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

ARTICLE 16.15

Technological Neutrality

The Parties recognise the benefits of technological neutrality, in particular with regard to allowing suppliers of public telecommunications services to choose the technologies they desire to use for supplying their services. A Party may restrict such choice by adopting or maintaining requirements necessary to satisfy legitimate public policy objectives, provided that those requirements do not create unnecessary obstacles to trade.

ARTICLE 16.16

Treatment by Major Suppliers

Each Party shall provide its telecommunications regulatory authority with the power to require, where appropriate, that a major supplier in its territory accords suppliers of public telecommunications networks or services of the other Party treatment no less favourable than that which the major supplier accords in like situations to its subsidiaries or its affiliates, regarding:

(a) the availability, provisioning, rates or quality of like telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

ARTICLE 16.17

International Mobile Roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services with a view to promoting the growth of trade between the Parties and enhancing consumer welfare.

2. A Party may enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services in particular by:

(a) ensuring that information regarding retail rates is easily accessible to consumers; and

(b) minimising impediments to the use of technological alternatives to roaming, whereby consumers visiting its territory can access telecommunications services using the device of their choice.

ARTICLE 16.18

International Standards and Organisations

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks or services and shall promote those standards through the work of relevant international bodies including the International Telecommunication Union and the International Organization for Standardization.

CHAPTER 17

INTERNATIONAL MARITIME TRANSPORT SERVICES

ARTICLE 17.1

Definitions

1. For the purposes of this Chapter, Section B of Chapter10 (Liberalisation of Investments) and Chapters 11 (Cross-Border Trade in Services), 12 (Temporary Presence of Natural Persons for Business Purposes) and 18 (Financial Services):

(a) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;

(b) "customs clearance services" means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, on behalf of another party, whether this service is the main activity of the service provider or a usual complement of its main activity;

(c) "door-to-door or multimodal transport operations" means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;

(d) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;

(e) "international cargo" means cargo transported between a port of a Party and a port of the other Party or of a third country, or between a port of one Member State of the European Union and a port of another Member State of the European Union;

(f) "international maritime transport services" means the transport of passengers or cargo by sea-going vessels between a port of a Party and a port of the other Party or of a third country or between a port of one Member State of the European Union and a port of another Member State of the European Union, including direct contracting with providers of other transport services, with a view to covering door-to-door or multimodal transport operations under a single transport document, but not the right to provide such other transport services;

(g) "maritime auxiliary services" means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services;

(h) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent, the business interests of one or more shipping lines or shipping companies, for the purposes of:

(i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of those companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; or

(ii) acting on behalf of those companies organising the call of the ship or taking over cargoes when required; and

(i) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies; including the organisation and supervision of:

(i) the loading or discharging of cargo to or from a ship;

(ii) the lashing or unlashing of cargo; or

(iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge.

ARTICLE 17.2

Objective

This Chapter sets out the principles regarding the liberalisation of international maritime transport services pursuant to Section B of Chapter 10 (Liberalisation of Investments), and Chapters 11 (Cross-Border Trade in Services), 12 (Temporary Presence of Natural Persons for Business Purposes) and 18 (Financial Services).

ARTICLE 17.3

Principles

1. Subject to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, in accordance with Annexes I (Existing measures), II (Future Measures), III (Market Access Commitments) and VI (Financial Services), each Party shall:

(a) effectively apply the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis; and

(b) grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships with regard to, among others, access to ports, use of infrastructure and services of ports, and use of maritime auxiliary services, as well as related fees and charges, customs facilities and assignment of berths and facilities for loading and unloading.

2. In applying the principles referred to in subparagraphs 1(a) and (b), the Parties shall:

(a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and

(b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures or administrative, technical or other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of international maritime transport services.

3. Each Party shall permit international maritime service suppliers of the other Party to have an enterprise established and operating in its territory in accordance with Annexes I (Existing measures), II (Future Measures), III (Market Access Commitments) and VI (Financial Services).

4. The Parties shall make available to suppliers of international maritime transport services of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth and berthing services, as well as shore-based operational services essential to ship operations, including communications, water and electrical supplies.

CHAPTER 18

FINANCIAL SERVICES

ARTICLE 18.1

Definitions

For the purposes of this Chapter:

(a) "cross-border financial service supplier of a Party" means a person of a Party that is engaged in the supply of financial services within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of those services;

(b) "cross-border trade in financial services" or "cross-border supply of financial services" means the supply of a financial service:

(i) from the territory of one Party into the territory of the other Party; or

(ii) in the territory of one Party to a service consumer of the other Party; such supply of a financial service does not include the supply of a financial service in the territory of one Party by an investment in that territory;

(c) "financial institution" means any financial service supplier that carries out a financial service if that supplier is authorised to do business, regulated or supervised as a financial institution under the law of the Party in whose territory the supplier is located, including a branch in the territory of the Party of the financial service supplier whose head office is located in the territory of the other Party;

(d) "financial institution of the other Party" means a financial institution located in the territory of a Party that is controlled by a person of the other Party;

(e) "financial service" means any service of a financial nature including all insurance and insurance-related services, and all banking and other financial services (excluding insurance); covering the following activities:

(i) insurance and insurance-related services:

(A) direct insurance including co-insurance:

(1) life;

(2) non-life;

(B) reinsurance and retrocession;

(C) insurance intermediation, such as brokerage and agency; and

(D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services; and

(ii) banking and other financial services (excluding insurance):

(A) acceptance of deposits and other repayable funds from the public;

(B) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;

(C) financial leasing;

(D) all payment and money transmission services, including credit, charge and debit cards, travellers checks, and bankers drafts;

(E) guarantees and commitments;

(F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:

(1) money market instruments including checks, bills, certificates of deposits;

(2) foreign exchange;

(3) derivative products including, futures and options;

(4) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(5) transferable securities; and

(6) other negotiable instruments and financial assets, including bullion;

(G) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(H) money broking;

(I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

(J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(K) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(L) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs A to K, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(f) "financial service supplier" means a person of a Party that seeks to supply or supplies a financial service within the territory of that Party but does not include a public entity;

(g) "investment" means an investment as defined in paragraph 2 of Article 10.1 (Definitions) except that with respect to loans and other debt instruments referred to in that definition:

(i) a loan to, or debt instrument issued by, a financial institution is covered by the term investment if it is treated as regulatory capital by the Party in whose territory the financial institution is located, regardless of its maturity; and

(ii) a loan granted, or debt instrument owned, by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (i) is not covered by the term investment;

for greater certainty, a loan granted by, or debt instrument owned by, a cross-border financial service supplier other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 10 (Investment), provided that loan or debt instrument meets the criteria for investments set out in Article 10.1 (Definitions);

(h) "investor of a Party" means an investor of a Party as defined in Article 10.1 (Definitions).

(i) "new financial service" means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, which is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party;

(j) "public entity" means:

(i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and

(k) "self-regulatory organisation" means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from a Party.

ARTICLE 18.2

Scope

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

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of those investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. For greater certainty, Chapter 10 (Investment) applies to measures adopted or maintained by a Party:

(a) relating to investors of a Party and investments of those investors in financial service suppliers which are not financial institutions; and

(b) other than measures relating to the supply of financial services, relating to investors of a Party or investments of those investors in financial institutions.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except to the extent that a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or financial institution.

4. This Chapter does not apply to government procurement of financial services.

5. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

6. The provisions of Chapters 10 (Investment) and 11 (Cross-Border Trade in Services) apply to measures within the scope of this Chapter only to the extent that those provisions are incorporated into and made part of this Chapter.

7. The following provisions are hereby incorporated and made part of this Chapter and apply *mutatis mutandis* to measures adopted or maintained by a Party relating to financial institutions of the other Party, investors of the other Party and investments of those investors in financial institutions in the Party's territory:

a) Articles 10.11 (Formal Requirements), 10.14 (Investment and Regulatory Objectives and Measures), 10.15 (Treatment of Investors and of Covered Investments), 10.16 (Transfers), 10.17 (Compensation for Losses), 10.18 (Expropriation and Compensation), 10.19 (Subrogation), 10.52 (Denial of Benefits) and 11.9 (Denial of Benefits); and

b) Section D of Chapter 10 (Resolution of Investment Disputes) solely for claims that a Party has breached Articles 18.3 or 18.4 with respect to the operation of a financial institution or of an investment in a financial institution, or has breached Articles 10.11 (Formal Requirements), 10.15 (Treatment of Investors and of Covered Investments), 10.16 (Transfers), 10.17 (Compensation for Losses), 10.18 (Expropriation and Compensation), 10.52 (Denial of Benefits) or 11.9 (Denial of Benefits).

8. If an inconsistency arises between this Chapter and any other provision of the Agreement, this Chapter shall prevail to the extent of the inconsistency.

ARTICLE 18.3

National Treatment

1. Article 10.7 (National Treatment) is hereby incorporated into and made part of this Chapter and applies to investors and financial institutions of the other Party and their investments in financial institutions.

2. The treatment accorded by a Party to its own investors and investments of its own investors pursuant to Article 10.7 (National Treatment) means treatment accorded to its own financial institutions and investments of its own investors in financial institutions.

ARTICLE 18.4

Most-Favoured-Nation Treatment

1. Article 10.8 (Most-Favoured-Nation Treatment) is hereby incorporated into and made part of this Chapter and applies to measures adopted or maintained by a Party relating to investors and financial institutions of the other Party and their investments in financial institutions.

2. The treatment accorded by a Party to investors of a third country and investments of investors of a third country pursuant to Article 10.8 (Most-Favoured-Nation Treatment) means treatment accorded to financial institutions of a third country and to investors of a third country and their investments in financial institutions.

ARTICLE 18.5

Market Access

1. A Party shall not adopt or maintain with respect to a financial institution of the other Party or with respect to market access through establishment of a financial institution by an investor of the other Party, either on the basis of its entire territory or on the basis of a territorial subdivision, a measure that:

(a) imposes limitations on:

(i) the number of financial institutions, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

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

(iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; or

(iv) the total number of natural persons that may be employed in a particular financial services sector or that a financial institution may employ and who are necessary for, and directly related to, the performance of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restricts or requires specific types of legal entity or joint venture through which a financial institution may perform an economic activity.

2. For greater certainty, this Article shall not be construed as preventing a Party from requiring a financial institution to supply certain financial services through separate legal entities if, under the law of that Party, the range of financial services supplied by the financial institution may not be supplied through a single entity.

ARTICLE 18.6

Senior Management and Board of Directors

Article 10.10 (Senior Management and Board of Directors) is hereby incorporated into and made a part of this Chapter and applies to measures adopted or maintained by Party relating to financial institutions.

ARTICLE 18.7

Cross-Border Trade in Financial Services

1. Articles 11.4 (Market Access) and 11.6 (National Treatment), are hereby incorporated into and made part of this Chapter and apply to measures adopted or maintained by a Party relating to cross-border financial service suppliers of the other Party supplying the financial services specified in Annex 18-A (Cross-Border Trade in Financial Services).

2. The treatment accorded by a Party to its own services and service suppliers pursuant to Article 11.6 (National Treatment) means treatment accorded to its own financial services and financial service suppliers.

3. The measures which a Party shall not adopt or maintain with respect to services and service suppliers of the other Party pursuant to Article 11.4 (Market Access) means measures relating to cross-border financial service suppliers of the other Party supplying financial services.

4. Article 11.7 (Most-Favoured-Nation Treatment) is hereby incorporated into and made part of this Chapter and applies to measures adopted or maintained by a Party regarding cross-border financial service suppliers of the other Party.

5. The treatment accorded by a Party to services and service suppliers of a third country pursuant to Article 11.7 (Most-Favoured-Nation Treatment) means treatment accorded to financial services of a third country and financial service suppliers of a third country.

6. Article 11.5 (Local Presence) is hereby incorporated into and made part of this Chapter and applies to cross-border financial service suppliers of the other Party supplying the financial services specified in Annex 18-A (Cross-Border Trade in Financial Services).

7. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in its territory. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. A Party may define "doing business" and "solicitation" for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

8. This Article shall not be construed as preventing a Party from adopting or maintaining a measure that prescribes formal requirements in connection with the supply of a cross-border financial service, such as the registration or authorisation of cross-border financial service suppliers and of financial instruments provided that those requirements are not applied in a discriminatory manner.

ARTICLE 18.8

Performance Requirements

1. The Parties shall jointly determine disciplines on performance requirements such as those set out in Article 10.9 (Performance Requirements) that shall apply to investments in financial institutions.

2. Within 180 days following the joint determination of the performance requirement disciplines pursuant to paragraph 1, the Joint Council shall modify by a decision paragraph 1 in order to integrate those disciplines into this Article and may modify, as appropriate, the reservations and non-conforming measures of each Party in Annex VI (Financial Services).

3. Article 18.12 applies to measures listed with respect to the performance requirement disciplines referred to in paragraph 1.

ARTICLE 18.9

Financial Services New to the Territory of a Party

1. A Party shall permit a financial institution of the other Party to supply any new financial service that the former Party would permit to be supplied by its own financial institutions in accordance with its domestic law in like situations without adopting a law or modifying an existing law.

2. Notwithstanding Article 18.8(1) in conjunction with Article 11.4 (Market Access), a Party may determine the institutional and legal form through which the new financial service may be supplied and may require authorisation for the supply of the service. If that authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

ARTICLE 18.10

Review Clause on Data Flows

The Parties shall reassess within three years of the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data for conducting the activities that are within the scope of this Chapter.

ARTICLE 18.11

Treatment of Information

Nothing in this Agreement shall be construed as requiring a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

ARTICLE 18.12

Reservations and Non-Conforming Measures

1. Articles 18.3 to 18.7 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at the level of:

(i) the European Union, as set out in Appendix VI-A (List of the EU) to Annex VI (Financial Services);

(ii) a central government, as set out by that Party in Section A of the List in its Appendix to Annex VI (Financial Services);

(iii) a regional government, as set out by that Party in Section A of the List in its Appendix to Annex VI (Financial Services); or

(iv) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed:

(i) immediately before the amendment, with Article 18.3, 18.4, 18.5, or 18.6; or

(ii) on the date of entry into force of the Agreement, with Article 18.7.

2. Articles 18.3 to 18.7 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in Section B of the List of its Appendix to Annex VI (Financial Services).

3. A reservation of a Party to Articles 10.6 (Market Access), 10.7 (National Treatment), 10.8 (Most-Favoured-Nation Treatment), 10.10 (Senior Management and Board of Directors), 11.4 (Market Access), 11.5 (Local Presence), 11.6 (National Treatment) or 11.7 (Most-Favoured-Nation Treatment) listed in its Appendix to Annexes I or II also constitutes a reservation to Articles 18.3, 18.4, 18.5, 18.6 or 18.7, as the case may be, to the extent that the measure, sector, subsector or activity set out in the reservation is within the scope of this Chapter.

4. A Party shall not adopt any measure covered by a reservation listed in its respective Appendix to Annex II (Future Measures) that requires directly or indirectly an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

ARTICLE 18.13

Prudential Carve-Out

1. Nothing in this Agreement shall be construed as preventing a Party from adopting or maintaining measures for prudential reasons,[6] including to:

(a) protect investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or

[6] The Parties recognise that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity or financial responsibility of individual financial service suppliers.

(b) ensure the integrity and stability of the financial system of that Party.

2. Where such measures do not conform to the other provisions of this Agreement, they shall not be used as a means of avoiding the commitments or obligations of a Party under this Agreement.

ARTICLE 18.14

Recognition

1. A Party may recognise prudential measures of the other Party or a third country in determining how the measures of the former Party relating to financial services shall be applied. Such recognition may be achieved either autonomously, through harmonisation or based on an agreement or other arrangement.

2. If a Party recognises a prudential measure of a third country in accordance with paragraph 1, that Party shall afford adequate opportunity to the other Party to demonstrate that the circumstances in which the Party recognised the prudential measure of the third country exist in the other Party and that under those circumstances there are or would be equivalent regulation, oversight and implementation in the other Party as well as, if appropriate, procedures for exchanging information between the Parties.

3. Nothing in this Agreement shall be construed as requiring a Party to recognise a prudential measure of the other Party.

ARTICLE 18.15

International Standards

Each Party shall endeavour to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against avoidance and evasion of taxes are implemented and applied in its territory. Those internationally agreed standards include, among others, those adopted by the G20, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), the International Organisation of Securities Commissions (IOSCO), the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes of the OECD.

ARTICLE 18.16

Self-Regulatory Organisations

If a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation in order to provide a financial service in or into its territory, the former Party shall ensure that the self-regulatory organisation complies with the obligations set out in Articles 18.3, 18.4 and 18.7.

ARTICLE 18.17

Payment and Clearing Systems

Each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business under terms and conditions that accord national treatment. This Article does not confer access to the Party's lender of last resort facilities.

ARTICLE 18.18

Domestic Regulation and Transparency

1. Chapters 13 (Domestic Regulation) and 28 (Good Regulatory Practices) do not apply to measures adopted or maintained by a Party relating to the scope of this Chapter.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. For the purposes of paragraph 2, each Party shall, to the extent practicable and in a manner consistent with its law:

(a) publish in advance its proposed laws and regulations related to matters within the scope of this Chapter, or publish in advance documents that provide sufficient details about such potential new laws and regulations to allow interested persons and the other Party to assess whether and how their interests could be significantly affected;

(b) provide interested persons and the other Party a reasonable opportunity to comment on the proposed measures or documents referred to in subparagraph (a); and

(c) consider comments received in accordance with subparagraph (b).

4. If a Party requires an authorisation for the supply of a financial service, the competent authorities of that Party shall:

(a) permit an applicant, to the extent practicable, to submit an application at any time;

(b) allow a reasonable period of time for the submission of an application if specific time periods for applications exist;

(c) provide to service suppliers and persons seeking to supply a service the information necessary to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation;

(d) provide, to the extent practicable, an indicative timeframe for processing of an application;

(e) endeavour to accept applications in electronic format;

(f) accept copies of documents which are authenticated in accordance with the law of the Party, in place of original documents, unless the presentation of original documents is required for protecting the integrity of the authorisation process;

(g) provide, at the request of the applicant, without undue delay information concerning the status of the application;

(h) if an application is considered complete for processing under the law of the Party, ensure that the processing of an application is finalised, and that the applicant is informed of the decision within a reasonable period of time after the submission of the application, to the extent possible in writing;[7]

(i) if an application is considered incomplete for processing under the law of the Party, within a reasonable period of time and to the extent practicable:

   (i) inform the applicant that the application is incomplete;

   (ii) provide, at the request of the applicant, guidance on why the application is considered incomplete;

   (iii) provide the applicant with the opportunity[8] to submit the additional information that is required to complete the application; and

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[7] The competent authorities can meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application. For greater certainty, informing in writing may include in electronic form.

[8] For greater certainty, that opportunity does not require a competent authority to grant an extension of deadlines.

(iv) if none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;

(j) if an application is rejected, inform the applicant, to the extent practicable, either on its own initiative or on the request of the applicant, of the reasons for rejection and, if applicable, the procedures for resubmission of an application;

(k) ensure that the authorisation fees[9] charged by the competent authority are reasonable, are transparent and do not in themselves restrict the supply of the relevant service or the pursuit of any other economic activity; and

(l) ensure that the authorisation, once granted, enters into effect without undue delay subject to the applicable terms and conditions.

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[9] Authorisation fees include licensing fees and fees relating to qualification procedures. They do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

ARTICLE 18.19

Sub-Committee on Financial Services

1. The Sub-Committee on Financial Services established by Article 1.10.1(i) (Sub-Committees and Other Bodies of Part III of this Agreement) shall meet annually, unless otherwise agreed, to:

(a) monitor the implementation and operation of this Chapter;

(b) consider matters regarding financial services that are referred to it by a Party;

(c) provide a forum for dialogue between the Parties on the regulation of the financial services sector with a view to improving mutual knowledge of their respective regulatory systems and to cooperate in the development of international standards;

(d) participate in dispute settlement procedures in accordance with Article 18.22 (Investment Disputes in Financial Services); and

(e) to assess the functioning of this Agreement as it applies to financial services.

2. Further to paragraph 1 of Article 1.10 (Sub-Committees and other Bodies of Part III of this Agreement), the composition of the Sub-Committee on Financial Services shall include financial services experts and representatives of authorities in charge of financial services policy. For Mexico, the authority responsible for financial services policy is the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) or its successor.

3. On request of either Party, the Sub-Committee on Financial Services shall discuss the development of appropriate guidelines for the interpretation of this Chapter. The Joint Council may adopt such guidelines by means of a recommendation.

ARTICLE 18.20

Consultations

1. A Party may request, in writing, consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall accord sympathetic consideration to that request. The consulting Parties shall report the results of their consultations to the Sub-Committee on Financial Services.

2. Each Party shall ensure that its delegation in the consultations includes officials with the relevant expertise in financial services or financial institutions covered by this Chapter. For Mexico, the officials of the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) or its successor fulfil this requirement.

3. Nothing in this Article shall be construed as requiring a Party to derogate from its law regarding the sharing of information among financial authorities or the requirements of an agreement or arrangement between financial authorities of the Parties, or require financial authorities to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

4. Nothing in this Article shall be construed as preventing a Party from requiring information for supervisory purposes concerning a financial institution, or a cross-border financial service supplier, located in the territory of other Party. That Party may approach the financial authority of the other Party to seek the information.

ARTICLE 18.21

Dispute Settlement

1. Chapter 31 (Dispute Settlement), including Annexes 31-A (Rules of Procedure) and 31-B (Code of Conduct), applies as modified by this Article to the settlement of disputes concerning the application and interpretation of the provisions of this Chapter.

2. In addition to the requirements set out in Article 31.9 (Requirements for Panellists), panellists shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions, unless the Parties agree otherwise.

3. The Joint Committee shall, no later than six months after the date of entry into force of this Agreement, adopt a list of at least 15 individuals, fulfilling the requirements set out in paragraph 2, who are willing and able to serve as panellists. The list shall be composed of three sub-lists:

(a) a sub-list of individuals of the European Union;

(b) a sub-list of individuals of Mexico; and

(c) a sub-list of individuals who shall serve as chairperson to the panel.

4. For the purposes of this Chapter, the sub-lists referred to in paragraph 3 shall, after adoption, replace the sub-lists set out in paragraph 1 of Article 31.8 (Lists of Panellists).

5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

(a) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the financial services sector of the other Party; or

(b) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

ARTICLE 18.22

Investment Disputes in Financial Services

1. Section D (Resolution of Investment Disputes) of Chapter 10 (Investment) as incorporated and made part of this Chapter by Article 18.2.8 applies, as modified by this Article, to:

(a) investment disputes pertaining to measures to which this Chapter applies and in which an investor claims that a Party has breached paragraph 2 of Article 10.7 (National Treatment), paragraph 2 of Article 10.8 (Most-Favoured-Nation Treatment), Articles 10.15 (Treatment of Investors and of Covered Investments), 10.16 (Transfers), 10.17 (Compensation for Losses), 10.18 (Expropriation and Compensation) or 10.52 (Denial of Benefits); or

(b) investment disputes commenced pursuant to Section D (Resolution of Investment Disputes) of Chapter 10 (Investment) in which Article 18.13 (Prudential Carve-Out) has been invoked.

2. In the case of an investment dispute pursuant to subparagraph 1(a), or if the respondent invokes Article 18.13 (Prudential Carve-Out) pursuant to subparagraph 1(b) within 60 days of the submission of a claim to the Tribunal in accordance with Article 10.26 (Submission of a Claim to the Tribunal), the division of the Tribunal hearing the case shall appoint, after consulting the disputing parties and pursuant to Article 10.44 (Expert Reports), one or more experts from the list of experts adopted by the Joint Committee to report to it on any factual issue concerning financial services matters raised by a disputing party in the proceedings. The list of experts shall be adopted by the Joint Council no later than six months after the entry into force of this Agreement and shall be composed of six experts who have demonstrated expertise or experience in financial services law or practice, which may include the regulation of financial institutions. If the list has not been adopted on the day that the claim is submitted pursuant to Article 10.26 (Submission of a Claim to the Tribunal), the experts shall be appointed from the individuals who have been designated and notified to the other Party by a Party or both Parties for the purposes of adopting that list.

3. The respondent may refer the matter in writing to the Sub-Committee on Financial Services for a decision as to whether and, if so, to what extent the exception under Article 18.13 (Prudential Carve-Out) is a valid defence to the claim. This referral shall not be made later than the date which the Tribunal fixes for the respondent to deliver its submission. If the respondent refers the matter to the Sub-Committee on Financial Services pursuant to this paragraph, the periods of time or proceedings referred to in Section D of (Resolution of Investment Disputes) of Chapter 10 (Investment) are suspended.

4. In a referral pursuant to paragraph 3, the Sub-Committee on Financial Services may make a joint determination as to whether and to what extent a prudential carve-out in accordance with Article 18.13 is a valid defence to the claim and transmit a copy thereof to the investor and the Tribunal. If the joint determination concludes that Article 18.13 is a valid defence to all parts of the claim in its entirety, the investor is deemed to have withdrawn its claim and the proceedings are discontinued in accordance with Article 10.40 (Discontinuance). If the joint determination concludes that Article 18.13 is a valid defence to only parts of the claim, the joint determination is binding on the Tribunal with respect to those parts of the claim. In that case, the suspension of the periods of time or proceedings described in paragraph 3 does not apply and the investor may proceed with the remaining parts of the claim.

5. If the Sub-Committee on Financial Services has not made a joint determination within three months after the referral of the matter by the respondent, the suspension of the periods of time or proceedings referred to in paragraph 3 does not apply and the investor may proceed with its claim.

6. At the request of the respondent and in case the Sub-Committee on Financial Services failed to make a joint determination within the three months period referred to in paragraph 5, the Tribunal shall decide as a preliminary matter whether and to what extent Article 18.13 is a valid defence. Failure of the respondent to make that request is without prejudice to the right of the respondent to assert Article 18.13 as a defence in a later phase of the proceedings. The Tribunal shall draw no adverse inference from the fact that the Sub-Committee on Financial Services has not agreed on a joint determination.

7. Proceedings pursuant to paragraph 6 shall be conducted by the division of the Tribunal established to hear the claim and shall in particular ensure that the disputing parties have an opportunity to present at least one written submission. The division of the Tribunal shall issue its preliminary decision within 120 days after the reception of the last submission. If the Tribunal requires additional time to issue its preliminary decision, it shall provide the reasons for the delay. If the division of the Tribunal concludes that Article 18.13 is a valid defence applicable to the entire claim, the investor is deemed to have withdrawn its claim and the proceedings are discontinued in accordance with Article 10.40 (Discontinuance). If the division of the Tribunal concludes that Article 18.13 is a valid defence applicable to only parts of the claim, the proceedings shall continue with the remaining parts of the claim.

CHAPTER 19

DIGITAL TRADE

ARTICLE 19.1

Definitions

For the purposes of this Chapter:

(a) "consumer" means any natural person, or enterprise if provided for in the law of the Party concerned, using or requesting a publicly available telecommunications service for purposes outside their trade, business, craft or profession;

(b) "data message" means information generated, sent, received or stored by electronic, optical or similar means;

(c) "electronic authentication service" means a service that enables to confirm:

(i) the identity of a natural person or enterprise, or

(ii) the origin and integrity of a data message from the time when it was first generated in its final form;

(d) "electronic signature" means data in electronic form affixed to or logically associated with a data message, which may be used to identify the signatory of that data message and to indicate its approval of the information contained in that data message, to ensure its origin and integrity in a way that any subsequent alteration in the data is detectable;

(e) "electronic trust service" means an electronic service consisting of the creation, verification and validation of electronic signatures, electronic time stamps, electronic registered delivery, certified digitisation services, website authentication and certificates related to those services;

(f) "end-user" means any natural person, or enterprise if provided for in the law of the Party concerned, using or requesting a publicly available telecommunications service, either as a consumer or for trade, business, craft or professional purposes;

(g) "trust service provider" means a natural person or enterprise who provides electronic trust services; and

(h) "unsolicited commercial electronic message" means an electronic message, including at least electronic mail, short message system (SMS) and multimedia message system (MMS) messages, which is sent for commercial purposes, without the consent of the recipient or despite the explicit rejection of the recipient, directly to end-users via a telecommunications network and, to the extent provided for under the law of a Party, other telecommunications services.

ARTICLE 19.2

Scope

1. This Chapter applies to measures of a Party affecting trade enabled by electronic means.

2. This Chapter does not apply to:

(a) gambling services;

(b) broadcasting services;

(c) audio-visual services;

(d) services of notaries or equivalent professions;

(e) legal representation services; and

(f) government procurement with the exception of Articles 19.7, 19.8 and 19.11.

ARTICLE 19.3

General Principles

The Parties recognise the economic growth and opportunities provided by digital trade and the importance of adopting frameworks that promote consumer confidence in digital trade and of avoiding unnecessary barriers to its use and development.

ARTICLE 19.4

Right to regulate

The Parties affirm the right to regulate within their territories in order to achieve legitimate policy objectives, such as those relating to public health, social services, public education, safety, environment, public morals, social or consumer protection, privacy and data protection, the promotion and protection of cultural diversity, or competition.

ARTICLE 19.5

Customs Duties on Electronic Transmissions

1. A Party shall not impose customs duties on electronic transmissions between a person of a Party and a person of the other Party.

2. For greater certainty, paragraph 1 does not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions, provided those taxes, fees or charges are imposed in a manner consistent with this Agreement.

ARTICLE 19.6

No Prior Authorisation

1. Each Party shall ensure that the supply of services by electronic means is not subject to prior authorisation.

2. Paragraph 1 is without prejudice to authorisation requirements which are not specifically and exclusively targeted at services provided by electronic means, or which apply to telecommunications services.

ARTICLE 19.7

Electronic Contracts

Each Party shall ensure that its legal system allows the conclusion of contracts by electronic means and that those contracts shall not be denied legal effect, validity or enforceability solely on the ground of having been concluded by electronic means.[10]

ARTICLE 19.8

Electronic Trust and Authentication Services

1. A Party shall not deny the legal validity of an electronic trust or an electronic authentication service solely on the basis that the service is provided in electronic form.

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[10] This provision does not apply to contracts:

(a) that create or transfer rights in real estate;

(b) requiring by law the involvement of courts, public authorities or professions exercising public authority;

(c) of suretyship granted and contracts on collateral securities furnished by persons acting for purposes outside their trade, business, craft or profession, as required by law; and

(d) governed by family law or by the law of succession.

2. A Party shall not adopt or maintain measures regulating electronic trust and electronic authentication services that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic methods for their transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic trust and electronic authentication services.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of electronic transactions, the method of electronic authentication meets certain performance standards or is certified by an authority accredited in accordance with its law. Such requirements shall be objective, transparent and non-discriminatory and shall relate only to the specific characteristics of the category of electronic transactions concerned.

4. The Parties shall encourage the use of interoperable electronic trust and electronic authentication services, and the mutual recognition of electronic trust and electronic authentication services provided by recognised trust services providers.

ARTICLE 19.9

Protection of Online Consumers

1. The Parties recognise the importance of maintaining and adopting transparent and effective measures that contribute to consumer trust, including but not limited to measures that protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce transactions.

2. Each Party shall adopt or maintain measures that contribute to consumer trust, including measures that proscribe fraudulent and deceptive commercial practices that cause harm or potentially cause harm to consumers.

3. The Parties recognise the importance of cooperation between their respective consumer protection agencies or other relevant bodies on activities related to electronic commerce between the Parties in order to improve consumer trust and thereby enhance consumer welfare.

ARTICLE 19.10

Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures that:

(a) require senders of unsolicited commercial electronic messages to facilitate the ability of end-users to prevent ongoing reception of those messages; or

(b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages.

2. Each Party shall ensure that unsolicited commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are sent and contain the necessary information to enable end-users to request cessation free of charge and at any moment.

3. Each Party shall provide recourse against senders of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.

4. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

ARTICLE 19.11

Source Code

1. A Party may not require the transfer of, or access to, source code of software owned by a natural person or enterprise of the other Party.

2. For greater certainty, paragraph 1 does not:

(a) prevent a Party from adopting or maintaining measures to achieve a legitimate public policy objective, including to ensure security and safety, for instance in the context of a certification procedure, in accordance with Articles 18.13 (Prudential Carve-Out), 32.1 (General Exceptions) and Article 2.8 (Security Exception) of Part IV of the Agreement; and.

(b) apply to the voluntary transfer of or granting of access to source code on a commercial basis by a person of the other Party, for instance in the context of a public procurement transaction or a freely negotiated contract.

3. Nothing in this Article shall affect:

(a) requirements by a court, administrative tribunal or competition authority to remedy a violation of competition laws;

(b) intellectual property rights and their enforcement; and

(c) the right of a Party to take any action or not disclose any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

ARTICLE 19.12

Open Internet Access

Each Party shall endeavour to ensure that, subject to applicable policies and laws and regulations, end-users in its territory are able to:

(a) access, distribute and use services and applications of their choice available on the Internet, subject to reasonable and non-discriminatory network management;

(b) connect devices of their choice to the Internet, provided that such devices do not harm the network; and

(c) have access to information on the network management practices of their Internet access service supplier.

ARTICLE 19.13

Cooperation

1. Recognising the global nature of digital trade, the Parties shall cooperate on regulatory matters and best practices through the existing sectoral dialogues, which shall, among others, address:

(a) the recognition and facilitation of interoperable cross-border electronic trust and authentication services;

(b) the treatment of direct marketing communications;

(c) the challenges for small and medium-sized enterprises in digital trade;

(d) the protection of consumers and the building of consumer trust in the ambit of electronic commerce;

(e) common cyber security issues; and

(f) any other matter relevant for the development of digital trade.

2. The cooperation on regulatory matters and best practises referred to in paragraph 1 shall focus on the exchange of information and views on the Parties' respective legislation on those as well as on the implementation of such legislation.

3. The Parties affirm the importance of actively participating in multilateral fora to promote the development of digital trade.

ARTICLE 19.14

Review Clause on Data Flows

The Parties shall reassess within three years after the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement.

CHAPTER 20

CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS
AND TEMPORARY SAFEGUARD MEASURES

ARTICLE 20.1

Current Account

Without prejudice to other provisions of this Agreement, each Party shall allow any transfers or payments with regard to transactions on the current account of the balance of payments between the Parties that fall within the scope of this Agreement, in freely convertible currency, and in accordance with the Articles of Agreement of the International Monetary Fund adopted in Bretton Woods, New Hampshire on 22 July 1944, as applicable.

ARTICLE 20.2

Capital Movements

Without prejudice to other provisions of this Agreement, each Party shall allow, with regard to transactions on the capital and financial account of balance of payments, the free movement of capital for the purpose of liberalisation of investments and other transactions, as provided for in Section B (Liberalisation of Investments) of Chapter 10 (Investment), Chapter 11 (Cross-Border Trade in Services), Chapter 12 (Temporary Presence of Natural Persons for Business Purposes) and Chapter 18 (Financial Services).

ARTICLE 20.3

Application of Laws and Regulations Relating to
Capital Movements, Payments or Transfers

1. Article 10.16 (Transfers) and subparagraph 6(a) of Article 18.2 (Scope), as well as Articles 20.1 and 20.2 shall not preclude a Party from applying its laws and regulations relating to:

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

(b) issuing, trading or dealing in financial instruments;

(c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences, or deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in adjudicatory proceedings; or

(f) social security, public retirement or compulsory savings schemes.

2. Those laws and regulations shall not be applied in an arbitrary or discriminatory manner, or in a manner which otherwise constitutes a disguised restriction on capital movements, payments or transfers.

ARTICLE 20.4

Temporary Safeguard Measures

1. In exceptional circumstances of serious difficulties for the operation of the European Union's economic and monetary union, or threat thereof, the European Union may adopt or maintain safeguard measures with regard to capital movements, payments or transfers. Those measures shall be limited to the extent that is strictly necessary to address such difficulties and shall be in force for a period not exceeding six months.

2. Measures imposed by the European Union pursuant to paragraph 1 shall not constitute a means of arbitrary or unjustifiable discrimination between Mexico and a third country. The European Union shall inform Mexico forthwith and present a schedule for the removal of such measures as soon as possible.

ARTICLE 20.5

Restrictions in Case of Balance of Payments,
External Financing and Macroeconomic Difficulties

1. A Party may adopt or maintain restrictive measures with regard to capital movements, payments or transfers:[11]

(a) in cases of serious balance-of-payments or external financial difficulties, or threat thereof;[12] or

(b) in cases of exceptional circumstances in which payments or transfers relating to capital movements cause or threaten to cause serious macroeconomic difficulties related to monetary and exchange rate policies in Mexico or a Member State of the European Union.

2. The measures referred to in paragraph 1 shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;

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[11] In the case of the European Union, those measures may be taken by a Member State of the European Union in situations other than those referred to in Article 20.4, which affect the economy of that Member State.

[12] For greater certainty, serious balance-of-payments or external financial difficulties, or threat thereof, as referred to in subparagraph 1(a) may be caused among other factors by serious macroeconomic difficulties related to monetary and exchange rate policies, or threat thereof, as referred to in subparagraph 1(b).

(b) not exceed those necessary to deal with the situation described in paragraph 1;

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

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(e) not treat the other Party less favourably than a third country in like situations; and

(f) not be used as a substitute for macroeconomic policies that are needed for warranted external adjustment.

3. In the case of trade in goods, a Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with Article XII of GATT 1994 and the Understanding on the Balance of Payments Provisions of the General Agreement on Tariffs and Trade 1994.

4. In the case of trade in services, a Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with Article XII of GATS.

5. A Party shall endeavour not to adopt or maintain measures that take the form of tariff surcharges, quotas, licenses or similar measures. The Party shall explain the rationale for using these restrictive measures when it notifies the other Party of the measures.

6. A Party adopting or maintaining measures referred to in paragraph 1 shall promptly notify them to the other Party.

7. If restrictive measures are adopted or maintained pursuant to Article 20.4 or this Article, the Parties shall promptly hold consultations in the Sub-Committee on Services and Investment unless consultations are held in other international fora to which both Parties are members. The consultations shall assess the balance-of-payments or external financial difficulties that led to the respective measures, taking into account factors such as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; and

(c) alternative corrective measures which may be available.

8. The consultations referred to in paragraph 7 shall address the compliance of any restrictive measures with Article 20.4 or paragraphs 1 and 2 of this Article. The Parties shall accept all relevant findings of statistical or factual nature presented by the International Monetary Fund ("IMF"), where available, and their conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

CHAPTER 21

PUBLIC PROCUREMENT

ARTICLE 21.1

Definitions

For the purposes of this Chapter:

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

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

(c) "covered procurement" means procurement for governmental purposes:

(i) of a good, a service, or any combination thereof:

(A) as specified for each Party in Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico) respectively; and

(B) not procured with a view to commercial sale or resale, or for use in the production or supply of a good or a service for commercial sale or resale;

(ii) by any contractual means, including:

(A) purchase;

(B) lease; and

(C) rental or hire purchase, with or without an option to buy;

(iii) for which the value, as estimated in accordance with Article 21.2, equals or exceeds the relevant threshold specified for each Party in Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico) respectively at the time of publication of a notice in accordance with Article 21.6;

(iv) by a procuring entity; and

(v) that is not otherwise excluded from coverage by Article 21.2.2 or by Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico);

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

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

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

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

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

(i) "offset" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

(j) "open tendering" means a procurement method whereby all interested suppliers may submit a tender;

(k) "procuring entity" means an entity covered under Sections A, B and C of Annexes 21-A (Covered Procurement of the European Union) and 21-B (Covered Procurement of Mexico);

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

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

(n) "services" includes construction services, unless otherwise specified;

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

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

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

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

(ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

ARTICLE 21.2

Scope and Coverage

Application of the Chapter

1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.

2. Except as otherwise provided for in Annexes 21-A (Covered Procurement of the European Union) and 21-B (Covered Procurement of Mexico), this Chapter does not apply to:

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

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

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

(d) public employment contracts;

(e) procurement conducted:

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

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

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

3. The commitments of each Party on covered procurement are set out in the Annexes 21-A (Covered Procurement of the European Union) and 21-B (Covered Procurement of Mexico) in accordance with the following structure:

(a) in Section A, the central government entities whose procurement is covered by this Chapter;

(b) in Section B, the sub-central government entities whose procurement is covered by this Chapter including, with regard to Mexico, other entities at sub-central level;

(c) in Section C, all other entities whose procurement is covered by this Chapter;

(d) in Section D, the goods covered by this Chapter;

(e) in Section E, the services, other than construction services, covered by this Chapter;

(f) in Section F, the construction services covered by this Chapter;

(g) in Section G, the public private partnership or works concessions covered by this Chapter;

(h) in Section H, any general notes and derogations; and

(i) in Section I, the media in which the Party publishes its procurement notices, award notices, and other information related to its public procurement system.

4. If the law of a Party allows a covered procurement to be carried out on behalf of the procuring entity by other entities or persons whose procurement is not covered with respect to the goods and services concerned, this Chapter shall also apply.

Valuation

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

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

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

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

    (ii) if the procurement provides for the possibility of options, the total value of such options.

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

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

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

7. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) if the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) if the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) if the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) if it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) applies.

ARTICLE 21.3

Security and General Exceptions

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

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

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

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

(c) necessary to protect intellectual property; or

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

ARTICLE 21.4

General Principles

Non-Discrimination

1. Notwithstanding the scope of application in Article 21.2, an enterprise of a Party that is legally established through the constitution, acquisition or maintenance of a commercial presence in the territory of the other Party may participate in government procurement of that other Party under the same conditions as the enterprises of that other Party as provided for under the law of that other Party.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favourable than the treatment the Party, including its procuring entities, accords to its own goods, services and suppliers.

3. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

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

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

Use of Electronic Means

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

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

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

(c) use electronic means of information and communication for the publication of notices and tender documentation in procurement procedures and, to the widest extent practicable, for the submission of tenders.

Conduct of Procurement

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

(a) is consistent with this Chapter, using one of the following methods: open tendering, selective tendering or limited tendering;

(b) prevents conflicts of interest and corrupt practices, in accordance with the law of the Party concerned.

Anti-corruption measures

6. Each Party shall ensure that it has appropriate measures in place to prevent corruption in its government procurement. Those measures shall include procedures to render ineligible for participation in the procurements of a Party, either indefinitely or for a stated period of time, suppliers that the judicial authorities of that Party have determined by final decision to have engaged in fraudulent or other illegal actions in relation to government procurement in the territory of that Party. Each Party shall also ensure that they have in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest on the part of those engaged in or having influence over a procurement.

Rules of Origin

7. A Party shall not apply rules of origin to goods imported or services supplied from the other Party for purposes of government procurement covered by this Chapter that are different from the rules of origin which that Party applies in the normal course of trade to imports or supplies of the same goods or services.

Denial of Benefits

8. A Party may deny the benefits of this Chapter to a service supplier of the other Party, subject to prior notification and consultation, where the Party establishes that the service is being provided by an enterprise that has no substantial business activities in the territory of either Party.

Offsets

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

Measures Not Specific to Procurement

10. Paragraphs 2 and 3 do not apply to:

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

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

(c) other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

ARTICLE 21.5

Information on the Procurement System

1. Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

(b) provide an explanation thereof to the other Party, on request.

2. Each Party shall list in Section I of Annex 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico), respectively:

(a) the electronic or paper media in which the Party publishes the information described in paragraph 1(a);

(b) the electronic or paper media in which the Party publishes the notices required by Articles 21.6, 21.8.9 and 21.15.2; and

(c) the website address or addresses where the Party publishes:

(i) its procurement statistics referred to in Article 21.15.4; or

(ii) its notices concerning awarded contracts pursuant to Article 21.15.6.

3. Each Party shall promptly notify the Sub-Committee on Public Procurement of any modification to its information listed in Section I of Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico).

ARTICLE 21.6

Notices

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances described in Article 21.12.

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

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

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

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

(d) a description of any options;

(e) the timeframe for delivery of goods or services or the duration of the contract;

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

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

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

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

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

(k) if, pursuant to Article 21.8, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender; and

(l) an indication that the procurement is covered by this Chapter.

Summary Notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in one of the WTO languages.

The summary notice shall contain at least the following information:

(a) the subject matter of the procurement;

(b) the final date for the submission of tenders or, if applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the procurement may be requested.

Notice of Planned Procurement

4. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). The notice of planned procurement should include the subject matter of the procurement and the approximate date of the publication of the notice of intended procurement or the approximate period in which the procurement may be held.

5. A procuring entity covered under Sections B or C of Annex 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico) may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 as is available to the procuring entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

General Rules on Notices

6. All notices of intended procurement, summary notice and notice of planned procurement shall be directly accessible by electronic means free of charge through an online single point of access. In addition, the notices may also be published in an appropriate paper medium which is widely disseminated and shall remain readily accessible to the public, at least until expiration of the time period indicated in the notice.

ARTICLE 21.7

Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

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

(b) may require relevant prior experience if essential to meet the requirements of the procurement; and

(c) shall not require prior experience in the territory of the Party to be a condition of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

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

(b) shall base its evaluation on the conditions that it has specified in advance in notices or tender documentation.

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

(a) bankruptcy;

(b) false declarations;

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

(d) final judgments in respect of serious crimes or other serious offences under the law of that Party;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

ARTICLE 21.8

Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information. In this case, the Party shall ensure that interested suppliers have full access to information on the registration system by electronic means and that they may request registration at any time during its validity. The competent authority shall inform them within a reasonable period of time of the decision to grant or reject this request. If the request is rejected, the decision shall be duly motivated.

2. Each Party shall ensure that:

(a) its procuring entities make efforts to minimise differences in their qualification procedures; and

(b) if its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

3. A Party, including its procuring entities, shall not adopt or apply a registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Selective Tendering

4. If a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in Article 21.6.2 (a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time period for tendering, at least the information in Article 21.6.2(c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article 21.10.3(b).

5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers permitted to tender and the criteria for selecting the limited number of suppliers. An invitation to submit a tender shall be addressed to a number of suppliers necessary to ensure effective competition.

6. If the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

Multi-Use Lists

7. A procuring entity may maintain a multi-use list provided that a notice inviting interested suppliers to apply for inclusion on the list is published annually in the appropriate medium listed in Section I of Annexes 21-A (Covered Procurement of the European Union) and 21-B (Covered Procurement of Mexico) and, if published by electronic means, made available continuously.

8. The notice provided for in paragraph 7 shall include:

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

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

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

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

(e) an indication that the list may be used for procurement covered by this Chapter.

9. Notwithstanding paragraph 7, if a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

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

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

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

11. If a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time period provided for in Article 21.10.2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the procuring entity does not have sufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the procuring entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Other Entities of Sections B and C of Annexes 21-A (Covered Procurement of the European Union) and 21-B (Covered Procurement of Mexico).

12. A procuring entity of a Party covered under Sections B or C of Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico) may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 7 and includes the information required under paragraph 8, as much of the information required in Article 21.6.2 as is available, and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the procuring entity promptly provides to suppliers that have expressed an interest in a given procurement, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article 21.6.2, to the extent such information is available.

13. A procuring entity covered under Sections B or C of the Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico) may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 to tender in a given procurement, if there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

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

15. If a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the procuring entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

ARTICLE 21.9

Technical Specifications and Tender Documentation

Technical Specifications

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

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

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

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

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

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

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

6. A Party may allow its procuring entities to take into account environmental and social considerations, provided they are non-discriminatory and they are linked to the subject matter of the contract.

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

Tender Documentation

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

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

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

(c) all evaluation criteria the procuring entity will apply in the awarding of the contract and, unless price is the sole criterion, the relative importance of those criteria;

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

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

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

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

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

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

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

11. A procuring entity shall promptly:

(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

12. If procuring entity, prior to the award of a contract, modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

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

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

ARTICLE 21.10

Time Periods

1. A procuring entity shall, in accordance with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the time necessary for transmitting tenders by non-electronic means from points located in the other Party or in the territory of the procuring entity, if electronic means are not used.

The time periods, including any extension thereof, shall be the same for all interested or participating suppliers.

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the procuring entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time -period for tendering established in accordance with paragraph 3 to not less than 10 days if:

(a) the procuring entity has published a notice of planned procurement as described in Article 21.6.4 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(v) as much of the information that is required for the notice of intended procurement under Article 21.6.2, as is available;

(b) the procuring entity, for contracts of a recurring nature, indicates in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 3 impracticable.

5. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time period for tendering established in accordance with paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision of this Article, if a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering established in accordance with paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, if the procuring entity accepts tenders for commercial goods or services by electronic means, it may reduce the time period established in accordance with paragraph 3 to not less than 10 days.

8. If a procuring entity covered under Section B or C of Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico) has selected all or a limited number of qualified suppliers, the time period for tendering may be determined by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the time period shall not be less than 10 days.

ARTICLE 21.11

Negotiation

1. A Party may provide for its procuring entities to conduct negotiations with suppliers if:

(a) the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required pursuant to Article 21.6.2; or

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

2. A procuring entity shall:

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

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

ARTICLE 21.12

Limited Tendering

1. Provided it is not used for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and choose not to apply Articles 21.6 to 21.8, 21.9.8 to 21.9.12 and Articles 21.10, 21.11, 21.13 and 21.14 under any of the following circumstances:

(a) provided that the requirements of the tender documentation are not substantially modified in the case:

    (i) no tenders were submitted or no suppliers requested participation;

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

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

(iv) the tenders submitted have been collusive;

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

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

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

(iii) an absence of competition for technical reasons;

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

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

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

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

(e) for goods purchased on a commodity market;

(f) if a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

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

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

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

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

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

ARTICLE 21.13

Electronic Auctions

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

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

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

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

ARTICLE 21.14

Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

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

2. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

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

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

(a) the most advantageous tender; or

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

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

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

7. Each Party may provide, as a general rule, for a standstill period between the award and the conclusion of a contract in order to give sufficient time to unsuccessful bidders to review and challenge the award decision.

ARTICLE 21.15

Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions and, on the request of a supplier, shall do so in writing. Subject to Articles 21.16.2 and 21.16.3, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. A procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Section I of the Annex 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico) no later than 72 days after the award of each contract covered by this Chapter. If the procuring entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

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

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

(c) the name and address of the successful supplier;

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

(e) the date of award; and

(f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article 21.12, a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

3. A procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 21.12; and

(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Exchange of Statistics

4. Each Party shall collect and exchange on an annual basis statistics on its procurements covered by this Chapter.[13] Those statistical reports shall contain, with respect to contracts awarded by all procuring entities of the Party concerned covered under this Chapter statistics on the estimated value of contracts awarded for covered procurement on a global basis and broken down by categories of procuring entities.

5. To the extent that such information is available, each Party shall provide statistics on the country of origin of products and services purchased by its procuring entities. With a view to ensuring that such statistics are comparable, the Sub-Committee on Public Procurement established pursuant to Article 21.19 shall provide guidance on the methods to be used. With a view to ensuring effective monitoring of procurements covered by this Chapter, the Joint Council may decide to modify the requirements set out in paragraph 4.

6. If a Party requires notices concerning awarded contracts to be published electronically, pursuant to paragraph 2, and if such notices are accessible to the public through a single database in a form permitting analysis of the awarded contracts, the Party may, instead of reporting to the Sub-Committee on Public Procurement, provide a link to the website, together with any instructions necessary to access and use such data.

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[13] The first exchange of information shall take place one year after the entry into force of this Agreement.

ARTICLE 21.16

Disclosure of information

Provision of Information to Parties

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a covered procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. The Party that receives the information shall not disclose that information to any supplier if this would prejudice competition in future tenders, except after obtaining the consent of the Party that provided the information.

Non-Disclosure of Information

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

3. Nothing in this Chapter shall be construed as requiring a Party, including its procuring entities, authorities and review bodies, to disclose confidential information if such disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

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

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

ARTICLE 21.17

Domestic Review Procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which, in the context of a covered procurement in which the supplier has, or has had, an interest, a supplier may challenge:

(a) a breach of this Chapter; or

(b) if the supplier does not have a right to challenge directly a breach of this Chapter under the law of a Party, a failure to comply with a Party's measures implementing this Chapter.

The procedural rules for all challenges shall be in writing and made generally available.

2. In case of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the covered procurement shall encourage the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

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

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

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

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

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

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

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

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

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

7. Each Party shall adopt or maintain procedures that provide for rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Those interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Any justification for not acting shall be provided in writing.

8. Each Party shall adopt or maintain procedures that provide for corrective action or compensation for the loss or damages suffered if a review body has determined that there has been a breach or a failure as referred to in paragraph 1. The compensation for the loss or damages suffered may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

ARTICLE 21.18

Modifications and Rectifications to Coverage

1. The European Union may modify or rectify Annex 21-A (Covered Procurement of the European Union) and Mexico may modify or rectify Annex 21-B (Covered Procurement of Mexico).

Modifications

2. If a Party intends to modify Annex 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico) respectively, that Party shall:

(a) notify the other Party in writing; and

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

3. Notwithstanding subparagraph 2(b), a Party does not need to provide compensatory adjustments if the modification covers a procuring entity over which the Party has effectively eliminated its control or influence. Government control or influence over the covered procurement of procuring entities covered under Section C of Annexes 21-A (Covered Procurement of the European Union), or under Sub-list 2 of each State of Section B or Section C of Annex 21-B (Covered Procurement of Mexico) is presumed to be effectively eliminated if the procuring entity is exposed to competition on markets to which access is not restricted.

4. The other Party may object to the proposed modification, notified pursuant to paragraph 2, if it disputes that:

(a) an adjustment proposed in accordance with subparagraph 2(b) is adequate to maintain a comparable level to the existing coverage provided for in this Chapter;

(b) the modification covers a procuring entity over which the Party has effectively eliminated its control or influence in accordance with paragraph 3.

The objection shall be made in writing within 45 days of receipt of the notification referred to in subparagraph 2(a) or that Party shall be deemed to have accepted the adjustment or modification, including for the purposes of Chapter 31 (Dispute Settlement).

Rectifications

5. The following changes to Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico) shall be considered a rectification of a purely formal nature, provided that they do not affect the existing coverage provided for in this Chapter:

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

(b) a merger of two or more entities covered under Section A to C of Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico); and

(c) the separation of an entity covered under Section A to C of Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico) into two or more entities that are all added to the procuring entities covered under the same Section of Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico).

6. Each Party shall notify the other Party every three years following the entry into force of this Agreement of proposed rectifications to Annexes 21-A (Covered Procurement of the European Union) or 21-B (Covered Procurement of Mexico).

7. A Party may notify the other Party of an objection to a proposed rectification within 45 days from having received the notification. If a Party submits an objection, it shall explain why it considers the proposed rectification is not a change provided for in paragraph 5, and describe the effect of the proposed rectification on the coverage provided for in this Chapter. If no objection is submitted in writing within 45 days after the date of receipt of the notification, the other Party shall be deemed to have accepted the proposed rectification.

Consultations and Dispute resolution.

8. If the other Party objects to the proposed modification or rectification, the Parties shall seek to resolve the issue through consultations. If no agreement is found within 60 days after the date of receipt of the objection, the Party seeking to modify or rectify Annex 21-A (Covered Procurement of the European Union) or Annex 21-B (Covered Procurement of Mexico) may refer the matter to dispute settlement under Chapter 31 (Dispute Settlement). The proposed modification or rectification shall take effect only when both Parties have agreed or if so provided for in the ruling of a panel in a final report in accordance with Article 31.13 (Final Report).

ARTICLE 21.19

Sub-Committee on Public Procurement

The Sub-Committee on Public Procurement established pursuant to Article 1.10 (Sub-Committees and other Bodies of Part III of this agreement) shall address matters related to the implementation and operation of this Chapter, such as:

(a) the modification of Annexes 21-A (Covered Procurement of the European Union) and 21-B (Covered Procurement of Mexico);

(b) the preparation for the Joint Council of the decisions modifying Annexes 21-A (Covered Procurement of the European Union) and 21-B (Covered Procurement of Mexico;

(c) matters regarding government procurement related to this Chapter that are referred to it by a Party; and

(d) any other matter related to the operation of this Chapter.

CHAPTER 22

STATE-OWNED ENTERPRISES, ENTERPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES AND DESIGNATED MONOPOLIES

ARTICLE 22.1

Definitions

For the purposes of this Chapter:

(a) "Arrangement" means the Arrangement on Officially Supported Export Credits, developed within the framework of the OECD or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of 1 January 1979;

(b) "commercial activities" means activities the end result of which is the production of a good or supply of a service, which will be sold in the relevant market in quantities and at prices determined by an enterprise through the conditions of supply and demand, and are undertaken with an orientation towards profit-making[14];

[14] For greater certainty, this excludes activities undertaken by an enterprise: (a) which operates on a not-for-profit basis; or (b) which operates on a cost recovery basis.

(c) "commercial considerations" means price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale; or other factors that would normally be taken into account in the commercial decisions of a private enterprise operating according to market economy principles in the relevant business or industry;

(d) "designate" means to establish or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

(e) "designated monopoly" means an entity, public or private, including a consortium or a government agency, that in any relevant market in the territory of a Party is designated as the sole supplier or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of the grant;[15]

(f) "enterprise granted special rights or privileges" means an enterprise, public or private, including a subsidiary, to which a Party has granted special rights or privileges, in law or in fact; special rights or privileges arise if a Party designates, or limits the number of, enterprises authorised to supply a good or a service according to criteria that are not objective, proportional and non-discriminatory, thereby substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions;

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[15] For greater certainty, this Chapter does not apply to natural monopolies unless they are designated within the meaning of subparagraph 1(d).

(g) "financial institution" and "financial service", have the same meaning as in Article 18.1 (Definitions);

(h) "service supplied in the exercise of governmental authority" means a service supplied in the exercise of governmental authority as defined in GATS and, if applicable, the Annex on Financial Services to GATS;[16]

(i) "state-owned enterprise" means an enterprise owned or controlled by a Party[17].

ARTICLE 22.2

Delegated Authority

Unless otherwise specified in this Agreement, each Party shall ensure that any person, including a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly that has been delegated regulatory, administrative or other governmental authority by a Party, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.

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[16] For greater certainty, services supplied in the exercise of governmental authority include services supplied by a central bank, a monetary authority, a financial regulatory body or a resolution authority of a Party.

[17] For the establishment of ownership or control, all relevant legal and factual elements shall be examined on a case-by-case basis.

ARTICLE 22.3

Scope

1. This Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies engaged in commercial activities. If a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly combines commercial and non-commercial activities[18], only the commercial activities are covered by this Chapter.

2. This Chapter does not apply to:

(a) state-owned enterprises, enterprises granted special rights or privileges and designated monopolies when acting as procuring entities conducting covered procurement as defined in Article 21.1(c) (Definitions);

(b) any service supplied in the exercise of governmental authority;

[18] This includes carrying out a legitimate public service mandate.

(c) activities carried out by:

(i) a financial institution or other legal entity, owned or controlled by a Party, that is established or operated temporarily and solely for resolution purposes[19];

(ii) a public entity, including a public trust that, pursuant solely to a public service mandate which aims to contribute to the balanced and steady development of the Party concerned, supplies financial services for the account or with the guarantee or using the financial resources of that Party; and

(iii) a public entity pursuant to a public service mandate relating to a statutory system of social security or public retirement plans; and

(d) state-owned enterprises, enterprises granted special rights or privileges and designated monopolies if, at the time the determination of the amount of the threshold is made, in any one of the three previous consecutive fiscal years the annual revenue derived from its commercial activities was less than 200 million special drawing rights.

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[19] For greater certainty: a) the term "resolution" is interpreted in accordance with the law of the Party in which the financial institution or other legal entity is established, b) the financial institution or other legal entity does not engage in any commercial activity which is not directly related to its resolution purposes.

3. Article 22.6 does not apply to the supply of financial services by a state-owned enterprise, enterprise granted special rights or privileges and designated monopoly pursuant to a government mandate, if that supply of financial services:

(a) supports exports or imports, provided that those services are:

 (i) not intended to displace commercial financing; or

 (ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market[20];

(b) supports private investment outside the territory of the Party, provided that those services are:

 (i) not intended to displace commercial financing; or

 (ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

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[20] If no comparable financial services are offered in the commercial market: (a) for the purposes of subparagraphs (a)(ii) and (b)(ii), the state-owned enterprise may rely as necessary on available evidence to establish a benchmark of the terms on which such services would be offered in the commercial market; and (b) for the purposes of subparagraphs (a)(i) and (b)(i), the supply of the financial services shall be deemed not to be intended to displace commercial financing.

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

4. Article 22.6 does not apply to the sectors set out in subparagraphs 2(c) to (e) of Article 10.5 (Scope).

5. Article 22.6 does not apply to the extent that a Party's state-owned enterprises, enterprises granted special rights or privileges and designated monopolies make purchases and sales of goods or services pursuant to:

(a) any existing non-conforming measure that the Party maintains, continues, renews or amends in accordance with Articles 10.12 (Non-Conforming Measures and Exceptions), 11.8 (Non-Conforming Measures and Exceptions) or Article 18.12 (Reservations and Non-Conforming Measures) as set out in Annex I (Existing Measures), and Section B of Annex VI (Financial Services); or

(b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with Articles 10.12 (Non-Conforming Measures and Exceptions), 11.8 (Non-Conforming Measures and Exceptions) or 18.12 (Reservations and Non-Conforming Measures) as set out in Annex II (Future Measures), and Section B (Future Measures) of Annex VI (Financial Services).

6. The Parties share the understanding that a measure adopted or maintained under Annex 22-A (Non-Conforming Activities of Mexico), or excluded from the scope of this Chapter, may be maintained, provided that such measure, to the extent that it falls within the scope of the WTO Agreement, is applied in accordance with the rights and obligations of the Party taking such measure under the WTO Agreement.[21]

ARTICLE 22.4

Non-Conforming Activities

Article 22.6 does not apply with respect to the non-conforming activities of state-owned enterprises or designated monopolies listed in Annex 22-A (Non-Conforming Activities of Mexico) in accordance with the terms of that Annex.

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[21] For greater certainty, the only forum to determine whether a measure of a Party is applied in accordance with that Party's rights and obligations under the WTO Agreement is the dispute settlement mechanism under the DSU.

ARTICLE 22.5

General Provisions

1. Without prejudice to the rights and obligations of each Party under this Chapter, nothing in this Chapter shall be construed as preventing a Party from establishing or maintaining a state-owned enterprise, granting an enterprise special rights or privileges or designating or maintaining a monopoly.

2. A Party shall not require or encourage a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly to act in a manner inconsistent with this Chapter.

ARTICLE 22.6

Non-Discriminatory Treatment and Commercial Considerations

1. Each Party shall ensure that each of its state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, when engaging in commercial activities:

(a) acts in accordance with commercial considerations in its purchase or sale of a good or a service, except to fulfil the terms of a public service mandate that is not inconsistent with subparagraphs (b) or (c);

(b) in its purchase of a good or service:

(i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party; and

(ii) accords to a good or service supplied by an enterprise that is a covered investment within the meaning of Article 10.1.1(c) (Definitions) in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party in the relevant market in the Party's territory; and

(c) in its sale of a good or service:

(i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party; and

(ii) accords to an enterprise that is a covered investment within the meaning of Article 10.1.1(c) (Definitions) in the Party's territory treatment no less favourable than it accords to enterprises of the Party in the relevant market in the Party's territory.[22]

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[22] For greater certainty, this Article does not apply with respect to the purchase or sale of shares, stock or other forms of equity by a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly as a means of its equity participation in another enterprise.

2. Provided that such different terms or conditions or refusal are in accordance with commercial considerations, paragraph 1 does not preclude state-owned enterprises, enterprises granted special rights or privileges or designated monopolies from:

(a) purchasing or supplying goods or services on different terms or conditions, including those relating to price; or

(b) refusing to purchase or supply goods or services.

ARTICLE 22.7

Regulatory Framework

1. The Parties shall endeavour to respect and make best use of relevant international standards, including the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

2. Each Party shall ensure that any regulatory body or competent authority exercising a regulatory function that the Party establishes or maintains:

(a) is independent from and not accountable to any of the enterprises that that regulatory body or competent authority regulates in order to ensure the effectiveness of the regulatory function; and

(b) acts impartially[23] in like circumstances with respect to all enterprises that that regulatory body or competent authority regulates, including state-owned enterprises, enterprises granted special rights or privileges and designated monopolies.[24]

3. Each Party shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner, including with respect to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies.

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23 For greater certainty, the impartiality with which the regulatory body or competent authority exercises its regulatory functions is to be assessed by reference to a general pattern or practice of that regulatory body or competent authority.

24 For greater certainty, for those sectors in which the Parties have agreed to specific obligations relating to the regulatory body or competent authority in other Chapters, the relevant provision in those other Chapters shall prevail.

ARTICLE 22.8

Transparency

1. A Party shall, on written request of the other Party, promptly provide the following information concerning a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly, provided that the request includes an explanation of how the activities of that state-owned enterprise, enterprise granted special rights or privileges or designated monopoly may be affecting the requesting Party's interests under this Chapter:

(a) the percentage of shares that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies cumulatively own, and the percentage of voting rights that they cumulatively hold, in the state-owned enterprise, enterprise granted special rights or privileges or designated monopoly;

(b) a description of any special shares or special voting or other rights that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies hold, to the extent that those rights are different from the rights attached to the general common shares of such state-owned enterprise, enterprise granted special rights or privileges or designated monopoly;

(c) the organisational structure of the state-owned enterprise, enterprise granted special rights or privileges or designated monopoly, the composition of its board of directors or of an equivalent body, the official titles of any public official serving as an officer or member of the board of directors or that equivalent body;

(d) a description of the government departments or public bodies which regulate or monitor the state-owned enterprises, the enterprises granted special rights or privileges or the designated monopolies, a description of the reporting requirements imposed on them by those departments or public bodies if practicable, and the rights and practices[25] of the government departments or any public bodies with respect to the appointment, dismissal or remuneration of senior executives and members of the board of directors or any other equivalent body;

(e) annual revenue and total assets of the state-owned enterprise, enterprise granted special rights or privileges or designated monopoly over the most recent three-year period for which information is available;

(f) any exemptions and immunities from which the state-owned enterprise, enterprise granted special rights or privileges or designated monopoly benefits under the law of the requested Party; and

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[25] For greater certainty, the term "practices" does not include the reasons for an appointment, dismissal or remuneration of senior executives and members of the board of directors or any other equivalent body.

(g) any additional information regarding the state-owned enterprise, enterprise granted special rights or privileges or designated monopoly that is publicly available, including annual financial reports and third-party audits.

2. If the requested information is not available, the requested Party shall provide the reasons for this in writing to the requesting Party.

3. If a Party provides written information pursuant to a request in accordance with this Article and informs the requesting Party that it considers that information to be confidential, the requesting Party shall not disclose that information without the prior consent of the Party providing the information.

CHAPTER 23

COMPETITION POLICY

ARTICLE 23.1

General Principles

The Parties recognise the importance of free and undistorted competition in their trade and investment relations. The Parties acknowledge that anticompetitive business practices and State interventions have the potential to distort the proper functioning of markets and undermine the benefits of the liberalisation of trade and investment. The Parties share the view that proscribing such conduct, implementing competition policy, promoting advocacy actions and cooperating on matters covered by this Chapter will help secure the benefits of this Agreement.

ARTICLE 23.2

Competition Law and Anticompetitive Business Practices

1. Each Party shall maintain or adopt in its territory comprehensive competition law which applies to all sectors of the economy[26] and addresses the following business practices in an effective manner:

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

(b) abuses by one or more enterprises, which individually or jointly have substantial power in the relevant market, and which abuses have or may have as object or effect the prevention, restriction or distortion of competition in that relevant market or any related market; and

[26] For greater certainty, competition law in the EU applies to the agricultural sector in accordance with Regulation 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347, 20.12.2013, p. 671. For greater certainty, the Ley Federal de Competencia Económica (Federal Economic Competition Law), published in the Diario Oficial de la Federación (Official Journal of the Federation) on 23 May 2014, applies to all sectors in Mexico for which the competition authorities elaborate their own regulations, criteria or guidelines in accordance with the 2013 Constitutional amendments, published in the Diario Oficial de la Federación (Official Journal of the Federation) on 11 June 2013.

(c) concentrations between enterprises which result or may result in a substantial lessening of competition or which significantly impede or may significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.

2. All enterprises, private or public, shall be subject to the competition law referred to in this Article.

3. Each Party shall take appropriate action with respect to anticompetitive business practices, with the objective of promoting competition policy.

4. To the extent provided for in the law of a Party, the application of the competition law should not obstruct the performance, in law or in fact, of the particular tasks of public interest that may be assigned to enterprises. Exemptions from the competition law of a Party should be limited to tasks of public interest, proportionate to the desired public policy objective and transparent.

ARTICLE 23.3

Implementation

1. Each Party shall maintain its autonomy in amending and enforcing its competition law.

2. Each Party shall establish or maintain a functionally independent authority or authorities responsible for, and appropriately equipped with the powers and resources necessary for the full application and the effective enforcement of their respective competition law.

3. Each Party shall apply its competition law in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and right of defence of the enterprises concerned, including the right to be heard prior to a final decision or resolution.

4. In their enforcement policy the competition authority or authorities of a Party shall not discriminate on the basis of the nationality of the respondent in an enforcement procedure[27] or of the third persons granted a right to participate in such enforcement procedure.

5. Each Party shall ensure that a respondent in an enforcement procedure, carried out to determine whether that respondent's conduct violates its competition law or what administrative sanctions or remedies should be ordered for violation of that law, is afforded the opportunity to be heard and provide evidence in its defence. In particular, each Party shall ensure that the respondent has a reasonable opportunity to review and contest the evidence on which the determination may be based.

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[27] For the purposes of this Article, an enforcement procedure means a judicial or administrative procedure following an investigation into the alleged violation of the competition law.

6. Each Party shall guarantee that the addressee of a decision or resolution imposing an administrative sanction or a remedy for violation of its competition law is given the opportunity to seek judicial review of that decision or resolution.

ARTICLE 23.4

Transparency

1. The Parties recognise the value of transparency in their competition enforcement policies.

2. Each Party shall publish its administrative or procedural rules contained in legal acts pursuant to which its competition law investigations and enforcement procedures are conducted. Those administrative or procedural rules may, to the extent provided in each Party's competition law, include procedures with reasonable timeframes for providing evidence in those procedures.

3. Each Party shall ensure that a non-confidential version of any final decision or resolution determining a violation of its competition law and, as the case may be, any order implementing a resolution, is published in order to enable interested persons to become acquainted with them.

4. Each Party shall ensure that all final decisions or resolutions determining a violation of its competition law are in writing and set out the findings of fact and the reasoning, including the legal and, if applicable, economic analysis, on which the decision or resolution is based.

ARTICLE 23.5

Cooperation and Coordination

1. The Parties recognise the importance of cooperation and coordination between their respective competition authorities on matters related to their competition law and policies in the free trade area. Accordingly, the competition authorities of the Parties shall endeavour to cooperate on matters related to their respective competition law, including through assistance, notification, consultation, and exchange of information.

2. The Parties shall strengthen cooperation in the enforcement of their competition law to the extent compatible with their respective laws and important interests, and within the limits of their reasonably available resources. For that purpose, the competition authorities of the Parties shall endeavour to exchange non-confidential information, experiences and views with regard to:

(a) their respective competition law, policies and practices, including information about exemptions granted under their competition law;

(b) the enforcement of their respective competition law; and

(c) their respective advocacy actions.

3. The Parties shall endeavour to strengthen coordination between their respective competition authorities in areas of mutual concern and to the extent compatible with their respective laws and important interests, and within the limits of their reasonably available resources. For that purpose, the Parties shall endeavour to coordinate, to the extent possible, their enforcement activities relating to the same or related cases.

4. The Parties affirm that their competition authorities recognise the use of confidentiality waivers in their areas of enforcement and acknowledge that the decision of an enterprise to waive its right for the protection of confidential information is voluntary.

5. Nothing in this Article shall limit the discretion of the competition authorities of a Party to decide whether to take action on particular requests by the other Party's competition authorities.

6. Nothing in this Article shall preclude the competition authorities of either Party from taking action with respect to particular cases.

7. The Parties' competition authorities may consider entering into a separate cooperation arrangement that sets out mutually agreed terms for implementing cooperation.

ARTICLE 23.6

Technical Cooperation

The Parties consider that it is in their common interest to support the objectives of this Agreement with technical cooperation for the purposes of sharing experiences in developing and implementing competition policy and in enforcing their respective competition law, subject to the resources reasonably available to each Party.

ARTICLE 23.7

Consultations

1. To foster mutual understanding between the Parties, or to address specific matters on the interpretation or application of this Chapter, a Party shall, upon the request of the other Party, enter into consultations on matters raised by the other Party. The Party requesting consultations shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The Parties shall promptly discuss any questions arising from the interpretation or application of this Chapter.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavour to provide relevant non-confidential information to the other Party.

ARTICLE 23.8

Confidentiality of Information

1. Notwithstanding any other provision of this Chapter, a Party is not required to provide information if the disclosure of this information is prohibited by the laws of the Party possessing the information.

2. If a Party provides information under this Chapter, the other Party shall maintain the confidentiality of that information.

3. If a Party's competition authorities receive confidential information from the competition authorities of the other Party subject to a confidentiality waiver, the Party's competition authorities shall use the information received in accordance with the terms of the waiver.

ARTICLE 23.9

Competition Authorities

For the purposes of this Chapter, the competition authorities are the following, or their successors:

(a) in the case of the European Union:

    the European Commission; and

(b) in the case of Mexico:

    (i) National Antitrust Commission (Comisión Nacional Antimonopolio); and

    (ii) Telecommunication Regulatory Commission (Comisión Reguladora de Telecomunicaciones (CRT)).

ARTICLE 23.10

Non-Application of Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 (Dispute Settlement) concerning the interpretation or application of the provisions of this Chapter.

CHAPTER 24

SUBSIDIES

ARTICLE 24.1

Definitions

For the purposes of this Chapter:

(a) "subsidy provided for goods" means a measure which fulfils the conditions set out in Article 1.1 of the SCM Agreement and is specific in accordance with and within the meaning of Article 2 of the SCM Agreement.

(b) "subsidy provided for services" means a measure which involves a financial contribution by a government or a public body and confers a benefit and is specific to an enterprise or industry or a group of enterprises or industries in accordance with and within the meaning of Article 2 of the SCM Agreement.[28]

[28] This definition is without prejudice to the outcome of future discussions in the WTO on the definition of subsidies for services. Depending on the progress of those discussions, the Joint Council may adopt a decision to adapt this Agreement in this respect.

ARTICLE 24.2

General Principles

The Parties recognise that subsidies may be granted when they are necessary to achieve a public policy objective. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of the liberalisation of trade and investment. In principle, a Party should not grant subsidies to enterprises providing goods or services if they negatively affect, or are likely to negatively affect, trade or investment.

ARTICLE 24.3

Scope

1. This Chapter applies to subsidies to all enterprises pursuing an economic activity. If an enterprise combines economic and non-economic activities, this Chapter only applies to the economic activities of that enterprise.

2. This Chapter does not apply to subsidies granted to enterprises entrusted with the provision of particular services of public interest, including those entrusted through special rights or privileges, to the extent that such subsidies are limited to the amount necessary to cover the costs of the service in question.

3. This Chapter does not apply to subsidies provided for agricultural goods and subsidies provided for fish and fisheries products.

4. With the exception of Article 24.5, this Chapter does not apply to subsidies provided in the audio-visual sector.

5. Article 24.7 does not apply to subsidies provided for services.

ARTICLE 24.4

Relationship with the WTO

The Parties affirm their rights and obligations pursuant to Article XV of GATS, Article XVI of GATT 1994, and under the SCM Agreement.

ARTICLE 24.5

Transparency

1. Each Party shall, with respect to any subsidy granted or maintained within its territory, make the following information available to the public:

(a) the legal basis of the subsidy;

(b) the form of the subsidy;

(c) the amount of the subsidy or the amount budgeted for the subsidy; and

(d) if possible, the name of the recipient.[29]

2. A Party shall be deemed to comply with paragraph 1 if:

(a) a notification is provided to the WTO pursuant to Article 25.1 of the SCM Agreement, and, if possible, the name of the recipient has been disclosed to the public; or

[29] Subparagraph 1(d) applies to subsidies of 500 000 special drawing rights and above.

(b) the information required in paragraph 1 has been made available by that Party or on its behalf on a publicly accessible website by 31 December of the calendar year subsequent to the one in which a subsidy was maintained or granted.[30]

3. With respect to subsidies provided for services, this Article applies only if:

(a) the amount of the subsidy per beneficiary over a period of three consecutive years is above 400 000 special drawing rights; and

(b) the subsidy is granted for the provision of services in the following sectors: audio-visual, telecommunication, financial services, transport (including maritime transport), energy (including electricity distribution), environment, computer, architecture and engineering, construction, and postal and courier services.

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[30] For greater certainty, the publication of a subsidy or subsidy programme on the website does not prejudge its legal status or the nature of the program itself.

ARTICLE 24.6

Consultations

1. If a Party considers that a subsidy granted by the other Party is negatively affecting, or is likely to negatively affect its trade or investment, the former Party may express its concern to the other Party and request consultations on the matter. The requested Party shall accord full and sympathetic consideration to such a request.

2. During the consultations, the requesting Party may request the other Party to provide additional information about the subsidy, such as:

(a) the legal basis and policy objective or purpose of the subsidy;

(b) the form of the subsidy;

(c) the dates and duration of the subsidy and any other time limits attached to it;

(d) the eligibility requirements of the subsidy;

(e) the total amount or the annual amount budgeted for the subsidy;

(f) the name of the recipient of the subsidy, if possible; and

(g) any other information permitting an assessment of the negative effects of the subsidy on trade or investment.

3. The requested Party shall provide relevant information on the subsidy in question no later than 60 days after the date of receipt of the request referred to in paragraph 2. If any relevant information requested pursuant to paragraph 2 is not provided in the written response, the requested Party shall explain the absence of such information in its written response.

4. If the requesting Party, after receiving the information provided pursuant to paragraphs 2 and 3, informs the requested Party that it considers that the subsidy concerned has or may have a significant negative effect on its trade or investment, the requested Party shall use its best endeavours to eliminate or minimise those significant negative effects within one year thereafter.

ARTICLE 24.7

Subsidies Subject to Conditions

1. Each Party shall apply conditions to the following subsidies, in so far as they negatively affect or are likely to negatively affect trade or investment of the other Party:

(a) subsidies or legal arrangements whereby a government is responsible for covering debts or liabilities of certain enterprises are allowed subject to the condition that the coverage of those debts and liabilities is limited as regards the amount of those debts and liabilities or the duration of that responsibility;

(b) subsidies to ailing or insolvent enterprises or to those on the brink of insolvency are allowed subject to the following conditions:

    (i) a credible restructuring plan has been prepared; that plan shall be based on realistic assumptions with a view to ensuring the return of the enterprise to long-term viability within a reasonable time period; and

    (ii) enterprises other than small and medium-sized enterprises contribute themselves to the costs of restructuring.

2. Subparagraph 1(b) shall not be construed as preventing a Party from providing temporary liquidity support in the form of loan guarantees or loans for the time reasonably necessary to prepare a restructuring plan. Such temporary liquidity support shall be limited to the amount needed to keep the enterprise in business.

ARTICLE 24.8

Use of Subsidies

Each Party shall ensure that enterprises use the subsidies it has granted only for the policy objective or purpose for which they were granted.[31]

ARTICLE 24.9

Non-Application of Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 (Dispute Settlement) concerning the interpretation or application of Article 24.5, in so far as it concerns subsidies provided for services, and Article 24.6.4.

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[31] For greater certainty, a Party is deemed to fulfil this obligation if it has set up the appropriate legislative framework and administrative procedures to that effect.

CHAPTER 25

INTELLECTUAL PROPERTY

SECTION A

General Provisions

ARTICLE 25.1

Objectives and Principles

1. The objective of this Chapter is to achieve an adequate and effective level of protection and enforcement of intellectual property rights in order to:

(a) contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations; and

(b) promote and govern trade between the Parties as well as reduce distortions and impediments to trade.

2. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with this Chapter.

3. A Party may adopt appropriate measures, provided that they are consistent with the provisions of this Chapter, to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

4. Taking into consideration the underlying public policy objectives of domestic systems, the Parties recognise the need to:

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and

(c) foster competition and open and efficient markets,

through their respective intellectual property systems, while respecting the principle of transparency, and taking into account the interests of all relevant stakeholders, including right holders, users and the public.

ARTICLE 25.2

Nature and Scope of Obligations

1. The Parties commit to ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties, including the TRIPS Agreement. This chapter shall complement and further specify the rights and obligations of the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.

2. For the purposes of this Chapter "intellectual property rights" means all categories of intellectual property rights that are covered by Sections 1 to 7 of Part II of the TRIPS Agreement as well as plant variety rights. The protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property of 20 March 1883, as last revised at Stockholm on 14 July 1967 (hereinafter referred to as "Paris Convention").

3. Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing this Chapter within its own legal system and practice.

ARTICLE 25.3

Exhaustion

This Chapter does not affect the freedom of the Parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.

ARTICLE 25.4

National Treatment

1. Each Party shall accord to the nationals[32] of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection[33] of intellectual property rights covered by this Chapter, subject to the exceptions provided in, respectively, the Paris Convention, the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as last revised at Paris on 24 July 1971 (hereinafter referred to as "Berne Convention"), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961 (hereinafter referred to as "Rome Convention"), or the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington, D.C. on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided under this Agreement.

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[32] For the purposes of this Chapter, the definition of nationals in the TRIPS Agreement applies.

[33] For the purposes of this provision, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

2. A Party shall not, as a condition for according national treatment pursuant to this Article, require right holders to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights.[34]

3. A Party may avail itself of the exceptions permitted pursuant to paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within its jurisdiction, only where such exceptions are:

(a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

4. A Party shall not have any obligation pursuant to this Article with respect to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization (hereinafter referred to as "WIPO") relating to the acquisition or maintenance of intellectual property rights.

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[34] This is without prejudice to Article 11 of the Rome Convention.

SECTION B

Standards Concerning Intellectual Property Rights

SUB-SECTION B.1

Copyright and Related Rights

ARTICLE 25.5

International Treaties

1. The Parties affirm their commitment to comply with the following international agreements:

(a) the Berne Convention;

(b) the Rome Convention;

(c) the WIPO Copyright Treaty, adopted in Geneva on 20 December 1996; and

(d) the WIPO Performances and Phonograms Treaty, adopted in Geneva on 20 December 1996.

2. The Parties shall make all reasonable efforts to comply with the provisions of the Beijing Treaty on Audiovisual Performances, adopted in Beijing on 24 June 2012, and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, adopted in Marrakesh, on 27 June 2013.

ARTICLE 25.6

Authors

Each Party shall provide authors with the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;

(b) any form of distribution to the public, by sale or otherwise, of the original of their works or of copies thereof;

(c) any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental to the public of originals or copies of their works.

ARTICLE 25.7

Performers

Each Party shall provide performers with the exclusive right to authorise or prohibit:

(a) the fixation[35] of their performances;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances;

(c) the distribution to the public, by sale or otherwise, of the fixations of their performances;

(d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;

(e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation; and

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[35] "Fixation" means the embodiment of sounds or moving images, or of the representation thereof, from which they can be perceived, reproduced or communicated by means of a device.

(f) the commercial rental to the public of the fixation of their performances.

ARTICLE 25.8

Producers of Phonograms

Each Party shall provide producers with the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their phonograms;

(b) the distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;

(c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental of their phonograms to the public.

ARTICLE 25.9

Broadcasting Organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:[36]

(a) the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;

(c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite, in such a way that members of the public may access them from a place and at a time individually chosen by them;

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[36] For Mexico this provision is without prejudice to the requirement to comply with its obligations under its Telecommunication and Broadcasting Law ("Ley en Materia de Telecomunicaciones y Radiodifusión"), as published in the Official Journal on 16 July 2025.

(d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite; and

(e) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

ARTICLE 25.10

Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes[37]

1. Each Party shall provide performers and producers of phonograms with the right to a single equitable remuneration paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public[38].

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[37] Each Party may grant to performers and producers of phonograms more extensive rights as regards the broadcasting and communication to the public of phonograms published for commercial purposes.

[38] For the purpose of this Article, "communication to the public" does not include the making available to the public of a phonogram, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them.

2. The Parties recognise that the single equitable remuneration should be distributed between the performers and producers of the corresponding phonograms. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets out the terms according to which performers and producers of phonograms are to share the single equitable remuneration.

ARTICLE 25.11

Term of Protection

1. The rights of the author of a work shall run for the life of the respective authors and for at least 70 years after their death, irrespective of the date when the work is lawfully made available to the public.

2. The term of protection of a musical composition with words shall expire not less than 70 years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the author of the lyrics and the composer of the musical composition.[39]

[39] A Party may decide that the application of this paragraph requires that both contributions were specifically created for the respective musical composition with words.

3. In the case of anonymous or pseudonymous works, the term of protection shall expire at least 70 years after the work is lawfully made available to the public. However, if the pseudonym adopted by the author leaves no doubt as to the author's identity, or if the author discloses his or her identity during the period referred to in the first sentence, the term of protection laid down in paragraph 1 applies.

4. The term of protection of cinematographic or audiovisual works shall expire at least 70 years after the death of the last of at least the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of the music.[40]

5. The rights of broadcasting organisations shall expire not less than 50 years after the first transmission of a broadcast, whether that broadcast is transmitted by wire or over the air, including by cable or satellite.

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[40] A Party may decide that the music must be specifically created for the use in the cinematographic or audiovisual work.

6. Each Party shall provide[41] that:

(a) the term of protection of rights of performers shall expire 75 years after the first fixation of the interpretation or performance in a phonogram, or the first interpretation or performance of works not fixated in phonograms, or the transmission for the first time by any means; and

(b) the term of protection of rights of producers of phonograms shall expire 75 years after the first fixation of the sounds in the phonogram.

Alternatively, a Party shall provide that:

(c) the rights of performers for their performances fixed otherwise than in a phonogram shall expire not less than 50 years after the fixation of the performance and, if published within this period, not less than 50 years after the first lawful publication; and

(d) the rights of performers for their performances fixed in phonograms and of producers of phonograms shall expire not less than 50 years after the fixation of the performance or the phonogram and, if published within this period, not less than 70 years after the first lawful publication. The Party shall take effective measures to ensure that the profit generated during the 20 years of protection beyond 50 years after the first lawful publication is shared fairly between the performers and the producers of phonograms.

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[41] For greater certainty, each Party shall choose between the option referred to in subparagraphs (a) and (b) or the alternative referred to in subparagraphs (c) and (d), based on its domestic legislation.

7. The terms of protection set out in this Article shall be calculated from 1 January of the year following the event.

ARTICLE 25.12

Resale Right

1. Each Party shall provide, for the benefit of the author of works of graphic or plastic art, except for applied works of art, a resale right, defined as an inalienable right, which cannot be waived, even in advance, to receive a participation[42] in the price obtained from any resale of that work, after the first transfer of that work by the author[43].

2. The right referred to in paragraph 1 applies to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.

[42] A Party may express this participation as a percentage of the resale price.
[43] A Party may establish minimum conditions for the application of the resale right.

ARTICLE 25.13

Cooperation on Collective Management of Rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purposes of fostering the availability of works and other protected subject-matter in the territories of the Parties and the transfer of revenue from the rights for the use of such works or other protected subject-matter.

2. The Parties agree to promote transparency and non-discrimination among entitled members of collective management organisations, in particular as regards the revenue from the rights they collect, deductions they apply to such revenue, the use of the rights revenue collected, the distribution policy and their repertoire.

ARTICLE 25.14

Exceptions and Limitations

Each Party shall confine exceptions or limitations to the rights set out in this Sub-Section to certain special cases that do not conflict with a normal exploitation of the work, performance, phonogram, or broadcast, and do not unreasonably prejudice the legitimate interests of the right holder.

ARTICLE 25.15

Protection of Technological Measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which a person carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing the objective of circumvention.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services, which:

(a) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measures;

(b) have only a limited commercially significant purpose or use other than to circumvent; or

(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.

3. For the purposes of this Article, "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or related right as provided for by the law of the Party concerned. Technological measures shall be deemed "effective" where the use of a protected work or other subject-matter is controlled by the right holder through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter, or a copy control mechanism, which achieves the objective of protection.

4. Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by the right holders, each Party may take appropriate measures, as necessary, to ensure that the adequate legal protection against the circumvention of effective technological measures provided for in accordance with this Article does not prevent beneficiaries from enjoying exceptions and limitations provided for in accordance with Article 25.14.

ARTICLE 25.16

Obligations Concerning Rights Management Information

1. Each Party shall provide adequate legal protection against any person knowingly performing, without authority, any of the following acts, if such person knows, or has reasonable grounds to know, that by so doing he or she is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights:

(a) the removal or alteration of any electronic rights-management information; or

(b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Sub-Section from which electronic rights-management information has been removed or altered without authorisation.

2. For the purposes of this Sub-Section, "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this Sub-Section, the author or any other right holder, any information about the terms and conditions of use of the work or other subject-matter, or any numbers or codes that represent such information.

3. Paragraph 2 applies when any of the items referred to in that paragraph is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Sub-Section.

SUB-SECTION B.2

Trademarks

ARTICLE 25.17

International Agreements

Each Party:

(a) shall make all reasonable efforts to adhere to the Trademark Law Treaty done at Geneva on 27 October 1994 and to the Singapore Treaty on the Law of Trademarks, done at Singapore on 27 March 2006.

(b) shall adhere to the Protocol Relating to the Madrid Agreement concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007, and to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957, as amended on 28 September 1979 (hereinafter referred as "Nice Classification").

ARTICLE 25.18

Registration Procedure

1. Each Party shall establish a system for the registration of trademarks in which each final negative decision, including the partial refusal of registration issued by the relevant trademark administration, shall be notified in writing, duly reasoned and open to challenge.

2. Each Party shall provide for the possibility to oppose applications to register trademarks or, if appropriate, trademark registrations and for the opportunity for the trademark applicant to respond to such opposition.[44]

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[44] Each Party shall make all reasonable efforts to adopt an adversarial procedure for the opposition.

3. Each Party shall provide a publicly available electronic database of applications and registrations of trademarks.

ARTICLE 25.19

Rights Conferred by a Trademark

1. A registered trademark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

(a) any sign which is identical to the trademark in relation to goods or services which are identical to those for which the trademark is registered; and

(b) any sign where, because of its identity with, or similarity to, the trademark and the identity or similarity of the goods or services covered by the trademark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trademark.

2. The proprietor of a registered trademark shall be entitled to prevent all third parties from bringing, in the course of trade, goods into the territory of the Party where the trademark is registered without being released for free circulation there, if such goods, including packaging, come from third countries and bear without authorisation a trademark which is identical to the trademark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trademark.[45]

ARTICLE 25.20

Well-known Trademarks

For the purposes of giving effect to the protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, each Party shall apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

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[45] A Party may provide that the entitlement of the proprietor of the trademark shall lapse if, during the proceedings to determine whether there was a breach of the registered trademark, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

ARTICLE 25.21

Bad Faith Applications

Each Party may provide that a trademark shall not be registered if the application for registration of the trademark was made in bad faith by the applicant. Each Party shall provide that such a trademark shall be declared invalid if it has been registered.

ARTICLE 25.22

Cancellation

1. Each Party shall provide that a trademark shall be liable to cancellation[46], if within a period of time determined by its law, the trademark has not been used[47] in the relevant territory in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use.

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[46] For greater certainty, a Party may define cancellation as revocation, expiration or nullity.

[47] A Party may require that the use is of genuine character or made in a quantity or manner corresponding to commercial use. A Party may further decide to disregard the commencement or resumption of use just before the filing of the cancellation request.

2. A trademark shall also be liable to cancellation if, after the date on which it was registered, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service in respect of which it is registered.

3. A trademark shall also be liable to cancellation, if it was registered despite being capable to deceive the public as to the nature, quality or geographical origin of the goods or services for which it was registered.[48]

ARTICLE 25.23

Exceptions to the Rights Conferred by a Trademark

Each Party:

(a) shall provide for the fair use of descriptive terms[49] as a limited exception to the rights conferred by trademarks; and

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[48] For greater certainty, a Party may also cancel a trademark if, as a consequence of the use made of it by the proprietor of the trademark or with his consent in respect of the goods or services for which it is registered, it is liable to mislead the public.

[49] The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services, where such use is in accordance with honest practices in industrial or commercial matters.

(b) may provide for other limited exceptions,

provided that these exceptions take account of the legitimate interests of the owners of the trademarks and of third parties.

SUB-SECTION B.3

Industrial Designs

ARTICLE 25.24

International Agreements

Each Party shall make all reasonable efforts to accede to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted at Geneva on 2 July 1999.

ARTICLE 25.25

Protection of Registered Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original.[50] This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with this Sub-Section.

2. The holder of a registered industrial design shall have the right to prevent third parties not having the holder's consent at least from using and notably making, offering for sale, selling, putting on the market or importing a product or using articles bearing or embodying the protected industrial design if such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the industrial design, or are not compatible with fair trade practice.

3. An industrial design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new or original:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty or originality.

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[50] If the law of a Party so provides, individual character of industrial designs may also be required.

4. "Normal use" referred to in subparagraph 3(a) means use by the end user, excluding maintenance, servicing or repair work.

ARTICLE 25.26

Term of Protection

The term of protection shall be determined by each Party and may be renewable for one or more periods of five years each, up to a total term of protection of 25 years from the date of filing the application.

ARTICLE 25.27

Exceptions and Exclusions

1. Each Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the holder of the protected industrial design, taking account of the legitimate interests of third parties.

2. Industrial design protection shall not extend to designs dictated essentially by technical or functional considerations. In particular, an industrial design shall not be protected if it consists of features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product, in which the industrial design is incorporated or to which it is applied, to be mechanically connected to, or placed in, around or in contact with another product so that either product may perform its function.

3. By way of derogation from paragraph 2, an industrial design right may subsist in an industrial design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

ARTICLE 25.28

Relation to Copyright

An industrial design shall also be eligible for protection under the law of copyright of a Party as from the date on which the industrial design was created or fixed in any form. The extent to which, and the conditions under which, such a copyright protection is conferred, including the level of originality required, shall be determined by each Party.

SUB-SECTION B.4

Geographical Indications

ARTICLE 25.29

Definitions

For the purposes of this Sub-Section:

(a) "geographical indication" means an indication which identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin; and

(b) "product class" means the list of classes taking into consideration the Nice Classification.

ARTICLE 25.30

International Agreements

The Parties affirm their commitment to protect geographical indications in their territory in accordance with Articles 22, 23 and 24 of the TRIPS Agreement.

Each Party shall make all reasonable efforts to adhere to the Geneva Act of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration adopted at Geneva on 20 May 2015.

ARTICLE 25.31

Scope

1. This Sub-Section applies to the recognition and protection of geographical indications identifying goods falling within the relevant product class and listed in Annex 25-B (List of Geographical Indications).

2. The Parties shall consider extending the scope of geographical indications covered by this Sub-Section to geographical indications in product classes other than food and agricultural goods. For that reason, the Parties have included in Annex 25-C (Geographical Indications of Mexico as Referred to in Article 25.31.2) names identifying goods originating and protected in their territory that, provided the scope of protection of this Agreement is extended, will be considered to be included under the scope of protection of this Agreement subject to the conclusion of the procedures set out in this Sub-Section.[51]

ARTICLE 25.32

Listed Geographical Indications

For the purposes of this Sub-Section the geographical indications listed in:

(a) Section A of Annex 25-B (List of Geographical Indications) are geographical indications which identify a good as originating in the territory of the European Union or a region or locality in that territory; and

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[51] The Parties recognise that, for the purpose of assessment of trademark applications, insofar as this is relevant under the law of a Party, those names are protected in the country of origin.

(b) Section B of Annex 25-B (List of Geographical Indications) are geographical indications which identify a good as originating in the territory of Mexico or a region or locality in that territory.

ARTICLE 25.33

Established Geographical Indications

Having considered the names listed in Annex 25-B (List of Geographical Indications) and having completed an opposition procedure in accordance with Annex 25-A (Main Elements of the Opposition Procedure), each Party shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

ARTICLE 25.34

Protection of Geographical Indications Listed in
Annex 25-B (List of Geographical Indications)

1. Each Party shall provide the legal means for interested parties to prevent:

(a) the use of a geographical indication of the other Party listed in Annex 25-B (List of Geographical Indications)[52] for a good that falls within the product class for that geographical indication and that either:

    (i) does not originate in the place of origin specified in Annex 25-B (List of Geographical Indications) for that geographical indication; or

    (ii) originates in the place of origin specified in Annex 25-B (List of Geographical Indications) for that geographical indication but was not produced or manufactured in accordance with the laws and regulations of the other Party that would apply if the good were for consumption in the other Party;

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[52] As regards the list of geographical indications set out in Annex 25-B (List of Geographical Indications), the protection provided in accordance with this Article does not cover individual terms which are part of a compound geographical indication name as set out in Appendix 25-B-1 (Individual Terms as Part of a Compound Geographical Indication).

(b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good; and

(c) any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

2. Each Party shall provide the protection referred to in subparagraph 1(a) even where the true origin of the good is indicated, or the geographical indication is used in translation or the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

3. Each Party shall provide for enforcement, by administrative action and in the form provided for by its law, against:

(a) any direct or indirect commercial use of a protected name;

(b) any imitation, variation or deceiving use of a protected name;

(c) any false or misleading indication of a protected name; or

(d) any practice likely to mislead the consumer as to the true origin, provenance and nature of the good.

4. The geographical indications protected under this Sub-Section shall not become generic in the territories of the Parties.

5. Nothing in this Sub-Section shall oblige a Party to protect a geographical indication of the other Party which is not or has ceased to be protected in the territory of the originating Party. Each Party shall notify the other Party if a geographical indication ceases to be protected in its territory. That notification shall take place within three months after the competent authority issues its final determination that the geographical indication has ceased to be protected.

6. The provisions of this Article shall apply, *mutatis mutandis*, to the list of names in Annex I and Annex II to the Agreement between the European Community and the United Mexican States on the mutual recognition and protection for spirits drinks, done at Brussels on 27 May 1997, hereinafter referred to as the "Spirits Agreement".

ARTICLE 25.35

Amendment of the List of Geographical Indications

1. The Joint Council, in accordance with Article 25.42, may decide to amend Annex 25-B (List of Geographical Indications) by adding or correcting geographical indications, or by removing geographical indications which have ceased to be protected or have fallen into disuse in their place of origin. The Sub-Committee on Intellectual Property shall prepare those decisions.

2. New geographical indications shall be added by a decision of the Joint Council after the names submitted have been considered and an opposition procedure as referred to in Article 25.33 has been completed.

3. The Joint Council may modify by a decision Annexes I and II to the Spirits Agreement, following the procedure referred to in Article 25.33 in the case of new geographical indications.

ARTICLE 25.36

Right of Use of Geographical Indications

1. A geographical indication protected under this Sub-Section may be used by any operator marketing a good which conforms to the corresponding technical specification.

2. Once a geographical indication is protected under this Sub-Section, the use of that protected geographical indication shall not be subject to any registration of users or other requirements.

3. Indications, abbreviations and symbols referring to a geographical indication may only be used in relation to the good protected or registered in the respective territory and produced in conformity with the corresponding technical specification.

ARTICLE 25.37

Relation between Trademarks and Geographical Indications

1. This Sub-Section shall be without prejudice to the rights conferred by a prior trademark applied for or registered in good faith, or acquired through use in good faith, in a Party. As a limited exception to the rights conferred by a trademark, in certain circumstances a prior trademark may not entitle its owner to prevent a registered geographical indication from being granted protection or being used in the Party in which the trademark is applied for, registered or used. The protection of the registered geographical indication shall not limit in any other way the rights conferred by that trademark, including the possibility to request renewals or variations of a distinctive sign provided that the variation does not constitute an act of unfair competition.

2. A Party shall not be required to protect a name as a geographical indication pursuant to Article 25.34 if, in light of a trademark's reputation and renown and the length of time it has been used, that name is likely to mislead the consumer as to the true identity of the good.

3. Subject to Article 25.39 and building upon paragraph 3 of Article 22 of the TRIPS Agreement, in respect of geographical indications listed in Annex 25-B (List of Geographical Indications) and remaining protected as geographical indications by the Party of origin, a Party shall refuse or invalidate *ex officio*, if permitted by its law or at the request of an interested party, the registration of a trademark, provided that:

(a) the registration of the trademark for goods would be inconsistent with Article 25.34;

(b) the trademark relates to the same or a similar good;

(c) the trademark relates to goods not having the origin of the geographical indication concerned; and

(d) the application to register the trademark is submitted after the date of submission of the application for protection of the geographical indication in the territory of the Party concerned.

4. For geographical indications referred to in Article 25.32, the date of submission of the application for protection referred to in subparagraph 3(d) shall be the date of the signing of this Agreement.

5. For geographical indications referred to in Article 25.35, the date of submission of the application for protection shall be the date of the publication of the geographical indication in the opposition procedure.

6. Protection provided to the geographical indications listed in Annex 25-B (List of Geographical Indications) shall commence no earlier than the date on which this Agreement enters into force.

ARTICLE 25.38

Enforcement of Protection

Each Party shall enforce the protection provided for in Articles 25.34 to 25.37 by appropriate administrative or judicial procedures, in accordance with their law and practice. The competent authorities shall enforce that protection in any or both of the following ways:

(a) on their own initiative; or

(b) on request of an interested party.

ARTICLE 25.39

General Rules

1. A Party shall not be required to protect a name as a geographical indication under this Sub-Section if that name conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the good.

2. A homonymous name which is likely to mislead the consumer into believing that a good comes from another territory shall not be registered as a geographical indication even if the name is accurate as far as the actual territory, region or locality of origin of the good is concerned. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall jointly decide the practical conditions under which wholly or partially homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

3. If a Party, in the context of bilateral negotiations with a third country, proposes to protect a geographical indication of that third country which is wholly or partially homonymous with a geographical indication of the other Party, it shall inform the other Party, which shall be given the opportunity to comment before that name is protected.

4. A technical specification referred to in this Sub-Section shall be approved, including any amendments, by the authorities of the Party in the territory from which the good originates.

ARTICLE 25.40

Exceptions

1. Nothing in this Sub-Section shall require a Party to apply its provisions in respect of a geographical indication, or an individual name contained in a multi-component geographical indication, of the other Party, with respect to goods or services for which the relevant indication is identical to the term customary in common language as the common name for such goods or services in the territory of that Party.

2. If a translation of a geographical indication is identical to or contains a term customary in common language as the common name for a good in the territory of a Party, or if a geographical indication is not identical to but contains that term, this Sub-Section shall be without prejudice to the right of any person to use that term in association with that good in the territory of that Party.

3. In determining whether a term is the term customary in common language as the common name for a good in the territory of a Party, that Party's authorities shall have the authority to take into account how consumers understand that term in its territory. Factors relevant to that consumer understanding may include:

(a) whether the term is used to refer to the type of good in question, as indicated by competent sources such as dictionaries, newspapers and relevant websites; and

(b) how the good referenced by the term is marketed and used in trade in the territory of that Party.[53]

4. Nothing in this Sub-Section shall prevent the use in the territory of a Party, with respect to any good, of a customary name of a plant variety or an animal breed, existing in the territory of that Party as of the date of entry into force of this Agreement.

5. Nothing in this Agreement shall prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

ARTICLE 25.41

Incorporation of Existing Agreement

1. The Spirits Agreement is incorporated into and made part of this Agreement, and applies *mutatis mutandis*.[54]

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[53] For the purposes of this subparagraph, the authorities of a Party may take into account, as appropriate, whether the term is used in relevant international standards recognised by the Party to refer to a type or class of good in the territory of the Party.

[54] For greater certainty, this includes all past and future amendments of the Spirits Agreement.

2. The Sub-Committee on Intellectual Property established by Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall replace the Joint Committee established by Article 17 of the Spirits Agreement and fulfil the functions set out in that Article.

ARTICLE 25.42

Cooperation

1. The Sub-Committee on Intellectual Property established pursuant to Article 1.10 (Sub-Committees and other Bodies of Part III of this Agreement) shall be the appropriate forum for monitoring the implementation and the administration of this Sub-Section.

2. The Parties shall notify each other if a geographical indication listed in Annex 25-B (List of Geographical Indications) ceases to be protected in the territory of the Party concerned. Following such notification, the Sub-Committee on Intellectual Property shall prepare for the Joint Council the decision to modify Annex 25-B (List of Geographical Indications) in accordance with the procedures set out in this Agreement.

3. A Party may, either directly or through the Sub-Committee on Intellectual Property, request the other Party to provide information relating to technical specifications and their amendments.

4. Each Party may make publicly available the technical specifications corresponding to the geographical indications of the other Party protected under this Sub-Section, in Spanish or English.[55]

5. Any matter arising from technical specifications of protected geographical indications shall be dealt with by the Sub-Committee on Intellectual Property.

ARTICLE 25.43

Protection under the law of a Party

This Sub-Section is without prejudice to the right of a holder of a geographical indication in one Party to seek recognition and protection of a geographical indication in the other Party under the law of that Party.

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[55] Mexico may make those technical specifications publicly available in Spanish or English.

SUB-SECTION B.5

Patents

ARTICLE 25.44

International Agreements

Each Party shall adhere to the Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 28 September 1979 and last modified on 3 October 2001, and recognise the importance of adopting or maintaining procedural standards consistent with the Patent Law Treaty, adopted in Geneva on 1 June 2000.

ARTICLE 25.45

Patents and Public Health

1. The rights and obligations established in this Sub-Section do not and shall not prevent a Party from taking measures to protect public health. The Parties recognise the importance and affirm their commitment to the Declaration on the TRIPS Agreement and Public Health, adopted in Doha on 14 November 2001 (hereinafter referred to as "Doha Declaration"). In interpreting and implementing the rights and obligations under this Sub-Section, the Parties shall ensure consistency with the Doha Declaration.

2. The Parties shall contribute to the implementation and respect the decision of the WTO General Council of 30 August 2003 on implementation of paragraph 6 of the Doha Declaration as well as the Protocol of 6 December 2005 amending the TRIPS Agreement.

ARTICLE 25.46

Supplementary Protection in Case of Delays in Marketing Approval
for Pharmaceutical Products Including Biologic Products[56]

1. The Parties recognise that pharmaceutical products, including biologic products[57], protected by a patent in their respective territory may be subject to an administrative approval[58] procedure before being put on the market. They recognise that the period that elapses between the filing of the application for a patent and the approval to place the product on their respective market, as defined for that purpose by the relevant law of a Party, may shorten the period of effective protection under the patent.

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[56] Mexico shall implement the obligations provided for in this Article no later than two years after the entry into force of this Agreement.

[57] Each Party shall determine which products fall under the terms "pharmaceutical products" and "biologic products" in accordance with its law in place on 21 April 2018.

[58] For greater certainty, the term "marketing approval" is equivalent to the term "marketing authorisation".

2. Each Party shall provide for an adequate and effective mechanism to compensate the patent owner for the reduction in the effective patent life resulting from unreasonable delays[59] in the granting of the first marketing approval in its respective territory. Such compensation shall take the form of a supplementary *sui generis* protection, equal to the time by which the period of two years referred to in the footnote is exceeded. The maximum term of this supplementary protection shall not exceed five years.[60]

3. As an alternative to paragraph 2, a Party may make available an extension, not exceeding five years[61], of the duration of the rights conferred by the patent protection to compensate the patent owner for the reduction in the effective patent life as a result of the marketing approval procedure. This extension of the duration shall take effect at the end of the lawful term of the patent for a period equal to the period which elapsed between the date on which the application for a patent was filed and the date of the first approval to place the product on the market in that Party, reduced by a period of five years.

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59 For the purposes of this Article, an unreasonable delay includes at least a delay of more than two years in the first response to the applicant following the date of filing of the application for marketing approval. Any delays that occur in the granting of a marketing approval due to periods attributable to the applicant or any period that is out of control of the marketing approval authority need not be included in the determination of such delay.

60 If a Party complies with this paragraph, that Party is not obliged to comply with the alternative provided in paragraph 3.

61 This period can be extended for six months in the case of pharmaceutical products if paediatric studies have been carried out and the results of those studies are reflected in the product information.

4. In implementing the obligations of this Article, each Party may determine conditions and limitations, provided that the Party continues to comply with this Article.

5. Each Party shall make best efforts to process applications for marketing approval of pharmaceutical products in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays. With the objective of avoiding unreasonable delays, a Party may adopt or maintain procedures that expedite the processing of marketing approval application.

SUB-SECTION B.6

Plant Varieties

ARTICLE 25.47

International Agreements

Each Party shall protect plant varieties rights, in accordance with the International Convention for the Protection of New Varieties of Plants adopted in Paris on 2 December 1961, as lastly revised in Geneva on 19 March 1991, including the exceptions to the breeder's right as referred to in Article 15 of that Convention, and cooperate to promote and enforce these rights.[62]

[62] Mexico shall implement this provision no later than four years after the date of entry into force of this Agreement.

SUB-SECTION B.7

Protection of Undisclosed Information

ARTICLE 25.48

Scope of Protection of Trade Secrets

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention, each Party shall provide the legal means, including administrative or civil judicial proceedings[63], for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices.[64] For the purposes of this Sub-Section, trade secrets encompass undisclosed information as provided for in paragraph 2 of Article 39 of the TRIPS Agreement.

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[63] For greater certainty, a Party may provide those legal means through criminal procedures in accordance with its law.

[64] A Party may consider not to apply these procedures if the conduct contrary to honest commercial practices is carried out, in accordance with its law, with a view to revealing misconduct, wrongdoing or an illegal activity or for the purpose of protecting a legitimate interest recognised by its law.

2. For the purposes of this Sub-Section, a Party shall at least consider the following conduct to be contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced; or

(b) the use or disclosure of a trade secret without the consent of the trade secret holder, whenever carried out by a person who acquired the trade secret unlawfully or in breach of a confidentiality agreement or of any other duty not to disclose the trade secret or to limit its use.[65,66]

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[65] For greater certainty, the criteria provided in the laws and regulations of each Party contain the breach of a duty to limit the use of a trade secret.

[66] For greater certainty, the European Union considers that the following situations do not fall under paragraph 2:
(a) independent discovery or creation by a person of the relevant information;
(b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;
(c) acquisition, use or disclosure of information required or allowed by the law of a Party;
(d) use by employees of their experience and skills honestly acquired in the normal course of their employment; or
(e) disclosure of information in the exercise of the right to freedom of expression and information.

ARTICLE 25.49

Administrative or Civil Judicial Procedures of Trade Secrets

1. Each Party shall ensure that any person participating in the proceedings referred to in Article 25.48.1 or having access to documents which form part of those proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.

2. In the proceedings referred to in Article 25.48.1, each Party shall provide that its competent authorities have the authority at least to take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in the proceedings. Such specific measures may include, in accordance with the law of each Party, the possibility of restricting access to certain documents in whole or in part, of restricting access to hearings and their corresponding records or transcript, and of making available a non-confidential version of judicial decisions in which the passages containing trade secrets have been removed or redacted.

ARTICLE 25.50

Protection of Undisclosed Data Related to
Pharmaceutical Products Including Biologic Products[67]

1. If a Party requires, as a condition for a marketing approval of new[68] pharmaceutical products, including biologic products[69], the submission of undisclosed test or other data of pre-clinical tests or clinical trials necessary to determine whether the use of those products is safe and effective, the Party shall protect those data against disclosure to third parties, if the origination of those data involves considerable effort, except where the disclosure is necessary for an overriding public interest or unless steps are taken to ensure that the data are protected against unfair commercial use.

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[67] Mexico shall implement this obligation no later than two years after the entry into force of this Agreement.

[68] For the purposes of this Article, the term "new" implies that the products contain a new chemical entity that has not been previously approved in the territory of the Party or refers to a new biologic or biotechnological product that has not been previously approved in the territory of the Party.

[69] Each Party shall determine which products fall under the terms "pharmaceutical products" and "biologic products" in accordance with its law in place on 21 April 2018.

2. For pharmaceutical products, including biologic products, a Party shall not grant a marketing approval to third persons permitting them, without the consent of the person that previously submitted the data referred to in paragraph 1, to market the product[70] on the basis of those data or the marketing approval granted to the person that submitted those data[71], for at least six years from the date[72] of the marketing approval of the new product in the territory of that Party.[73]

3. There shall be no limitation on either Party to implement abbreviated authorisation procedures for such products on the basis of bioequivalence and bioavailability studies.

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[70] For the purposes of this paragraph, a Party may provide that the term "product" refers to the same or a similar product.

[71] For greater certainty, this includes data submitted for authorisations granted to the person that submitted such information in the territories of the Parties and of third countries.

[72] For greater certainty, a Party may limit the period of protection under this paragraph to six years.

[73] A Party may provide that, for biologic products, the protection of undisclosed data referred to in this Article applies only to the first marketing approval of the new biologic product.

ARTICLE 25.51

Protection of Undisclosed Data Related to Plant Protection Products[74]

1. If a Party requires, as a condition for a marketing approval[75] of a new[76] plant protection product the submission of undisclosed test or other data concerning the safety or efficacy of the product[77], the Party shall protect those data against disclosure to third parties, except where the disclosure is necessary for an overriding public interest or unless steps are taken to ensure that the data are protected against unfair commercial use.

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[74] Mexico shall implement this obligation no later than two years after the entry into force of this Agreement.

[75] For purposes of this article, the term "marketing approval" is synonymous with "sanitary approval" under the law of a Party.

[76] For purposes of this article, the term "new" implies that the product contains a new chemical entity that has not been previously approved in the territory of the Party.

[77] For greater certainty, this Article applies to cases in which the Party requires the submission of undisclosed test or other data concerning only the safety of the product, only the efficacy of the product or both.

2. For plant protection products, a Party shall not grant a marketing approval to third persons permitting them, without the consent of the person that previously submitted the data referred to in paragraph 1, to market the product on the basis of those data or the marketing approval granted to the person that submitted those data, for at least 10 years[78] from the date of the marketing approval of the new product in the territory of that Party.

3. Each Party shall establish rules to avoid duplicative testing on vertebrate animals.

4. There shall be no limitation on either Party to implement abbreviated authorisation procedures for such products on the basis of equivalence studies.

[78] For greater certainty, a Party may limit the period of protection pursuant to this Article to 10 years.

SECTION C

Enforcement of Intellectual Property Rights

SUB-SECTION C.1

General Provisions

ARTICLE 25.52

General Obligations

1. The Parties affirm their commitments under the TRIPS Agreement and in particular Part III thereof. Each Party shall provide for the complementary measures, procedures and remedies under this Section, which are necessary to ensure the enforcement of intellectual property rights. These measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

2. The measures, procedures and remedies referred to in paragraph 1 shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

3. This Section does not create any obligation for a Party to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of a Party to enforce its law in general. This Sub-Section does not create any obligation with respect to how a Party distributes resources between the enforcement of intellectual property rights and the enforcement of law in general.

ARTICLE 25.53

Persons Entitled to Apply for the Application of Measures, Procedures and Remedies

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section and in Part III of the TRIPS Agreement:

(a) the holders of intellectual property rights in accordance with its law;

(b) all other persons authorised to use those intellectual property rights, in particular licensees, in so far as permitted by, and in accordance with, its law;

(c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by, and in accordance with, its law; and

(d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by, and in accordance with, its law.

SUB-SECTION C.2

Civil and Administrative Enforcement

ARTICLE 25.54

Evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities, on application by a party which has presented reasonably available evidence to support his claim that his intellectual property right has been infringed or is about to be infringed, have the authority to order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

2. The provisional measures referred to in paragraph 1 may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production or distribution of these goods, and the documents relating thereto.

3. Each Party shall take the measures necessary to provide its competent judicial authorities with the authority to order, in case of infringement of an intellectual property right committed on a commercial scale, if appropriate and on request of a party in the proceedings, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.[79]

[79] Mexico may limit that authority to criminal procedures, in accordance with its law.

ARTICLE 25.55

Right of Information

1. Each Party shall ensure that, in proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities have the authority to order the infringer or any other person which is party to the proceedings or a witness therein, to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right[80].

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[80] The European Union may decide that:

(a) "any other person" means a person who was:

(i) found in possession of the infringing goods on a commercial scale;

(ii) found to be using the infringing services on a commercial scale;

(iii) found to be providing on a commercial scale services used in infringing activities; or

(iv) indicated by the person referred to in subparagraph (i) to (iii) as being involved in the production, manufacture or distribution of the infringing goods or the provision of the infringing services;

(b) "information" shall, as appropriate, comprise:

(i) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; or

(ii) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

2. This Article applies without prejudice to other provisions in the law of a Party which:

(a) grant the right holder rights to receive further information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) govern the responsibility for misuse of the right of information;

(d) afford the opportunity to refuse to provide information that would force the person referred to in paragraph 1 to admit his own participation or that of his close relatives in an infringement of an intellectual property right; or

(e) govern the protection of confidentiality of information sources or the processing of personal data.

ARTICLE 25.56

Provisional and Precautionary Measures

1. Each Party shall ensure that its judicial authorities, on request of the applicant, have the authority to issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, if appropriate, to a recurring penalty payment if provided for by its law, the continuation of the alleged infringements of that right, or to make that continuation subject to the provision of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right. For the purposes of this Article, "intermediaries" include internet service providers.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

3. Each Party shall provide that, in the case of an alleged infringement, its judicial authorities have the authority to order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.[81]

ARTICLE 25.57

Remedies

1. Each Party shall ensure that the competent judicial authorities have the authority to order, on request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction or at least the definitive removal from the channels of commerce, of goods that they have found to infringe an intellectual property right. Each Party shall ensure that, if appropriate, the competent judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods.

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[81] Mexico may limit the authority to order the communication of bank, financial or commercial documents to criminal procedures in accordance with its law. Each Party may limit this authority to infringements committed on a commercial scale and situations where the applicant demonstrates the existence of circumstances likely to endanger the recovery of damages.

2. In considering a request for remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

ARTICLE 25.58

Injunctions

Each Party shall ensure that, if a judicial decision finds an infringement of an intellectual property right, the competent judicial authorities have the authority to issue against the infringer, as well as against an intermediary whose services are being used by a third party to infringe an intellectual property right, an injunction aimed at prohibiting the continuation of the infringement.

ARTICLE 25.59

Damages

1. Each Party shall provide that its judicial authorities have the authority at least to order the infringer who knowingly, or with reasonable grounds to know, engaged in activities infringing intellectual property rights, to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement of its intellectual property right.[82]

2. In determining the amount of damages pursuant to paragraph 1, the judicial authorities of each Party shall take into account all appropriate aspects and have the authority to consider, among other things, any legitimate measure of value the right holder submits, including lost profits, the value of the goods or services that are the object of the infringement, measured by the market price, or the suggested retail price.

3. Each Party shall provide that, at least in cases of infringement of copyright or related rights and trademark counterfeiting, its judicial authorities have the authority to order the infringer, at least in the cases referred to in paragraph 1, to pay the right holder the infringer's profits that are attributable to the infringement. A Party may comply with this paragraph through a presumption that those profits correspond to the damages referred to in paragraph 1.

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[82] A Party may provide that the initiation of a procedure to claim damages is not subject to a final finding of a violation of intellectual property rights.

4. Each Party may provide that the judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages which may be pre-established, where the infringer did not knowingly, or without reasonable grounds to know, engage in infringing activity.

ARTICLE 25.60

Legal Costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless equity does not allow this.

ARTICLE 25.61

Publication of Judicial Decisions

Without prejudice to its law governing the protection of confidentiality of information sources or the protection of personal data, each Party shall ensure that, in legal proceedings concerning the infringement of an intellectual property right, the competent judicial authorities have the authority to order, on request of the applicant, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

ARTICLE 25.62

Presumption of Authorship or Ownership

1. Each Party shall recognise that, for the purposes of applying the measures, procedures and remedies provided for in this Sub-Section, in the absence of proof to the contrary, it is sufficient for the name of an author of a literary or artistic work to appear on the work in the usual manner, in order for the author to be regarded as such, and consequently to be entitled to institute infringement proceedings.

2. Paragraph 1 applies, *mutatis mutandis*, to the holders of rights related to copyright with regard to their protected subject matter.

ARTICLE 25.63

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set out in this Sub-Section.

ARTICLE 25.64

Voluntary Stakeholder Initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce infringements of intellectual property rights, including online and in other marketplaces, which focus on concrete problems and seek practical solutions that are realistic, balanced, proportionate and fair for all stakeholders concerned.

SECTION D

Border Enforcement

ARTICLE 25.65

Consistency with GATT and the TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs authorities, whether or not covered by this Agreement, each Party shall ensure consistency with its obligations under GATT and the TRIPS Agreement and, in particular, with Article 41 and Section 4 of Part III of the TRIPS Agreement.

ARTICLE 25.66

Border Enforcement Measures Related to Intellectual Property Rights

1. Each Party shall have in place procedures allowing for the destruction of goods infringing intellectual property rights, in accordance with Articles 46 and 59 of the TRIPS Agreement.

2. With respect to goods under customs control, each Party shall ensure that its customs authorities are active, in accordance with its laws and regulations and in coordination with other relevant authorities, in targeting and identifying shipments containing goods suspected of infringing trademarks, copyright or other intellectual property rights. At least with regard to import goods, these activities should be carried out on the basis of risk analysis.

3. Each Party shall adopt and maintain a centrally managed electronic database relating at least to trademarks and industrial designs, which shall serve as a relevant tool for cooperation between the competent authorities and right holders, free of charge, and for the provision of information for risk analysis. Each Party shall endeavour to extend the electronic database for risk analysis to other intellectual property rights.

4. Each Party shall ensure that information provided by the right holder is automatically included in the electronic database provided that it complies with the relevant requirements, in accordance with its laws and regulations. The validation of the information provided by a right-holder shall be automatic or done within a reasonable period of time by the competent authorities of each Party.

5. The Parties recognise the benefits of maintaining and improving an electronic database, with a view to contributing to the detection of infringements of intellectual property rights and to providing elements to initiate the procedure of the suspension or detention of goods under customs control.

6. Each Party shall provide that its customs authorities may act on their own initiative to suspend the release of or detain goods suspected of infringing an intellectual property right, or to inform the right holder or the relevant authorities in order to allow them to assess the need to initiate a procedure that may lead to the suspension or detention of those goods.

7. A Party is encouraged to have in place procedures allowing for the swift destruction of counterfeit trademark and pirated goods sent through postal or express couriers' consignments.

8. The customs authorities of each Party shall maintain a regular dialogue and promote cooperation with stakeholders and with other authorities involved in the enforcement of the intellectual property rights referred to in this Article.

9. The Parties shall cooperate with respect to international trade in goods suspected to infringe intellectual property rights and, in particular, to share information on such trade, in accordance with their laws and regulations.

10. The Parties shall have a regular exchange on the proper implementation and administration of this Article.

SECTION E

Final Provisions

ARTICLE 25.67

Cooperation and Transparency

1. The Parties shall cooperate with a view to supporting the implementation of this Chapter.

2. Areas of cooperation include, but are not limited to, the following activities:

(a) the exchange of information on developments in the domestic and international policy regarding intellectual property rights;

(b) the exchange of information on intellectual property laws and regulations of the Parties, including initiatives or amendments;

(c) the exchange of experience between the Parties on the enforcement of intellectual property rights;

(d) coordination to prevent trade of counterfeit goods, including with third countries;

(e) technical assistance, capacity building, and exchange and training of personnel;

(f) the protection and defence of intellectual property rights and the dissemination of information in this regard in, among others, business circles and civil society;

(g) education and awareness raising relating to intellectual property rights, including the impact of infringements of intellectual property rights on the economy and the safety of consumers;

(h) enhancement of institutional cooperation, particularly between the authorities in charge of intellectual property rights;

(i) collaboration with SMEs, including at SME-focused events or gatherings, regarding protecting and enforcing intellectual property rights and reducing infringements; and

(j) exchange of information between the Parties regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories.

3. The Sub-Committee on Intellectual Property established pursuant to Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall monitor the implementation and administration of this Chapter and any other relevant matters.

The Sub-Committee on Intellectual Property shall meet at least once per year, except if the Parties agree otherwise.

4. Each Party shall designate a contact point to facilitate cooperation and coordination under this Chapter, and notify the other Party of its contact details. The Parties shall promptly notify each other of any changes to those contact details.

CHAPTER 26

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 26.1

Objective and Scope

1. The objective of this Chapter is to enhance the integration of sustainable development in the trade and investment between the Parties, notably by establishing principles and actions concerning labour[83] and environmental aspects of sustainable development of specific relevance in the context of trade and investment.

[83] For the purposes of this chapter, the term "labour" means the strategic objectives of the ILO under the Decent Work Agenda, which is expressed in the ILO Declaration on Social Justice for a Fair Globalization of 2008.

2. The Parties recall Agenda 21 and the Rio Declaration on Environment and Development of 1992, adopted by the UN Conference on Environment and Development in 1992; the Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002; the International Labour Organization's Declaration on Social Justice for a Fair Globalization of 2008 adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008; the Outcome Document of the UN Conference on Sustainable Development of 2012, incorporated in Resolution 66/288 adopted by the UN General Assembly on 27 July 2012, entitled "The Future We Want"; and the Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development document "Transforming our World: the 2030 Agenda for Sustainable Development".

3. Consistent with the instruments referred to in paragraph 2, the Parties shall promote:

(a) sustainable development, which encompasses economic development, social development and environmental protection, all three being inter-dependent and mutually reinforcing;

(b) the development of international trade and investment in a manner that contributes to the objective of achieving the Sustainable Development Goals; and

(c) inclusive green growth and circular economy so as to foster economic growth while ensuring environmental protection and promoting social development.

ARTICLE 26.2

Right to Regulate and Levels of Protection

1. The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish its levels of domestic environmental and labour protection and to adopt or modify its relevant laws and regulations, and policies as it deems appropriate. Such levels, laws and regulations, and policies shall be consistent with each Party's commitment to the internationally recognised standards and agreements referred to in Articles 26.3 and 26.4.

2. Each Party shall strive to ensure that its relevant laws and regulations, and policies provide for and encourage high levels of environmental and labour protection; and shall continue to strive to improve such laws and regulations, and policies and their underlying levels of protection.

3. A Party should not weaken the levels of protection afforded in its environmental or labour law in order to encourage trade or investment.

4. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental or labour law in order to encourage trade or investment.

5. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental or labour law in order to encourage trade or investment.

ARTICLE 26.3

Multilateral Labour Standards and Agreements

1. The Parties affirm their commitment to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all, in particular women, young people and persons with disabilities.

2. In accordance with the International Labour Organization Constitution and the International Labour Organization Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session, Geneva, 18 June 1998, each Party shall respect, promote and effectively implement the principles concerning the fundamental rights at work, as defined in the fundamental International Labour Organization (hereinafter referred to as "ILO") conventions, which are:

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

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

(c) the effective abolition of child labour; and

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

3. Pursuant to paragraphs 1 and 2 and underlining the commitment of the Parties to support multilateral governance, each Party shall effectively implement the ILO conventions and protocols it has ratified.

4. Each Party shall make continued and sustained efforts towards ratifying the fundamental ILO conventions.

5. The Parties shall regularly exchange information on their respective progress with regard to ratification of the fundamental ILO conventions and related protocols and of other ILO conventions or protocols to which they are not yet party and which are considered as up-to-date by the ILO.

6. The Parties shall consult as appropriate and should cooperate on trade-related labour issues of mutual interest, including in the context of the ILO.

7. Recalling the ILO Declaration on Social Justice for a Fair Globalization of 2008, the Parties note that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

8. Each Party shall promote decent work as defined in the ILO Declaration on Social Justice for a Fair Globalization of 2008. Each Party shall, in accordance with its conditions and priorities, pay particular attention to:

(a) developing and enhancing measures for occupational safety and health, including compensation in case of occupational injury or illness, as defined in the relevant ILO conventions and other international commitments;

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

(c) maintaining an effective labour inspection system in accordance with its international commitments and relevant ILO standards.

9. Each Party shall ensure that its administrative, judicial and labour tribunal proceedings for the enforcement of its labour law are fair, accessible and transparent, and permit effective action against infringements of labour rights referred to in this Chapter.

ARTICLE 26.4

Multilateral Environmental Governance and Agreements

1. The Parties recognise the importance of the United Nations Environment Assembly (UNEA) of the United Nations Environment Programme (UNEP) and multilateral environmental governance and agreements as a response of the international community to global or regional environmental challenges and aim to enhance the mutual supportiveness between trade and environment policies.

2. Pursuant to paragraph 1 and in order to support multilateral environmental governance, each Party shall effectively implement the multilateral environmental agreements, protocols and amendments to which it is a party.

3. The Parties shall regularly exchange information on their respective initiatives regarding the ratifications of multilateral environmental agreements, including their protocols and amendments.

4. The Parties shall consult as appropriate and should cooperate on trade-related environmental matters of mutual interest, including in the context of multilateral environmental agreements.

5. The Parties acknowledge the right of each Party to invoke Article 32.1 (General Exceptions) in relation to measures taken pursuant to multilateral environmental agreements to which they are party.

ARTICLE 26.5

Trade and Climate Change

1. The Parties recognise the importance of pursuing the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC), done at New York on 9 May 1992, in order to address the urgent threat of climate change and recognise the role of trade to that end.

2. Pursuant to paragraph 1, each Party shall:

(a) effectively implement the UNFCCC and the Paris Agreement, including through actions that contribute to the implementation of the Nationally Determined Contributions (NDCs) in accordance with the Paris Agreement;

(b) promote the positive contribution of trade to the transition to a sustainable low-carbon economy and to climate-resilient development; and

(c) promote green economic growth based on actions on climate change mitigation and adaptation, including ecosystem-based adaptation, renewable energies and energy-efficient solutions.

3. The Parties should cooperate on trade-related matters concerning climate change bilaterally, regionally and in international fora, as appropriate, including in the UNFCCC, the WTO and the Montreal Protocol on Substances that Deplete the Ozone Layer.

ARTICLE 26.6

Trade and Biological Diversity

1. The Parties recognise the importance of conserving and sustainably using biological diversity and the role of trade in pursuing those objectives, consistent with the Convention on Biological Diversity (CBD) done at Rio de Janeiro on 5 June 1992 and its Protocols, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) signed at Washington D.C. on 3 March 1973 and other relevant international instruments to which they are party, including the decisions and resolutions adopted thereunder.

2. Parties recognise that mainstreaming the conservation and sustainable use of biological diversity across relevant sectors of the economy and strengthening legal, institutional and regulatory domestic frameworks can contribute to generating positive impacts on biological diversity and its ecosystem services as well as to achieving sustainable development.

3. Pursuant to paragraph 1, each Party shall:

(a) implement effective measures to combat illegal wildlife trade, including through cooperation activities with third countries as appropriate;

(b) promote the inclusion of animal and plant species in the Appendices to CITES where the conservation status of that species is considered at risk because of international trade and conduct periodic reviews, which may result in a recommendation to amend the Appendices to the CITES, in order to ensure that they properly reflect the conservation needs of species subject to international trade;

(c) promote the long-term conservation and sustainable use of CITES listed species, including their legal and traceable trade, while providing benefits to stakeholders in the value-chain, in particular to the local communities where CITES listed species are obtained;

(d) take measures to conserve biological diversity when it is subject to pressures linked to trade and investment, in particular through measures to prevent the spread of invasive alien species; and

(e) exchange information with the other Party on initiatives on trade in natural resource-based products with the aim of promoting conservation and sustainable use of biological diversity and promote such trade.

4. Each Party should cooperate with the other Party bilaterally, regionally and in international fora, including with relevant stakeholders, on matters concerning trade and the conservation and sustainable use of biological diversity, as well as on combatting illegal wildlife trade, including through initiatives to reduce demand for illegal wildlife products and specimens, and to enhance cooperation on law enforcement and information sharing.

ARTICLE 26.7

Trade and Sustainable Management of Forests

1. The Parties recognise the importance of sustainable forest management and the role of trade in pursuing this objective.

2. Pursuant to paragraph 1, each Party shall:

(a) encourage the conservation and sustainable management of forests and the promotion of trade and consumption of timber and timber products from sustainably managed forests;

(b) promote trade in forest products that has not given rise to deforestation or forest degradation;

(c) implement measures to combat illegal logging and related trade, including through cooperation activities with third countries as appropriate; and

(d) exchange information with the other Party on trade-related initiatives on forest governance and on the conservation of forest cover, and cooperate with the other Party to maximise positive impacts and ensure the mutual supportiveness of their respective policies of mutual interest.

3. Each Party should cooperate with the other Party bilaterally, regionally and in international fora, including with relevant stakeholders, on matters concerning trade and the conservation of forests as well as sustainable forest management.

ARTICLE 26.8

Trade and Sustainable Management of Marine Biological Resources and Aquaculture

1. The Parties recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems as well as of promoting responsible and sustainable aquaculture with the aim of ensuring sustainable economic, environmental and social conditions; and the role of trade in pursuing these objectives.

2. The Parties acknowledge that illegal, unreported and unregulated fishing (hereinafter referred to as "IUU fishing") has negative impacts on trade and the environment, and confirm the need for action to end IUU fishing to address the problems of overfishing and unsustainable utilisation of fisheries resources.

3. Pursuant to paragraphs 1 and 2, each Party shall:

(a) act in accordance with the principles of the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982, the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks opened for signature at New York on 4 December 1995, the Food and Agriculture Organization Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas approved on 24 November 1993 by Resolution 15/93 of the 27th Session of the Food and Agriculture Organization Conference, the Food and Agriculture Organization Code of Conduct for Responsible Fisheries adopted on 31 October 1995 by the Food and Agriculture Organization Conference, and the Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing approved on 22 November 2009 at the 36th Session of the Food and Agriculture Organization Conference;

(b) implement long-term conservation and management measures and sustainable exploitation of marine living resources as defined in the main United Nations and Food and Agriculture Organization (FAO) instruments relating to these issues;[84]

(c) participate actively in the work of the regional fisheries management organisations of which both Parties are members, observers or cooperating non-contracting parties, with the aim of ensuring the sustainable exploitation, management and conservation of marine biological resources and the marine environment, including, if applicable, active participation in the adoption of management, conservation and control measures by those regional fisheries management organisations and their effective implementation and enforcement, including, where applicable, catch documentation or certification schemes;

(d) implement effective measures to combat IUU fishing, including measures to exclude IUU fishing products from trade flows, and cooperate and exchange information to that end; and

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[84] These instruments include, among others and as they may apply: the UN Convention on the Law of the Sea, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the UN Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

(e) promote the development of sustainable and responsible aquaculture, including with regard to the implementation of the objectives and principles contained in the FAO Code of Conduct for Responsible Fisheries.

4. Each Party should cooperate with the other Party and within regional fisheries management organisations and other international fora with the aim of achieving sustainable fisheries management.

ARTICLE 26.9

Trade and Responsible Management of Supply Chains

1. The Parties recognise the importance of responsible management of supply chains through responsible business conduct and corporate social responsibility practices, which contribute to an enabling environment, and the role of trade in pursuing the objective of responsible management of supply chains.

2. Pursuant to paragraph 1, each Party shall:

(a) promote corporate social responsibility or responsible business conduct, including by encouraging the uptake of relevant practices by businesses; and

(b) support the dissemination and use of relevant international instruments, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted in Geneva in November 1977, the UN Global Compact and the UN Guiding Principles on Business and Human Rights endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011.

3. The Parties recognise the utility of international sector-specific guidelines in the area of corporate social responsibility or responsible business conduct, such as the OECD Due Diligence Guidance documents for responsible supply chains, and shall promote joint work in this regard, including with respect to third countries. Each Party shall promote the uptake of those guidelines supported by that Party.

4. Each Party shall exchange information as well as best practices and, as appropriate, cooperate with the other Party bilaterally, regionally and in international fora on matters covered by this Article.

ARTICLE 26.10

Other Trade and Investment-Related Initiatives Favouring Sustainable Development

1. The Parties confirm their commitment to enhancing the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions.

2. Pursuant to paragraph 1, each Party shall promote:

(a) trade and investment policies that support the objectives of the ILO Decent Work Agenda, and are consistent with the ILO Declaration on Social Justice for a Fair Globalization of 2008, including policies with regard to wages, earnings and working hours, inclusive social protection, health and safety at work, and other aspects related to working conditions;

(b) trade and investment facilitation in environmental goods and services, including those of particular relevance for climate change mitigation such as sustainable and renewable energy and energy efficient products and services by, among others, addressing related non-tariff barriers, adopting policy frameworks conducive to the deployment of best available technologies and cooperating in relation to initiatives in that area; and

(c) trade in goods that contribute to enhanced social conditions and environmentally sound practices, including goods that are covered by voluntary sustainability assurance schemes such as fair and ethical trade schemes and eco-labels.

3. Each Party should cooperate with the other Party bilaterally, regionally and in international fora on matters covered by this Article.

ARTICLE 26.11

Scientific and Technical Information

1. When establishing or implementing measures aimed at protecting the environment or occupational safety and health that may affect trade or investment, each Party shall take into account available scientific and technical information, relevant international standards, guidelines or recommendations.

2. If there is a lack of full scientific certainty and there are threats of serious or irreversible damage to the environment or to occupational safety and health, a Party may adopt cost-effective measures based on the precautionary principle. Such measures shall be consistent with, or justified under, this Agreement. They shall be based upon available pertinent information and subject to periodic review in the light of new scientific information.

ARTICLE 26.12

Transparency

When a Party adopts and implements measures of general application aimed at the protection of the environment and labour conditions that may affect trade or investment between the Parties, or trade or investment measures that may affect the protection of the environment or labour conditions, that Party shall do so in accordance with Chapter 27 (Transparency), and shall provide reasonable opportunities for interested persons to submit views on the proposed measures in accordance with its domestic laws and regulations.

ARTICLE 26.13

Cooperation on Trade and Sustainable Development

1. The Parties recognise the importance of cooperating in order to achieve the objectives of this Chapter.

2. The cooperation referred to in paragraph 1 may cover areas such as:

(a) labour and environmental aspects of trade and sustainable development in international fora, including in particular the WTO, the ILO, the United Nations Environment Assembly and Programme and multilateral environmental agreements;

(b) the impact of labour and environmental law and standards on trade and investment; and

(c) the impact of trade and investment law on labour and the environment.

3. The cooperation referred to in paragraph 1 may also cover trade-related aspects of:

(a) the fundamental, governance and other up-to-date ILO conventions of relevance in a trade context;

(b) the ILO Decent Work Agenda, including on the inter-linkages between trade and full and productive employment, labour market adjustment, core labour standards, decent work in global supply chains, social protection and social inclusion, social dialogue, skills development and gender equality;

(c) multilateral environmental agreements, including customs cooperation and support for each other's participation in such agreements;

(d) the current and future international climate change regime, including means to promote low-carbon technologies and energy efficiency, preparation and adoption of carbon pricing action including emissions trading systems, ecosystem-based adaptation and water management adaptation approaches to climate change;

(e) the Montreal Protocol on Substances that Deplete the Ozone Layer and its Kigali Amendment, in particular:

    (i) measures to control the production and consumption of and trade in ozone- depleting substances (ODSs) and hydrofluorocarbons (HFCs);

    (ii) introduction of environmentally friendly alternatives;

    (iii) updating of standards; and

    (iv) combatting illegal trade of substances regulated by that agreement;

(f) the promotion of inclusive green growth and a circular economy;

(g) transparent private and public sustainability assurance schemes, including eco-labelling;

(h) the protection and restoration of ecosystems, access to genetic resources and the fair and equitable sharing of benefits from their utilisation in accordance with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity done at Nagoya on 29 October 2010, as well as the valuation of ecosystems and their services and related economic instruments;

(i) corporate social responsibility, responsible business conduct and responsible management of global supply chains, including with regard to adherence, implementation and dissemination of internationally agreed instruments;

(j) the sound management of chemicals and waste;

(k) the promotion of the conservation and sustainable use of biological diversity, including by combatting illegal wildlife trade, as referred to in Article 26.6;

(l) the promotion of the conservation and sustainable management of forests with a view to halting deforestation and illegal logging, including the promotion of trade in forest products that have not given rise to deforestation or forest degradation, as referred to in Article 26.7; and

(m) the promotion of sustainable fishing practices and trade in sustainably managed fish products, as well as the protection and restoration of the marine environment, as referred to in Article 26.8.

ARTICLE 26.14

Sub-Committee on Trade and Sustainable Development

1. The Sub-Committee on Trade and Sustainable Development established by Article 1.10.1(l) (Sub-Committees and Other Bodies of Part III of this Agreement) shall meet within a year of the date of entry into force of this Agreement, unless otherwise agreed by the Parties, and thereafter as necessary in accordance with Article 1.4 (Sub-Committees and Other Bodies) of Part IV of this Agreement.

2. The Sub-Committee on Trade and Sustainable Development shall:

(a) facilitate and monitor the effective implementation and administration of this Chapter, including cooperation activities undertaken under this Chapter;

(b) carry out the tasks referred to in Articles 26.17 to 26.19;

(c) make recommendations to the Joint Committee, including with regard to topics for discussion with the Domestic Advisory Group and Civil Society Forum, referred to in Articles 1.7 (Domestic Advisory Groups) and 1.8 (Civil Society Forum) of Part IV of this Agreement; and

(d) consider any other matters related to this Chapter as the Parties may agree.

3. The Sub-Committee on Trade and Sustainable Development shall issue a public report after each of its meetings.

4. Each Party shall give due consideration to communications and opinions from the public on matters related to this Chapter and shall inform of such communications and opinions the Sub-Committee on Trade and Sustainable Development and its civil society mechanisms referred to in Article 1.6 (Relationship with Civil Society) of Part IV of this Agreement.

ARTICLE 26.15

Trade and Sustainable Development Contact Points

Each Party shall designate a contact point to facilitate communication and coordination between the Parties on any matters relating to the implementation of this Chapter and notify the other Party of its contact details. The Parties shall promptly notify each other of any changes to those contact details.

ARTICLE 26.16

Dispute Resolution

In case of disagreement between the Parties regarding the interpretation or application of this Chapter, the Parties shall have recourse exclusively to the dispute resolution procedures referred to in Articles 26.17 and 26.18.

ARTICLE 26.17

Consultations

1. A Party may request consultations with the other Party regarding the interpretation or application of this Chapter by delivering a written request to the contact point of the other Party established in accordance with Article 26.15. The request shall set out the reasons for requesting consultations, including a description of the matter at issue. Consultations shall start promptly after a Party delivers a request for consultations, and in any event no later than 30 days after the date of receipt of the request, unless the Parties agree otherwise. Consultations shall be held in person or, if the Parties so agree, by electronic means.

2. The Parties shall enter into consultations with the aim of reaching a mutually satisfactory resolution of the matter. With respect to matters related to the multilateral agreements referred to in this Chapter, the Parties shall take into account information from the ILO or relevant multilateral environmental organisations or bodies in order to ensure coherence between the work of the Parties and the work of those organisations or bodies. Where relevant and mutually agreed, the Parties shall seek advice from such organisations or bodies, or any other expert or body they deem appropriate.

3. If, 30 days after the date of receipt of the request referred to in paragraph 1, a Party considers that the matter needs further discussion, that Party may request in writing that the Sub-Committee on Trade and Sustainable Development be convened and notify that request to the contact point referred to in paragraph 1.The Sub-Committee on Trade and Sustainable Development shall meet promptly and endeavour to reach a mutually satisfactory resolution of the matter.

4. The Sub-Committee on Trade and Sustainable Development shall seek as appropriate the advice of the Domestic Advisory Groups referred to in Article 1.7 (Domestic Advisory Groups) of Part IV of this Agreement or other expert advice.

5. Any resolution reached by the Parties shall be made available to the public.

ARTICLE 26.18

Panel of Experts

1. If, within 90 days after a request for consultations pursuant to Article 26.17, the Parties have not reached a mutually agreed solution, a Party may request the establishment of a panel of experts to examine the matter. That request shall be made in writing to the contact point of the other Party designated pursuant to Article 26.15. The request shall identify the reasons for requesting the establishment of a panel of experts, including an indication of the legal basis for the complaint.

2. Except as otherwise provided for in this Article, Articles 31.6 (Establishment of a Panel), 31.10 (Functions of the Panel), 31.20 (Replacement of Panellists), 31.21 (Rules of Procedure), 31.22 (Suspension and Termination), 31.23 (Receipt of Information) and 31.24 (Rules of Interpretation); and Section E (Common Provisions) of Chapter 31 (Dispute Settlement); as well as Annexes 31-A (Rules of Procedure) and 31-B (Code of Conduct for Panellists and Mediators), apply.

3. The Sub-Committee on Trade and Sustainable Development shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as panellists on the panel of experts. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals that are not nationals of either Party and who may serve as chairperson of the panel of experts. Each Party shall propose at least five individuals for its sub-list. The Parties shall also select at least five individuals for the list of chairpersons. The Sub-Committee on Trade and Sustainable Development shall ensure that the list is kept updated and that the number of experts is maintained at least at 15 individuals.

4. The individuals referred to in paragraph 3 shall have specialised knowledge of, or expertise in, labour or environmental law, issues addressed in this Chapter or the resolution of disputes arising under international agreements. They shall be independent, serve in their individual capacities and shall not take instructions from any organisation or government with regard to issues related to the disagreement or be affiliated with the government of any Party, and shall comply with the provisions set out in Annex 31-B (Code of Conduct for Panellists and Mediators).

5. A panel of experts shall be established in accordance with the procedures set out in paragraphs 2 and 3 of Article 31.6 (Establishment of a Panel). The experts shall be selected from the individuals on the sub-lists referred to in paragraph 3 of this Article, in accordance with Article 31.7 (Composition of a Panel).

6. Unless the Parties agree otherwise within five days after the date of establishment of the panel of experts, as defined in paragraph 3 of Article 31.6 (Establishment of a Panel), the terms of reference of the panel shall be:

"to examine, in the light of the relevant provisions of Chapter 26 (Trade and Sustainable Development) of Part III (Trade and Investment) of this Agreement, the matter referred to in the request for the establishment of the Panel of Experts, to make findings and recommendations for the resolution of the matter and to deliver a report, in accordance with paragraph 8 of Article 26.18 (Panel of Experts)".

7. In matters related to the respect of multilateral agreements referred to in this Chapter, the panel of experts shall endeavour to seek information and advice from relevant bodies of the ILO or other bodies established under multilateral environmental agreements.

8. The panel of experts shall issue to the Parties an interim report within 90 days after the establishment of the panel of experts and a final report no later than 30 days after issuing the interim report. Those reports shall set out the findings of fact, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations. Each Party shall make the final report available to the public within 15 days after its delivery by the panel of experts.

9. The Parties shall discuss appropriate measures to be implemented taking into account the report and recommendations of the panel of experts. The Party implementing appropriate measures shall inform its Domestic Advisory Group referred to in Article 1.7 (Domestic Advisory Groups) of Part IV of this Agreement and the other Party of any actions or measures to be implemented no later than three months after the report has been made available to the public. The Sub-Committee on Trade and Sustainable Development shall monitor the follow-up to the report of the panel of experts and its recommendations. The domestic advisory groups referred to in Article 1.7 (Domestic Advisory Groups) of Part IV of this Agreement may submit observations to the Sub-Committee on Trade and Sustainable Development in this regard.

ARTICLE 26.19

Review

1. For the purposes of enhancing the effective implementation of this Chapter, the Parties shall initiate, upon entry into force of the Agreement, a formal review process taking into account, among others, the experience gained through implementation of this Chapter, policy developments in each Party, developments in international agreements and views presented by stakeholders. The Parties will aim to conclude the review process within 12 months.

2. For the purpose of paragraph 1, the Parties shall in particular discuss at the meetings of the Sub-Committee on Trade and Sustainable Development, the operation of the institutional and dispute settlement provisions set out in Articles 26.14 to 26.18, including a possible review of their effectiveness and the enhancement of the enforcement mechanism, including the possibility to apply a compliance phase and relevant countermeasures as last resort.

3. The Sub-Committee on Trade and Sustainable Development may prepare amendments to the relevant provisions of this Chapter reflecting the outcome of the discussions referred to in paragraph 1 and 2, in accordance with the amendment procedure established in Article 2.4 (Amendment) of Part IV of the Agreement.

4. Without prejudice to the outcome of the review, the Parties shall also consider the possibility and modality of including the Paris Agreement as an essential element of this Agreement.

CHAPTER 27

TRANSPARENCY

ARTICLE 27.1

Definitions

For the purposes of this Chapter:

(a) "measures of general application" means laws, regulations, procedures and administrative rulings of general application;

(b) "interested person" means any natural or legal person that may be affected by a measure of general application; and

(c) "administrative action" means an action or decision having a legal effect that affects the rights and obligations of a specific person in an individual case, and covers an administrative action or failure to take an administrative action or decision as provided for in the Party's law.

ARTICLE 27.2

Objective

The Parties aim to promote a transparent regulatory environment.

ARTICLE 27.3

Publication

1. Each Party shall ensure that any measure of general application with respect to any matter covered by this Part of the Agreement:

(a) is promptly published via an officially designated medium and, if feasible, electronic means, or otherwise made available in such a manner as to enable traders and other interested parties to become acquainted with them; and

(b) if adopted by the central level of government, provides an explanation of its objective and rationale.

2. To the extent possible, when introducing or changing a measure referred to in paragraph 1, each Party shall provide sufficient time to become acquainted with it between publication and entry into force.

ARTICLE 27.4

Provision of Information

1. A Party shall, at the request of the other Party, promptly provide information and respond to questions pertaining to any existing or proposed measure of general application that materially affects the operation of this Agreement.

2. Information provided pursuant to this Article is without prejudice as to whether the measure is consistent with this Agreement.

ARTICLE 27.5

Administration of Measures of General Application

1. Each Party shall administer in an objective, impartial, consistent and reasonable manner all measures of general application with respect to any matter covered by this Part of the Agreement.

2. When applying measures of general application in specific cases to particular persons, goods or services of the other Party, each Party shall:

(a) endeavour to provide a person that is directly affected by administrative proceedings with reasonable notice, in accordance with its laws and regulations, when those proceedings are initiated, including a description of the nature of the proceedings, a statement of the legal authority under which the proceedings are initiated and a general description of any controversial issues;

(b) afford such person a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action if time, the nature of the proceedings and public interest allow; and

(c) ensure the procedures are in accordance with its law.

ARTICLE 27.6

Review and Appeal

1. Each Party shall establish or maintain judicial, arbitral or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of an administrative action with respect to any matter covered by this Part of the Agreement.[85] Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory and impartial manner by tribunals that are independent of the authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that the parties to the proceedings referred to in paragraph 1 are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the relevant administrative authority.

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[85] For greater certainty, for the review and correction of an administrative action, a Party may require the exhaustion of the available administrative remedies.

3. The decision referred to in subparagraph 2(b) shall, subject to appeal or further review as provided for under law of that Party, be implemented by, and govern the practice of, the office or authority entrusted with administrative enforcement.

CHAPTER 28

GOOD REGULATORY PRACTICES

ARTICLE 28.1

Definitions

For the purposes of this Chapter:

(a) "regulatory authority" means:

(i) for the European Union: the European Commission; and

(ii) for Mexico: the Federal Public Administration, including any decentralised bodies of the Federal Public Administration; and

(b) "regulatory measures" means measures of general application, developed by a regulatory authority and adopted by a Party with which compliance is mandatory, which are:

(i) for the European Union:

(A) regulations and directives, as provided for in Article 288 of the Treaty on the Functioning of the European Union (TFEU); and

(B) delegated and implementing acts, as provided for in Articles 290 and 291 TFEU, respectively; and

(ii) for Mexico:

(A) laws and legislative decrees presented by the executive branch of the Federal Government; and

(B) any other administrative acts of general application, including, but not limited to, regulations, decrees, agreements and Normas Oficiales Mexicanas ("NOMs", Mexican Official Standards).

ARTICLE 28.2

General Principles

1. The Parties recognise the importance of:

(a) using good regulatory practices in the process of planning, designing, issuing, implementing, evaluating and reviewing regulatory measures in order to achieve domestic policy objectives; and

(b) maintaining and enhancing the benefits of this Agreement through the use of good regulatory practices to facilitating trade in goods and services and increasing investment between the Parties.

2. Each Party shall have the right to determine its approach to good regulatory practices under this Agreement in a manner consistent with its own legal framework, practice and fundamental principles[86] underlying its regulatory system.

[86] For the European Union, such principles include those included in and derived from the TFEU.

3. The provisions in this Chapter shall not be construed as requiring a Party to:

(a) deviate from domestic procedures for identifying its regulatory priorities and for preparing and adopting regulatory measures ensuring the levels of protection that it considers appropriate;

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

(c) achieve any particular regulatory outcome.

ARTICLE 28.3

Scope

1. This Chapter applies to regulatory measures in respect to any matter covered by this Part of the Agreement.

2. This Chapter does not apply to regulatory authorities and regulatory measures, practices or approaches of the Member States.

ARTICLE 28.4

Internal Consultation and Coordination of Regulatory Development

1. The Parties recognise that the implementation of good regulatory practices can be facilitated through domestic mechanisms that improve internal consultation and coordination required for processes or mechanisms for the development of regulatory measures.

2. Each Party shall adopt or maintain internal coordination or review processes or mechanisms with respect to regulatory measures that its regulatory authority is developing.

3. Such processes or mechanisms should seek, among others, to:

(a) foster good regulatory practices, including those set out in this Chapter;

(b) strengthen internal consultations and coordination for the identification and avoidance of unnecessary duplication and inconsistency of the requirements in the Party's regulatory measures;

(c) promote that the potential impacts of the regulatory measures under preparation, including those on small and medium-sized enterprises, are taken into consideration in the subsequent decision making process;

(d) ensure compliance with international trade and investment obligations; and

(e) promote that relevant developments in international and other fora are taken into consideration.

4. The Parties recognise that the processes or mechanisms referred to in paragraph 2 may vary depending on their respective circumstances. In this regard, each Party may, in accordance with its domestic rules and procedures, improve its regulatory system through additional internal consultation and coordination mechanisms.

5. Each Party may establish or maintain a central coordinating body.

ARTICLE 28.5

Transparency of the Regulatory Processes and Mechanisms

Each Party shall make publicly available descriptions of the processes and mechanisms used by its regulatory authority to prepare, evaluate or review regulatory measures. Those descriptions shall refer to relevant guidelines, rules or procedures, including those regarding opportunities for the public to provide comments.

ARTICLE 28.6

Early Information on Planned Regulatory Measures

1. Each Party shall make publicly available, at least on an annual basis, a list of planned major[87] regulatory measures that its regulatory authority reasonably expect to adopt within the year.

2. With respect to each of the regulatory measures included in the list referred to in paragraph 1, each Party should also make publicly available:

(a) a brief description of its scope and objectives; and

(b) the estimated time for its adoption including, if possible, the period for public consultation.

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[87] For greater certainty, a "major regulatory measure" means a measure that has a significant regulatory impact as determined by each Party, in accordance with its rules and procedures.

ARTICLE 28.7

Public Consultations

1. When developing a major regulatory measure, each Party shall, in accordance with its rules and procedures:

(a) publish either a draft regulatory measure or consultation documents that provides sufficient details about the new regulatory measure under preparation in order to allow any person to assess whether and how its interests might be significantly affected;

(b) offer reasonable opportunities for any person, on a non-discriminatory basis, to provide comments; and

(c) consider the comments received.

2. Each Party should make use of electronic means of communication and seek to use a dedicated single access point for providing information related to public consultations, including on how to provide comments.

3. Each Party shall make publicly available any comments it receives, as well as a summary of the results of the consultations. This obligation does not apply to the extent necessary to protect confidential information or personal data, or to withhold inappropriate content.

ARTICLE 28.8

Regulatory Impact Assessment

1. Each Party shall promote that its regulatory authority, in accordance with the applicable rules and procedures, carries out regulatory impact assessments when developing major regulatory measures.

2. When carrying out an regulatory impact assessment in accordance with paragraph 1, the regulatory authority of each Party shall establish and maintain processes and mechanisms that promote the consideration of the following factors:

(a) the need for a regulatory measure, including the nature and significance of the problem the regulatory measure is intended to address;

(b) any feasible and appropriate regulatory and non-regulatory alternatives, including the option of not regulating, that would achieve the public policy objective of that Party;

(c) to the extent possible and relevant, the potential costs and benefits and social, economic and environmental impact of those alternatives, including on international trade and investment and on small and medium-sized enterprises; recognising that some costs and benefits are difficult to quantify and to express in monetary terms;

(d) how the options under consideration relate to relevant international standards, including the reason for any divergence, where appropriate; and

(e) how the public policy objectives are best achieved in terms of effectiveness and efficiency.

3. When carrying out an regulatory impact assessment in accordance with paragraph 1, the regulatory authority shall rely on the best reasonably obtainable evidence including scientific, technical, economic or other information.

4 With respect to any regulatory impact assessment that a regulatory authority has carried out for a regulatory measure, the Party concerned shall prepare a final report that sets out in detail the factors the regulatory authority considered in its assessment and the relevant findings. Such report shall be made publicly available no later than the date the regulatory measure is made publicly available.

ARTICLE 28.9

Retrospective Evaluation

1. The regulatory authority of each Party shall maintain processes or mechanisms to promote periodic retrospective evaluations or reviews of its regulatory measures at intervals it deems appropriate.

2. When conducting a periodic retrospective evaluation the regulatory authorities of a Party shall consider whether there are opportunities to more effectively achieve public policy objectives and to reduce unnecessary regulatory burdens, including on small and medium-sized enterprises. On the basis of those periodic retrospective evaluations, each Party should determine whether its regulatory measures should be modified, streamlined, expanded or repealed.

3. Each Party shall make publicly available its plans for and the results of such periodic retrospective evaluations.

ARTICLE 28.10

Regulatory Register

Each Party shall ensure, in accordance with its rules and procedures, that regulatory measures, which are in effect are available on a single, freely accessible website. That website should allow searches for regulatory measures by citation or by word and be periodically updated.

ARTICLE 28.11

Contact Point

1. The contact points for communication between the Parties on matters arising under this Chapter are:

(a) in the case of Mexico, the General Directorate for International Trade Disciplines of the Undersecretariat of Foreign Trade of the Ministry of Economy, (*Dirección General de Disciplinas de Comercio Internacional de la Subsecretaría de Comercio Exterior de la Secretaría de Economía*) or its successor; and

(b) in the case of the European Union, the Directorate-General for Trade, or its successor.

2. Each contact point is responsible for consulting and coordinating within its respective regulatory authority, as appropriate, on matters arising under this Chapter.

3. Each Party shall notify the other Party of the contact details of its contact point and promptly notify the other Party of any changes to those contact details.

ARTICLE 28.12

Cooperation and Exchange of Information

1. The Parties shall cooperate in order to facilitate the implementation of this Chapter. This may include the organisation of any relevant activities, including mutual assistance, to strengthen cooperation between their regulatory authorities.

2. No later than one year after the date of entry into force of this Agreement, the Parties shall exchange information on their existing rules and procedures on good regulatory practices and, if applicable, on any steps taken for the implementation of this Chapter.

ARTICLE 28.13

Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 (Dispute Settlement) concerning the application or interpretation of the provisions of this Chapter.

CHAPTER 29

SMALL AND MEDIUM-SIZED ENTERPRISES

ARTICLE 29.1

Objective

The Parties recognise the importance of enhancing cooperation on matters relevant for small and medium-sized enterprises (hereinafter referred to as "SMEs") by the means provided for in this Chapter as well as by other provisions of this Agreement that may otherwise be of particular benefit to SMEs.

ARTICLE 29.2

Information Sharing

1. Each Party shall establish or maintain a publicly accessible website containing information regarding this Agreement, including:

(a) the text of this Agreement, including all annexes;

(b) a summary of this Agreement; and

(c) information designed for use by SMEs that shall contain:

(i) a description of the provisions of this Agreement that the Party considers to be relevant for SMEs of both Parties; and

(ii) any additional information that the Party considers useful for SMEs interested in benefitting from the opportunities provided under this Agreement.

2. Each Party shall include in the website referred to in paragraph 1 links to:

(a) the equivalent website of the other Party; and

(b) the websites of its government authorities and other appropriate entities that the Party considers would provide useful information to SMEs interested in trading or doing business in that Party.

3. The websites referred to in subparagraph 2(b) shall include information related to the following:

(a) customs laws and regulations, and procedures for importation, exportation and transit as well as forms and documents required therefor;

(b) laws and regulations, and procedures concerning intellectual property rights;

(c) technical regulations and, in cases where third party conformity assessment is mandatory as provided for in Chapter 9 (Technical Barriers to Trade), mandatory conformity assessment procedures and links to lists of conformity assessment bodies;

(d) sanitary and phytosanitary measures relating to importation and exportation;

(e) rules on public procurement, a database containing public procurement notices and the relevant provisions of Chapter 21 (Public Procurement);

(f) business registration procedures; and

(g) other information which the Party considers to be useful to SMEs.

4. Each Party shall include in the website referred to in paragraph 1 a link to a database that is electronically searchable by tariff nomenclature code. That database shall:

(a) include the following information with respect to access of goods to its market:

(i) rates of customs duties and tariff rate quotas, if applicable, concerning most-favoured nation and non most-favoured nation countries as well as preferential rates of customs duties and tariff rate quotas;

(ii) excise duties;

(iii) value added tax;

(iv) customs charges or other fees, including product-specific fees;

(v) rules of origin as provided for in Chapter 3 (Rules of Origin and Origin Procedures); and

(vi) criteria used to determine the customs value of goods; and

(b) endeavour to include the following information with respect to access of goods to its market:

(i) other tariff measures;

(ii) duty drawback, deferral or other types of relief that reduce, refund or waive customs duties;

(iii) if applicable, country of origin marking requirements, including placement and method of marking;

(iv) information required for import procedures; and

(v) information related to non-tariff measures.

5. Each Party shall regularly update the information and links provided pursuant to paragraphs 1 to 4 to ensure they are accurate.

6. Each Party shall ensure that the information provided in accordance with this Article is presented in a manner adequate for the use of SMEs. Each Party shall endeavour to make the information available in English.

7. A Party shall not apply any fee for access to the information provided pursuant to paragraphs 1 to 4 to any person of a Party.

ARTICLE 29.3

SME Contact Points

1. Each Party shall designate a contact point ("SME Contact Point") in charge of the functions set out in this Article and shall notify the other Party of its contact details. The Parties shall promptly notify each other of any changes to those contact details.

2. The SME Contact Points shall:

(a) ensure that the needs of SMEs are taken into account in the implementation of this Agreement and consider ways to increase trade and investment opportunities for SMEs by strengthening cooperation between the Parties on SME matters;

(b) identify ways and exchange information for SMEs of the Parties to take advantage of new opportunities created under this Agreement;

(c) ensure that the information included in the websites referred to in Article 29.2 is up-to-date and relevant for SMEs, and consider including in those websites any additional information that an SME Contact Point may recommend;

(d) address any other matter of interest to SMEs in connection with the implementation of this Agreement with regards to SMEs, including by:

(i) exchanging information;

(ii) participating, if appropriate, in the work of the sub-committees and working groups established under this Agreement, and presenting to those sub-committees and working groups, in their respective specific areas of activity, matters and recommendations of particular interest to SMEs, while avoiding duplication of work programmes; and

(iii) identifying and proposing possible mutually acceptable solutions for improving the ability of SMEs to engage in trade and investment between the Parties;

(e) report periodically on their activities for the consideration of the Joint Committee; and

(f) consider any other matter arising under this Agreement pertaining to SMEs as the Parties may agree.

3. SME Contact Points shall meet as necessary and shall carry out their work through the appropriate communication channels agreed by the SME Contact Points which may include electronic mail, videoconferencing or other electronic communication means.

4. SME Contact Points may seek to cooperate with experts and external organisations, as appropriate, in carrying out their activities.

ARTICLE 29.4

Non-Application of Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 (Dispute Settlement) concerning the interpretation or application of the provisions of this Chapter.

CHAPTER 30

RAW MATERIALS

ARTICLE 30.1

Definitions

For the purposes of this Chapter:

(a) "authorisation" means the permission, license, 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;

(b) "entity" refers to any natural person or enterprise or group thereof; and

(c) "raw materials" means substances used in the manufacture of industrial products, excluding processed fishery products and agricultural products, which consist of salt, sulphur, earths and stone, plastering materials, lime and cement (HS 25); ores, slag and ash (HS 26); goods included in HS 27; inorganic chemicals (HS 28); organic chemicals (HS 29); fertilisers (HS 31); natural rubber (HS 40); raw hides, skins and leather (HS 41); and basic and precious metals and processed minerals (ex HS 71, 72; 74-76; 78-81), excluding uranium and thorium (HS 26.12) and radioactive elements and isotopes (HS 28.44, 28.45).

ARTICLE 30.2

Principles

1. Each Party retains the sovereign right to determine whether areas are available for exploration and production of raw materials in its territory, determined in accordance with its law and the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

2. In accordance with the provisions of this Chapter, the Parties reserve their right to adopt, maintain and enforce measures necessary to pursue legitimate public policy objectives, such as securing the supply of raw materials, protecting society, the environment, public health and consumers, and promoting public security and safety.

ARTICLE 30.3

Export and Import Monopolisation

A Party shall not designate or maintain an import or export monopoly for raw materials. For the purposes of this Article, import or export monopoly means the exclusive right or grant of authority by a Party to an entity to import or export raw materials to the other Party[88].

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[88] For greater certainty, this provision is without prejudice of the provisions in Chapter 10 (Investment) and Chapter 11 (Cross-Border Trade in Services) and the annexes thereto and does not include any right that results from the grant of an exclusive intellectual property right.

ARTICLE 30.4

Export Pricing

A Party shall not adopt or maintain a higher price for exports of raw materials to the other Party than the price charged for those goods when destined for the domestic market, by means of any measure.

ARTICLE 30.5

Domestic Pricing

1. The Parties may only regulate the price of the domestic supply of raw materials (hereinafter referred to as "regulated price") by imposing a public service obligation.

2. If a Party imposes a public service obligation, it shall ensure that the obligation:

(a) is clearly defined, transparent and proportionate; and

(b) is not maintained if the circumstances or objectives giving rise to its imposition no longer exist.

3. A Party regulating the price shall ensure the publication of the methodology underlying the calculation of the regulated price referred to in paragraph 2 prior to its entry into force.

ARTICLE 30.6

Cooperation on Raw Materials

The Parties shall cooperate in the area of raw materials with a view to, among others:

(a) reducing or eliminating measures distorting trade and investment in third countries affecting raw materials;

(b) coordinating their positions in international fora where trade and investment issues related to raw materials are discussed and fostering international programmes in the areas of raw materials;

(c) fostering exchange of market data in the area of raw materials;

(d) promoting corporate social responsibility in accordance with international standards, such as the OECD Guidelines for Multinational Enterprises and the respective Due Diligence Guidance;

(e) promoting research, development, innovation and training in relevant fields of common interest in the area of raw materials;

(f) fostering the exchange of information and best practices on domestic policy developments; and

(g) promoting the efficient use of resources, including improving production processes as well as durability, reparability, design for disassembly, ease of reuse and recycling of goods.

CHAPTER 31

DISPUTE SETTLEMENT

SECTION A

Objective and Scope

ARTICLE 31.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties concerning the interpretation and application of this Part of the Agreement with a view to reaching, where possible, a mutually agreed solution.

ARTICLE 31.2

Scope

Unless otherwise provided, this Chapter applies with respect to any dispute between the Parties concerning the interpretation or application of the provisions of this Part of the Agreement (hereinafter referred to as "covered provisions"), if a Party considers that a measure[89] of the other Party is inconsistent with any covered provision.

ARTICLE 31.3

Definitions

For the purposes of this Chapter the definitions set out in Annexes 31-A (Rules of Procedure) and 31-B (Code of Conduct for Panellists and Mediators) apply.

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[89] For greater certainty, any act or omission attributable to a Party can be a measure of that Party for the purposes of this Chapter. A proposed measure of a Party may be the subject of consultations under Article 31.5. A panel shall not be established to review a proposed measure.

ARTICLE 31.4

Choice of Forum

1. If a dispute arises regarding a measure allegedly inconsistent with an obligation under this Part of the Agreement and a substantially equivalent obligation under another international agreement to which both Parties are party, including the WTO Agreement, the Party seeking redress shall select the forum in which to settle the dispute.

2. Once a Party has initiated dispute settlement procedures under this Section or under another international agreement, that Party shall not initiate dispute settlement procedures in another forum with respect to the measure referred to in paragraph 1, unless the forum selected first fails to make findings for procedural or jurisdictional reasons.

3. For the purposes of this Article:

(a) dispute settlement procedures under this Section are deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 31.6;

(b) dispute settlement procedures under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 6 of the DSU; and

(c) dispute settlement procedures under any other agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

4. Without prejudice to paragraph 2, nothing in this Agreement shall preclude a Party from suspending obligations authorised by the Dispute Settlement Body of the WTO or authorised under the dispute settlement procedures of another international agreement to which the Parties are party. The WTO Agreement or any other international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations under this Part of the Agreement.

SECTION B

Consultations

ARTICLE 31.5

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 31.2 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request to the other Party identifying the measure at issue and the covered provisions that it considers applicable.

3. The Party to which the request for consultations is made shall promptly reply to the request and in any case no later than 10 days after the date of its receipt. Consultations shall be held no later than 30 days after the date of receipt of the request and take place, unless the Parties agree otherwise, in the territory of the Party to which the request is made. Consultations shall be deemed concluded 30 days after the date of receipt of the request unless the Parties agree to continue consultations.

4. Consultations on matters of urgency, including those regarding perishable goods, shall be held within 15 days after the date of receipt of the request. Consultations shall be deemed concluded within those 15 days unless the Parties agree to continue consultations.

5. During consultations each Party shall provide to the other Party sufficient factual information to allow a complete examination of the manner in which the measure at issue could affect the application of this Part. Each Party shall endeavour to ensure the participation of personnel of its competent governmental authorities who have expertise in the matter subject to consultations.

6. Consultations, and in particular positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of either Party in any further proceedings. Each Party shall protect any confidential information received in the course of consultations as requested by the Party providing the information.

7. If the Party to which the request is made does not respond to the request for consultations within 10 days after the date of its receipt, if consultations are not held within the timeframes set out in paragraphs 3 or 4, if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that sought consultations may have recourse to Article 31.6.

SECTION C

Panel Procedures

ARTICLE 31.6

Establishment of a Panel

1. If the Parties fail to resolve the dispute through recourse to consultations as provided for in Article 31.5, the Party that sought consultations may request the establishment of a panel.

2. The request for the establishment of a panel shall be made by means of a written request to the other Party. The complaining Party shall identify in its request the measure at issue and explain how that measure is inconsistent with the covered provisions in a manner sufficient to present the legal basis for the complaint clearly.

3. A panel shall be established upon delivery of the request.

ARTICLE 31.7

Composition of a Panel

1. A panel shall be composed of three panellists.

2. Within 15 days after the date of receipt of the written request for the establishment of a panel by the Party complained against, the Parties shall consult with a view to agreeing on the composition of the panel. For that purpose, each Party shall, within 10 days after the date of receipt of the written request pursuant to Article 31.6, designate a panellist, who may be a national of that Party, and propose to the other Party up to three candidates to serve as chairperson. The Parties shall endeavour to agree on the chairperson from among the chairperson candidates within 15 days after the date of receipt of the written request pursuant to Article 31.6. A Party may object to a panellist designated by the other Party if it considers that such individual does not comply with the requirements set out in Article 31.9.

3. If the Parties fail to agree on the composition of the panel within the time period set out in paragraph 2, the Parties shall apply the procedures set out in the following paragraphs to compose a panel.

4. Each Party shall, within seven days after the expiry of the time period set out in paragraph 2, appoint a panellist from its sub-list referred to in Article 31.8.

5. If the complaining Party fails to appoint a panellist within the period specified in paragraph 4, the dispute settlement proceedings shall lapse at the end of that period.

6. If the responding Party fails to appoint a panellist within the period specified in paragraph 4, the complaining Party may request an appointing authority listed in the Rules of Procedure in Annex 31-A to select the panellist by lot. The appointing authority shall select the panellist by lot from the sub-list of the responding Party referred to in Article 31.8 within 15 days after the receipt of the request of the complaining Party.

7. If the Parties fail to agree on the chairperson within the time period set out in paragraph 2, the complaining Party or, in case of procedures pursuant to Article 31.18, either Party, may request an appointing authority listed in the Rules of Procedure in Annex 31-A to select by lot the chairperson of the panel from the sub-list of individuals who shall serve as chairpersons referred to in Article 31.8, within seven days after the expiry of that time period. The appointing authority shall select the chairperson within 15 days after the receipt of the request of that Party.

8. For the purposes of paragraphs 6 and 7, the appointing authorities listed in the Rules of Procedure in Annex 31-A shall select the panellists in accordance with the provisions of this Chapter and the Rules of Procedure in Annex 31-A.

9. If any of the lists referred to in Article 31.8 have not been adopted by the Joint Committee, the panellists or chairperson shall be appointed from the individuals who have been designated by one or both Parties and notified in writing to the other Party.

ARTICLE 31.8

Lists of Panellists

1. The Joint Committee shall, no later than six months after the date of entry into force of this Agreement, adopt a list of at least 15 individuals who are willing and able to serve as panellists. The list shall be composed of the three following sub-lists:

(a) a sub-list of individuals of the European Union;

(b) a sub-list of individuals of Mexico; and

(c) a sub-list of individuals who shall serve as chairperson of the panel.

2. Each sub-list shall include at least five individuals. The sub-list referred to in subparagraph 1(c) shall not contain individuals that are nationals of either Party.

3. The Joint Committee may adopt additional lists of individuals with expertise in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such additional lists shall be used to compose the panel in accordance with the procedure set out in Article 31.7.

ARTICLE 31.9

Requirements for Panellists

1. Each panellist shall:

(a) have demonstrated expertise in law, international trade, and other matters covered by this Agreement, such as the resolution of disputes arising under other international trade agreements;

(b) be independent of, and not be affiliated with or take instructions from, either Party;

(c) serve in his or her individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and

(d) comply with the Code of Conduct for Panellists and Mediators in Annex 31-B.

2. The chairperson shall also have experience in dispute settlement procedures.

3. In view of the subject-matter of a particular dispute, the Parties may agree to derogate from the requirements listed in subparagraph 1(a).

ARTICLE 31.10

Functions of the Panel

The panel:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case, and the applicability of the covered provisions and the conformity of the measures at issue with the covered provisions;

(b) shall set out, in its decisions and reports, the findings of fact, the applicability of the covered provisions, the basic rationale for any findings and conclusions and, if the parties have jointly requested them, any recommendations; and

(c) should regularly consult with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

ARTICLE 31.11

Terms of Reference

1. Unless the Parties agree otherwise, within five days after the date of appointment of the last panellist, the terms of reference of the panel shall be:

"to examine, in the light of the relevant provisions of Part III (Trade and Investment) of this Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel; to make findings on the conformity of the measure at issue with the provisions of Part III (Trade and Investment) of this Agreement referred to in Article 31.2 (Scope); to make recommendations, if the parties have jointly requested them; and to deliver a report in accordance with Articles 31.13 (Interim Report) and 31.14 (Final Report)."

2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period set out in paragraph 1.

ARTICLE 31.12

Decision on Urgency

1. If a Party so requests no later than five days from the date of the request of establishment of the panel, the panel shall decide, within 10 days of the appointment of the last panellist, whether the case concerns matters of urgency. The other Party shall have the opportunity to comment on the request within five days of the date of the delivery of such request.

2. In cases of urgency, the applicable time periods set out in Section C shall be half the time prescribed therein, except for the time periods referred to in Articles 31.6 and 31.11.

ARTICLE 31.13

Interim Report

1. The panel shall deliver an interim report to the Parties within 90 days after the date of the appointment of the last panellist. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. The panel shall under no circumstances deliver its interim report later than 120 days after the date of the appointment of the last panellist.

2. Each Party may deliver to the panel a written request to review precise aspects of the interim report within 10 days of its receipt. A Party may comment on the other Party's request within six days of its delivery.

ARTICLE 31.14

Final Report

1. The panel shall deliver its final report to the Parties within 120 days after the date of establishment of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. The panel shall under no circumstance deliver its final report later than 150 days after the date of establishment of the panel.

2. The final report shall include a discussion of any written request by the Parties on the interim report and clearly address any comments thereto. After considering any written request and comments by the Parties on the interim report, the panel may modify its report and make any further examination it considers appropriate.

3. The ruling of the panel in the final report shall be final and binding on the Parties.

ARTICLE 31.15

Compliance Measures

1. The Parties recognise the importance of prompt compliance with the findings and conclusions of the panel in the final report in order to ensure an effective resolution of the dispute. The Party complained against shall take any measures necessary to promptly comply with the findings and conclusions in the final report in order to bring itself into compliance with the covered provisions.

2. The Party complained against shall, no later than 30 days after receipt of the final report, deliver a notification to the complaining Party of the measures which it has taken, or which it envisages to take, to comply.

3. Unless the Parties reach a mutually agreed solution pursuant to Article 31.33, the resolution of a dispute shall require the removal of any measures inconsistent with this Agreement.

ARTICLE 31.16

Reasonable Period of Time

1. If immediate compliance is not possible, the Party complained against shall, no later than 30 days after receipt of the final report, deliver to the complaining Party a notification of the reasonable period of time it will require for compliance. The Parties shall endeavour to agree on a reasonable period of time to comply with the final report. The reasonable period of time should not exceed 15 months from the delivery of the final report under Article 31.14.

2. If the Parties do not agree on a reasonable period of time, the complaining Party may, at the earliest 20 days after receipt of the notification in paragraph 1, request in writing the original panel to determine the reasonable period of time. The panel shall deliver its decision to the Parties within 20 days after the date of receipt of the request.

3. The Party complained against shall deliver a written notification of its progress in complying with the final report to the complaining Party at least one month before the expiry of the reasonable period of time.

4. The Parties may agree to extend the reasonable period of time.

ARTICLE 31.17

Compliance Review

1. The Party complained against shall, no later than the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measures taken to comply with the final report.

2. When the Parties disagree on the existence of measures taken to comply or their consistency with the covered provisions, the complaining Party may deliver a written request to the original panel to decide on the matter. The request shall identify any measures at issue and explain how those measures would be inconsistent with the covered provisions in a manner sufficient to present the legal basis for the complaint clearly. The panel shall deliver its decision to the Parties within 60 days after the date of receipt of the request.

ARTICLE 31.18

Temporary Remedies

1. The Party complained against shall, upon request by and after consultations with the complaining Party, present an offer for temporary compensation if:

(a) the Party complained against delivers a notification to the complaining Party that it is not possible to comply with the final report; or

(b) the Party complained against fails to deliver a notification of any measure taken to comply within the deadline referred to in Article 31.15 or by the date of expiry of the reasonable period of time; or

(c) the panel finds that no measure taken to comply exists or that the measure taken to comply is inconsistent with the covered provisions.

2. Under any of the conditions referred to in subparagraphs 1(a) to (c), the complaining Party may deliver a written notification to the Party complained against that it intends to suspend the application of obligations under the covered provisions if:

(a) the complaining Party decides not to make a request pursuant to paragraph 1; or

(b) when a request pursuant to paragraph 1 is made, the Parties do not agree on the temporary compensation within 20 days after:

(i) the date of the notification of the Party complained against that it is not possible to comply with the final report;

(ii) the expiry of the reasonable period of time; or

(iii) the delivery of the panel decision pursuant to Article 31.17.

3. The notification shall specify the level of intended suspension of obligations. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that or those affected by the measure that the panel has found to be inconsistent with this Part of the Agreement or cause nullification or impairment. The suspension of concessions or other obligations may be applied to sectors covered by this Chapter other than the one or ones in which the panel has found nullification or impairment, in particular if the complaining Party is of the view that such suspension in the other sector is practicable or effective in inducing compliance. The level of the suspension of concessions or other obligations shall not exceed the level equivalent to the nullification or impairment caused by the violation.

4. The complaining Party may suspend the obligations 15 days after the date of delivery of the notification referred to in paragraph 2, unless the Party complained against has made a request under paragraph 5.

5. If the Party complained against considers that the notified level of suspension of concessions or other obligations exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original panel before the expiry of the 15-day period set out in paragraph 4 to decide on the matter. The panel shall determine the level of benefits it considers to be equivalent and shall deliver its decision to the Parties within 30 days after the date of the request. The complaining Party shall not suspend any obligations until the panel has delivered its decision. The suspension of obligations shall be consistent with this decision.

6. The suspension of obligations or the compensation referred to in this Article shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 31.33;

(b) the Parties have agreed that the measure taken to comply brings the Party complained against into conformity with the covered provisions; or

(c) any measure taken to comply which the panel found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into conformity with those provisions.

ARTICLE 31.19

Review of any Measure Taken to Comply after the Adoption of Temporary Remedies

1. The Party complained against shall deliver a notification to the complaining Party of any measure taken to comply following the suspension of obligations or following the application of temporary compensation, as the case may be. With the exception of cases under paragraph 2, the complaining Party shall terminate the suspension of obligations within 30 days after the receipt of the notification. In cases where compensation has been applied, and with the exception of cases under paragraph 2, the Party complained against may terminate the application of such compensation within 30 days after receipt of its notification that it has complied.

2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the covered provisions within 30 days of the date of receipt of the notification, the complaining Party shall deliver a written request to the original panel to decide on the matter. The panel shall deliver its decision to the Parties within 60 days after the date of the receipt of the request. If the panel finds that the measure taken to comply is in conformity with the covered provisions, the suspension of obligations or compensation, as the case may be, shall be terminated. If relevant, the level of suspension of obligations or of compensation shall be adjusted in light of the panel decision.

ARTICLE 31.20

Replacement of Panellists

If during dispute settlement procedures a panellist is unable to participate, withdraws or needs to be replaced because he or she does not comply with the requirements of the Code of Conduct for Panellists and Mediators in Annex 31-B, a new panellist shall be appointed in accordance with Article 31.7 and the Rules of Procedure in Annex 31-A. The time period for the delivery of the report or decision shall be extended as necessary until the appointment of the new panellist.

ARTICLE 31.21

Rules of Procedure

1. Panel procedures under this Section shall be governed by this Chapter and the Rules of Procedure in Annex 30-A.

2. The Rules of Procedure shall ensure in particular that:

(a) Parties have the right to at least one hearing before the panel at which each Party may present its views orally;

(b) each Party has an opportunity to provide an initial written submission and a written rebuttal;

(c) subject to the protection of confidential information, each Party makes available to the public its written submissions, written version of an oral statement and written responses to a request or question from the panel, if any, as soon as possible after those documents are submitted and no later than the date of delivery of the final report; and

(d) the panel and the Parties treat as confidential any information submitted by a Party to the panel.

2. Any hearing of the panel shall be open to the public, unless otherwise agreed by the Parties.

ARTICLE 31.22

Suspension and Termination

1. At the request of both Parties, the panel shall suspend its work at any time for a time period agreed by the Parties and not exceeding 12 consecutive months. The panel shall resume its work before the end of the suspension period at the written request of both Parties, or on the last day of the suspension period at the written request of either Party. The requesting Party shall deliver a notification to the other Party accordingly.

2. If neither Party requests the resumption of the panel's work before the end of the expiry of the suspension period, the authority of the panel shall lapse and the dispute settlement procedures shall be terminated. This shall be without prejudice to the Party's right to initiate new proceedings on the same matter.

3. If the work of the panel is suspended, the relevant time periods under this Section shall be extended by the same time period for which the work of the panel was suspended.

ARTICLE 31.23

Receipt of Information

1. At the request of a Party or on its own initiative, the panel may seek from the Parties information it considers necessary and appropriate. The Parties shall promptly and fully respond to any request by the panel for such information.

2. On request of a Party or on its own initiative, the panel may seek any information it deems appropriate from any source. The panel also has the right to seek the opinion or technical advice from experts, as it deems appropriate, and subject to any terms and conditions agreed by the Parties, where applicable.

3. The panel shall consider *amicus curiae* submissions from natural persons of a Party or legal persons established in a Party in accordance with the Rules of Procedure in Annex 31-A.

4. Any information obtained by the panel pursuant to this Article shall be disclosed to the Parties and the Parties may provide comments on that information.

ARTICLE 31.24

Rules of Interpretation

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties. The panel shall also take into account relevant interpretations in reports of WTO panels and of the Appellate Body adopted by the Dispute Settlement Body of the WTO.

2. Reports and decisions of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

ARTICLE 31.25

Reports and Decisions of the Panel

1. The deliberations of the panel shall be kept confidential. The panel shall make every effort to draft reports and take decisions by consensus. If that is not possible, the panel shall decide the matter by majority vote. In no case shall separate opinions of panellists be disclosed.

2. The decisions and reports of the panel shall be accepted unconditionally by the Parties. They shall not create any rights or obligations with respect to natural or legal persons.

3. Each Party shall make the reports and decisions of the panel publicly available as soon as possible after the date of delivery to the Parties, subject to the protection of confidential information.

SECTION D

Mediation Mechanism

ARTICLE 31.26

Objective

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

ARTICLE 31.27

Initiation of the Mediation Procedure

1. A Party may at any time request the other Party, in writing, to enter into a mediation procedure with respect to any measure of that Party adversely affecting trade or investment between the Parties. Consultations are not required before initiating the mediation procedure.

2. The request shall be sufficiently detailed to clearly present the concerns of the requesting Party and shall:

(a) identify the measure at issue;

(b) provide a statement of the adverse effects that the requesting Party considers the measure has, or will have, on trade or investment between the Parties; and

(c) explain how the requesting Party considers that those effects are linked to the measure.

3. The mediation procedure may only be initiated by mutual agreement of the Parties. The Party to which the request is made shall give sympathetic consideration to the request and deliver its written acceptance or rejection to the requesting Party within 10 days after its receipt. Otherwise the request shall be regarded as rejected.

ARTICLE 31.28

Selection of the Mediator

1. The Parties shall endeavour to agree on a mediator, if possible, no later than 15 days after the receipt of the acceptance of the request.

2. In the event that the Parties are unable to agree on a mediator within the time period set out in paragraph 1, either Party may request an appointing authority listed in the Rules of Procedure in Annex 31-A to select the mediator by lot, within five days after the request, from the sub-list of individuals who shall serve as chairpersons referred to in Article 31.8.

3. If the sub-list of individuals who shall serve as chairpersons referred to in Article 31.8 has not been adopted by the Joint Committee at the time a request is made pursuant to Article 31.27, the mediator shall be drawn by lot from the individuals designated by one or both Parties for that sub-list, as the case may be.

4. A mediator shall not be a national of either Party or employed by either Party, unless the Parties agree otherwise.

5. A mediator shall comply with the Code of Conduct for Panellists and Mediators in Annex 31-B.

ARTICLE 31.29

Rules of the Mediation Procedure

1. Within 10 days of the appointment of the mediator, the Party which invoked the mediation procedure shall deliver to the mediator and to the other Party a detailed written description of its concerns, in particular relating to the operation of the measure at issue and its possible adverse effects on trade or investment between the Parties. Within 20 days after the receipt of this description, the other Party may deliver written comments on this description.

2. The mediator shall assist the Parties in a transparent manner in bringing clarity to the measure at issue and its possible adverse effects on trade or investment between the Parties. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders, and provide any additional support requested by the Parties. The mediator shall consult with the Parties before seeking the assistance of, or consulting with, relevant experts and stakeholders.

3. The mediator may offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution, or agree on a different solution. The mediator shall not advise or comment on the consistency of the measure at issue with this Agreement.

4. The mediation procedure shall take place in the territory of the Party to which the request to enter into a mediation procedure was addressed or, by mutual agreement, in any other location or by any other means of communication.

5. The Parties shall endeavour to reach a mutually agreed solution within 60 days after the appointment of the mediator. In reaching such solution, the Parties may consider the completion of any necessary internal procedures. Pending a final agreement, the Parties may consider possible interim solutions, in particular if the measure relates to perishable goods.

6. On request of either Party, the mediator shall deliver a draft factual report to the Parties providing:

(a) a brief summary of the measure at issue;

(b) the procedures followed; and

(c) any mutually agreed solution reached, including any possible interim solutions.

7. The mediator shall allow the Parties 15 days to comment on the draft factual report. After considering the comments of the Parties, the mediator shall, within 15 days, deliver a final factual report to the Parties. The factual report shall not include any interpretation of this Agreement.

8. The procedure shall be terminated:

(a) by the adoption of a mutually agreed solution by the Parties, on the date of the adoption thereof;

(b) by mutual agreement of the Parties at any stage of the procedure, on the date of that agreement;

(c) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail, on the date of that declaration; or

(d) by a written declaration of a Party after having explored mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

ARTICLE 31.30

Confidentiality

1. Unless the Parties agree otherwise, all steps of the mediation procedure, including any advice or proposed solution, are confidential. Each Party may disclose to the public the fact that mediation is taking place.

2. If agreed by the Parties, mutually agreed solutions shall be made publicly available. The version disclosed to the public shall not contain any information a Party has designated as confidential.

ARTICLE 31.31

Relation to Dispute Settlement Procedures

1. The mediation procedure is without prejudice to the Parties' rights and obligations under Sections B and C or dispute settlement procedures under any other agreement. For greater certainty, a mediation procedure may be initiated or continue while panel procedures are in progress.

2. A Party shall not rely on or introduce as evidence in other dispute settlement procedures under this Agreement or any other agreement, nor shall a panel take into consideration:

(a) positions taken by the other Party in the course of the mediation procedure or information exclusively gathered in accordance with paragraph 2 of Article 31.29;

(b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or

(c) advice given or proposals made by the mediator.

3. Unless the Parties agree otherwise, a mediator shall not serve as a panellist in dispute settlement procedures under this Agreement or under any other agreement involving the same matter for which he or she has been a mediator.

SECTION E

Common Provisions

ARTICLE 31.32

Request for Information

1. Before a request for consultations or mediation is made pursuant to Article 31.5 or 31.27, respectively, a Party may request information regarding a measure adversely affecting trade or investment between the Parties. The Party to which such request is made shall, within 20 days after the receipt of the request, deliver a written response with its comments on the requested information.

2. A Party is normally expected to request information pursuant to paragraph 1 prior to requesting consultations or initiating a mediation procedure or the other relevant cooperation or consultations procedures under this Agreement.

ARTICLE 31.33

Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute covered by Article 31.2.

2. If a mutually agreed solution is reached during the panel or mediation procedure, or during any other alternative means of dispute resolution agreed by the Parties, including procedures involving good offices or conciliation, the Parties shall jointly notify that solution to the chairperson of the panel or the mediator, as the case may be. Upon such notification, the panel or mediation procedure shall be terminated.

3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.

4. No later than the date of expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

ARTICLE 31.34

Time Periods

1. All time periods set out in this Chapter shall be counted in calendar days from the day following that on which the act referred to occurred.

2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.

3. Under Section C, the panel may at any time propose to the Parties to modify any time period referred to in this Chapter, stating the reasons for the proposal.

ARTICLE 31.35

Costs

1. Each Party shall bear its own expenses derived from the participation in the panel or mediation procedure.

2. The Parties shall be jointly liable for the expenses derived from organisational matters, including the remuneration and expenses of the panellists and of the mediator, and shall share them equally. The remuneration of the panellists shall be determined in accordance with the Rules of Procedure in Annex 31-A. The remuneration of the mediator shall be determined in accordance with that provided for a chairperson of a panel in accordance with the Rules of Procedure in Annex 31-A.

ARTICLE 31.36

Administration of the Dispute Settlement Procedure

1. Each Party shall:

(a) designate an office which shall be responsible for the administration of the dispute settlement procedures under this Chapter; and

(b) notify the other Party in writing of the office's location and contact information within three months after the entry into force of this Agreement.

2. Each Party shall be responsible for the operation and costs of its respective designated office.

3. Notwithstanding paragraph 1, the Parties may agree to jointly entrust an external body with providing support for certain administrative tasks for the dispute settlement procedure under this Chapter.

ARTICLE 31.37

Private Rights

A Party shall not provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ARTICLE 31.38

Modification of Annexes

The Joint Council may modify Annexes 31-A (Rules of Procedure) and 31-B (Code of Conduct for Panellists and Mediators).

CHAPTER 32

EXCEPTIONS

ARTICLE 32.1

General Exceptions

1. Article XX of GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, and applies *mutatis mutandis* to Chapters 2 (Trade in Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs and Trade Facilitation), 6 (Sanitary and Phytosanitary Measures), 8 (Energy and Raw Materials), 9 (Technical Barriers to Trade), 22 (State-Owned Enterprises, Enterprises Granted Special Rights or Privileges and Designated Monopolies), and Section B of Chapter 10 (Liberalisation of Investments),

2. The Parties share the understanding that:

(a) the measures referred to in Article XX (b) of GATT 1994 include environmental measures[90], which are necessary to protect human, animal or plant life or health; and

[90] The Parties acknowledge the right to invoke Article XX (b) of GATT 1994 in relation to measures taken pursuant to multilateral environmental agreements to which they are party.

(b) Article XX (g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. If a Party intends to take any measures in accordance with Article XX (i) and (j) of GATT 1994, that Party shall provide the other Party with:

(a) all relevant information; and

(b) upon request, a reasonable opportunity for consultation with respect to any matter related to such measure, with a view to seeking a mutually acceptable solution.

The Parties may agree on any means necessary to resolve the matters subject to consultation referred to in subparagraph 3(b).

If exceptional and critical circumstances requiring immediate action make prior information or consultation impossible, the Party intending to take the measures concerned may immediately take the measures necessary to address those circumstances and shall immediately inform the other Party thereof.

4. Article XIV (a), (b) and (c) of GATS is incorporated into and made part of this Agreement, and applies *mutatis mutandis* to Chapters 11 (Cross-Border Trade in Services), 12 (Temporary Presence of Natural Persons for Business Purposes), 13 (Domestic Regulation), 14 (Mutual Recognition of Professional Qualifications), 16 (Telecommunications services), 17 (International Maritime Transport Services), 18 (Financial Services), 19 (Digital Trade), 22 (State-Owned Enterprises, Enterprises Granted Special Rights or Privileges and Designated Monopolies) and in Section B of Chapter 10 (Liberalisation of Investments).

5. The Parties share the understanding that the measures referred to in Article XIV (b) of GATS include environmental measures[91] necessary to protect human, animal or plant life or health.

6. For greater certainty, Article 2.8 (Security Exception) of Part IV is deemed to be a provision of Part III.

ARTICLE 32.2

Taxation

1. For the purposes of this Article:

(a) "residence" means residence for tax purposes; and

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[91] The Parties acknowledge the right to invoke Article XIV (b) of GATS in relation to measures taken pursuant to multilateral environmental agreements to which they are party.

(b) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation to which either Party is party.

2. Nothing in this Part of the Agreement shall affect the rights and obligations of a Party under a tax convention. In the event of any inconsistency between this Agreement and any tax convention, the tax convention shall prevail to the extent of the inconsistency.

3. Articles 10.8 (Most-Favoured-Nation Treatment), 11.7 (Most-Favoured-Nation Treatment), 18.4 (Most-Favoured Nation-Treatment) and paragraph 4 of Article 18.7 (Cross Border Trade in Financial Services) do not apply to an advantage accorded by a Party pursuant to a tax convention.

4. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties, if like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed as preventing a Party from adopting, maintaining or enforcing any measure aimed at ensuring the equitable or effective imposition or collection of direct taxes that:

(a) distinguish between taxpayers, who are not in the same situation, in particular with regard to their place of residence or the place where their capital is invested; or

(b) aim at preventing the avoidance or evasion of taxes pursuant to the provisions of any tax convention or domestic tax legislation.

5. For greater certainty, the fact that a taxation measure constitutes a significant amendment to an existing taxation measure, takes immediate effect as of its announcement, clarifies the intended application of an existing taxation measure, or has an unexpected impact on an investor or covered investment, does not, in and of itself, constitute a violation of Article 10.15 (Treatment of Investors and Covered Investments).

6. If an investor submits a request for consultations pursuant to Article 10.22 (Consultations) claiming that a taxation measure breaches an obligation pursuant to paragraph 2 of Article 10.7 (National Treatment) or paragraph 2 of Article 10.8 (Most-Favoured-Nation Treatment) or pursuant to Section C of Chapter 10 (Investment Protection), the respondent may refer the matter for consultation and joint determination by the Parties as to whether:

(a) the measure is a taxation measure;

(b) the measure, if it is found to be a taxation measure, breaches an obligation in paragraph 2 of Article 10.7 (National Treatment) or paragraph 2 of Article 10.8 (Most-Favoured-Nation Treatment) or Section C of Chapter 10 (Investment Protection); or

(c) there is an inconsistency between the obligations in this Agreement that are alleged to have been breached and those of a tax convention.

7. A referral pursuant to paragraph 6 cannot be made later than the date that the Tribunal determines for the respondent to submit its counter-memorial or statement of defence. If the respondent makes such a referral, the time periods or proceedings specified in Section D of Chapter 10 (Resolution of Investment Disputes) shall be suspended. If within 180 days after the referral the Parties do not agree to consider the issue, or fail to make a joint determination, the suspension of the time periods or proceedings shall no longer apply and the investor may proceed with its claim.

8. A joint determination by the Parties pursuant to paragraph 6 shall be binding on the Tribunal.

9. Each Party shall ensure that its delegation for the consultations to be conducted pursuant to paragraph 6 shall include persons with relevant expertise on the issues covered by this Article, including representatives from the relevant tax authorities[92] of each Party.

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[92] For Mexico, "representatives from the relevant tax authorities" means officials from the Ministry of Finance and Public Credit.

ARTICLE 32.3

Disclosure of Information

1. Nothing in this Agreement shall be construed as requiring a Party to make available confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. The disclosure of information throughout the dispute settlement proceedings under this Part of the Agreement shall be governed by the provisions of the applicable chapters.

3. When a Party submits information to the other Party under this Agreement, including through the bodies established under this Agreement, which is considered as confidential under the laws and regulations of the submitting Party, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

ARTICLE 32.4

WTO Waivers

If a right or obligation established by a provision of this Part of the Agreement duplicates one in the WTO Agreement, any measure taken in conformity with a waiver decision adopted pursuant to paragraphs 3 and 4 of Article IX of the WTO Agreement is deemed to be in conformity with the provision in this Agreement.