FREE TRADE AGREEMENT

BETWEEN

CANADA

AND

THE REPUBLIC OF COLOMBIA

CANADA and **THE REPUBLIC OF COLOMBIA** (“Colombia”), hereinafter referred to as “the Parties”, resolved to:

STRENGTHEN the special bonds of friendship and cooperation among their peoples;

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

BUILD on their respective rights and obligations under the *Marrakesh Agreement Establishing the World Trade Organization* and other multilateral and bilateral instruments of cooperation;

PROMOTE hemispheric economic integration;

CREATE an expanded and secure market for the goods and services produced in their territories, as well as new employment opportunities and improved working conditions and living standards in their respective territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules to govern their trade;

ENSURE a predictable commercial framework for business planning and investment;

ENHANCE the competitiveness of their firms in global markets;

UNDERTAKE each of the preceding in a manner that is consistent with environmental protection and conservation;

ENHANCE AND ENFORCE environmental laws and regulations, and to strengthen cooperation on environmental matters;

PROTECT, **ENHANCE AND ENFORCE** basic workers' rights, strengthen cooperation on labour matters and to build on their respective international commitments on labour matters;

PROMOTE sustainable development;

ENCOURAGE enterprises operating within their territory or subject to their jurisdiction, to respect internationally recognized corporate social responsibility standards and principles and to pursue best practices;

PROMOTE broad-based economic development in order to reduce poverty;

PRESERVE their flexibility to safeguard the public welfare;

and,

RECOGNIZING the differences in the level of development and the size of the Parties' economies and the importance of creating opportunities for economic development;

AFFIRMING their respective rights and obligations under the WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights* ("TRIPS Agreement") and other intellectual property agreements to which both Parties are party;

RECOGNIZING that the promotion and the protection of investments of investors of one Party in the territory of the other Party will be conducive to the stimulation of mutually beneficial business activity;

AFFIRMING the rights to use, to the full, the flexibilities established in the TRIPS Agreement including those to protect public health and, in particular, those to promote access to medicines for all;

RECOGNIZING that states must maintain the ability to preserve, develop and implement their cultural policies for the purpose of strengthening cultural diversity, given the essential role that cultural goods and services play in the identity and diversity of societies and the lives of individuals; and

AFFIRMING their commitment to respect the values and principles of democracy and promotion and protection of human rights and fundamental freedoms as proclaimed in the *Universal Declaration of Human Rights*;

HAVE AGREED as follows:

CHAPTER ONE

INITIAL PROVISIONS AND GENERAL DEFINITIONS

Section A - Initial Provisions

Article 101: Establishment of the Free Trade Area

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

Article 102: Relation to Other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the *Marrakesh Agreement Establishing the World Trade Organization* and other agreements to which the Parties are party.

2. In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Article 103: Relation to Multilateral Environmental Agreements

In the event of any inconsistency between this Agreement and the specific trade obligations set out in the Multilateral Environmental Agreements referred to in Annex 103, such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement**.**

Article 104: Extent of Obligations

Each Party is fully responsible for the observance of all provisions of this Agreement and shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the provincial, territorial and local governments and authorities within its territory.

Article 105: Reference to Other Agreements

Where this Agreement refers to or incorporates by reference other agreements or legal instruments in whole or in part, such references include related footnotes, interpretative and explanatory notes.

Section B - General Definitions

Article 106: Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

Commission means the Joint Commission established under Article 2001 (Administration of the Agreement - Joint Commission);

Coordinators means the Agreement Coordinators established under Article 2002 (Administration of the Agreement - Agreement Coordinators);

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

days means calendar days, including weekends and holidays;

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

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

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

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

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

Harmonized System (HS) means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, Chapter Notes and subheading notes;

heading means any four-digit number, or the first four digits of any number, used in the nomenclature of the Harmonized System;

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

national means a natural person who has the nationality of a Party or is a citizen according to Article 107, or is a permanent resident of a Party;

originating means qualifying under the rules of origin set out in Chapter Three (Rules of Origin);

person means a natural person or an enterprise;

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

preferential tariff treatment means the application of the respective duty rate under this Agreement to an originating good pursuant to the Tariff Elimination Schedule;

remanufactured good means an industrial good of a subheading listed in Annex 106 assembled in the territory of one or both of the Parties that:

(i) is entirely or partially composed of recovered goods, and

(ii) has a life expectancy and factory warranty similar to a like new good;

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

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

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

subheading means any six-digit number, or the first six digits of any number, used in the nomenclature of the Harmonized System;

tariff classification means the classification of a good or material under a chapter, heading or subheading of the Harmonized System;

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

Article 107: Country-specific Definitions

For purposes of this Agreement, unless otherwise specified:

citizen means with respect to Canada, a natural person who is a citizen of Canada under Canadian legislation.

natural person who has the nationality of a Party means with respect to Colombia, Colombians by birth or naturalization, in accordance with Article 96 of the *Constitución Política de Colombia*;

national government means:

(i) with respect to Canada, the Government of Canada, and

(ii) with respect to Colombia, the national level of government.

sub-national government: means with respect to Canada, provincial, territorial or local governments. For Colombia, as a unitary Republic, the term sub-national government does not apply.[1]

[1] For greater certainty, the *departamentos* are part of the local level of government.

territory means:

(i) with respect to Colombia, its land territory, both continental and insular, its air space and the maritime areas over which it exercises sovereignty, sovereign rights or jurisdiction in accordance with its domestic law and international law, and

(ii) with respect to Canada, (A) the land territory, air space, internal waters and territorial sea of Canada; (B) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea* of 10 December 1982 (UNCLOS); and (C) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS.

Annex 103

Multilateral Environmental Agreements

(a) the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, done at Washington on 3 March 1973, as amended on 22 June 1979;

(b) the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal, 16 September 1987, as amended 29 June 1990, as amended 25 November 1992, as amended 17 September 1997, as amended 3 December 1999;

(c) the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*, done at Basel on 22 March 1989; and

(d) the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, done at Rotterdam on 10 September 1998.

Annex 106

Remanufactured Goods

Subheadings of the Harmonized System

7307.92	8413.60	8482.10	8708.29
7318.15	8413.81	8483.10	8708.30
7318.19	8413.91	8483.20	8708.40
7320.20	8414.30	8483.40	8708.50
8408.20	8414.80	8483.50	8708.70
8407.34	8414.90	8483.60	8708.80
8409.91	8415.90	8483.90	8708.91
8409.99	8419.50	8487.90	8708.92
8411.81	8419.90	8501.31	8708.93
8411.82	8421.23	8503.00	8708.94
8411.91	8421.29	8511.40	8708.99
8411.99	8421.31	8511.50	8716.90
8412.21	8431.20	8526.10	9026.80
8412.29	8431.49	8526.91	9030.31
8412.39	8433.90	8531.20	9031.80
8412.90	8479.90	8531.80	9032.89
8413.30	8481.20	8537.10	
8413.50	8481.80	8542.32	

CHAPTER TWO

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 201: Scope and Coverage

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

Section A – National Treatment

Article 202: National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, and to this end Article III of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a sub-national government, treatment no less favorable than the most favorable treatment that sub-national government accords to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraph 1 does not apply to the measures set out in Annex 202.

Section B – Tariff Elimination

Article 203: Tariff Elimination

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall eliminate its customs duties on originating goods in accordance with its Schedules to Annex 203.

3. During the tariff elimination process the Parties agree to apply to originating goods traded between them the lesser of the customs duties resulting from a comparison between the rate established in accordance with Annex 203 and the existing rate pursuant to Article II of the GATT 1994.

4. On the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 203. An agreement between the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules to Annex 203 for that good when approved by each Party in accordance with its applicable legal procedures.

5. For greater certainty, a Party may:

(a) increase a customs duty to the level established in its Schedules to Annex 203 following a unilateral reduction;

(b) maintain or increase a customs duty as authorized by this Agreement, or the Dispute Settlement Body of the WTO or any covered agreement under the WTO Agreement; and

(c) modify its tariffs outside this Agreement on originating goods exempt from tariff elimination in its Schedules to Annex 203.

Section C – Special Regimes

Article 204: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin and of whether like, directly competitive or substitutable goods are available in the territory of the Party:

(a) professional equipment including equipment for the press or television, software, and broadcasting and cinematographic equipment necessary for carrying out the business activity, trade or profession of a person who qualifies for temporary entry pursuant to Chapter Twelve (Temporary Entry For Business Persons);

(b) goods admitted for sports purposes and goods intended for display or demonstration;

(c) commercial samples and advertising films and recordings.

2. Each Party, at the request of the person concerned and for reasons its customs administration considers valid, shall extend the time limit for temporary admission beyond the period initially fixed.

3. Neither Party may condition the duty-free temporary admission of a good referred to in subparagraphs 1 (a) or (b), other than to require that such good:

(a) be imported by a national or resident of the other Party who seeks temporary entry;

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

(c) not be sold or leased while in its territory;

(d) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(e) be capable of identification when exported;

(f) be exported on the departure of that person or within such other period related to the purpose of the temporary admission; and

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

4. Neither Party may condition the duty-free temporary admission of a good referred to in subparagraph 1(c), other than to require that such good:

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

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

(c) be capable of identification when exported;

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

(e) be imported in no greater quantity than is reasonable for its intended use; and

(f) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good.

5. Where a good is temporarily admitted duty-free under paragraph 1 and any condition a Party imposes under paragraphs 3 and 4 has not been fulfilled, the Party may impose:

(a) the customs duty and any other charge that would be owed on entry or final importation of the good; and

(b) any penalties provided for under its law.

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

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

8. Each Party shall provide that its customs administration or other competent authority refund the security to the importer or another person responsible for a good admitted under this Article and release the importer or the other person of any liability for failure to export the good on presentation of satisfactory proof to the customs administration or other competent authority of the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

9. Except as otherwise provided in this Agreement, no Party may:

(a) prevent a vehicle or container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;

(b) require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;

(c) condition the release of any obligation, including any security, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; or

(d) require that the vehicle or carrier bringing a container from the territory of the other Party into its territory be the same vehicle or carrier that takes such container to the territory of the other Party.

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

Article 205: Goods Re-entered After Repair or Alteration

1. Neither Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration.

2. Neither Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

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

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

(b) transforms an unfinished good into a finished good.

Article 206: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

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

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

(b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

Section D – Non-Tariff Measures

Article 207: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994, and to this end Article XI of the GATT 1994 is incorporated into and made a part of this Agreement, *mutatis mutandis*.[1]

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

(a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping duty orders and undertakings; or

(b) voluntary export restraints inconsistent with Article VI of the GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1. of the AD Agreement.

3. Paragraphs 1 and 2 do not apply to the measures set out in Annex 202.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent the Party from:

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

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[1] For greater certainty, this paragraph applies, *inter alia*, to prohibitions or restrictions on the importation of remanufactured goods.

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

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

6. Neither Party may, as a condition for engaging in importation or for the import of a good, require a person of the other Party to establish or maintain a contractual relationship with a distributor in its territory.

7. Nothing in paragraph 6 prevents a Party from requiring the designation of an agent for the purpose of facilitating communications between regulatory authorities of the Party and a person of the other Party.

8. For purposes of paragraph 6 “distributor” means a person of a Party who is responsible for the commercial distribution, concession or representation in the territory of that Party of goods of the other Party.

Article 208: Import Licensing

1. Neither Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Each Party shall notify the other Party of any existing import licensing procedures promptly after entry into force of this Agreement.

3. Each Party shall publish any new import licensing procedure and any modification to its existing import licensing procedures or list of products, whenever practicable, 21 days prior to the effective date of the requirement but in all events no later than such effective date.

4. Each Party shall notify the other Party of any other new import licensing procedures and any modification to its existing import licensing procedures within 60 days of publication. Such publication shall be in accordance with the procedures as set out in the Import Licensing Agreement.

5. Notification provided under paragraphs 2 and 4 shall:

(a) include the information specified in Article 5 of the Import Licensing Agreement; and

(b) be without prejudice as to whether the import licensing procedure is consistent with this Agreement.

Article 209: Administrative Fees and Formalities

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

2. Neither Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

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

Article 210: Export Taxes

Except as provided in Annex 210, no Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is also adopted or maintained on any such good when destined for

Article 211: Customs Valuation

The Customs Valuation Agreement and any successor Agreement shall govern the customs valuation rules applied by the Parties to their reciprocal trade.

Article 212: Distinctive Products

1. Colombia shall recognize "*Canadian Whisky*" and "*Canadian Rye Whisky*" as distinctive products of Canada. Accordingly, Colombia shall not permit the sale of any product as "*Canadian Whisky*" and "*Canadian Rye Whisky*", unless it has been manufactured in Canada in accordance with the laws and regulations of Canada governing the manufacture of "*Canadian Whisky*" and "*Canadian Rye Whisky*".

2. At the request of a Party, the Committee on Trade in Goods shall consider whether to recommend that the Parties amend the Agreement to provide additional protection in the manner set out in the domestic law of the other Party.

Section E – Agriculture

Article 213: Scope and Coverage

1. This Section applies to the measures adopted or maintained by either Party relating to agricultural goods.

2. For agricultural goods, in the event of any inconsistency between the provisions of this Section and the provisions of any other Section or Chapter of this Agreement, the provisions of this Section shall prevail to the extent of the inconsistency.

Article 214: Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of agricultural export subsidies and shall work together toward an agreement in the WTO to eliminate those subsidies and avoid their reintroduction in any form.

2. A Party shall not maintain, introduce or re-introduce agricultural export subsidies on any agricultural good originating in or shipped from its territory that are exported directly or indirectly to the territory of the other Party.

3. If either Party maintains, introduces or re-introduces an export subsidy on a product that is exported to the other Party, the Party applying the measure shall, at the request of the other Party, consult with a view to agreeing on specific measures that either Party may adopt to counter the effects of such export subsidy. Should agreement on specific measures not be reached within a period of 90 days following the initial request, or such period as agreed by the Parties, the importing Party may adopt measures to counter the effect of the export subsidy, including an increase in the rate of duty on such imports to the applied most-favoured-nation (MFN) tariff rate. The applied measures shall be removed by the importing Party upon the elimination of the export subsidy.

Article 215: State Trading Enterprises

1. The rights and obligations of the Parties with respect to state trading enterprises shall be governed by Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, which are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties agree to cooperate in the WTO negotiations to ensure transparency regarding the operation and maintenance of state trading enterprises.

Article 216: Domestic Support Measures for Agricultural Goods

1. The Parties agree to cooperate in the WTO agricultural negotiations in order to achieve a substantial reduction of the production and trade-distorting domestic support measures.

2. If either Party maintains, introduces or re-introduces a domestic support measure that the other Party considers to distort bilateral trade covered by this Agreement, the Party applying the measure shall, at the request of the other Party, consult with a view to avoiding the nullification and impairment on the concessions granted under this Agreement. Such consultations shall be deemed to satisfy the requirements of Article 2104 (Dispute Settlement - Consultations).

Article 217: Agricultural Safeguard Measures

1. Notwithstanding Article 203, Colombia may apply an agricultural safeguard measure in the form of an additional customs duty on an originating agricultural good listed in Annex 217, provided the conditions of this Article are fulfilled. The total customs duties applied on such good, including the agricultural safeguard measure, shall not exceed the lesser of:

(a) the applied MFN tariff rate at the time the measure is adopted; or

(b) the base rate set out in a Party's Schedules to Annex 203.

2. Colombia may not apply or maintain an agricultural safeguard measure on an originating good:

(a) after the expiration of the tariff elimination period set out in Annex 203; or

(b) that increases the duty on in-quota goods subject to a TRQ.

3. Colombia may apply an agricultural safeguard measure during any calendar year on an originating agricultural good only where the quantity of imports of the good during that year exceeds the trigger volume for that good, set out in Annex 217.

4. Colombia may not apply or maintain a safeguard measure pursuant to this Article and at the same time apply or maintain with respect to the same good:

a) an emergency action pursuant to Chapter Seven (Emergency Action and Trade Remedies); or

b) a measure pursuant to Article XIX of the GATT 1994 and the WTO *Agreement on Safeguards* .

5. Colombia shall implement an agricultural safeguard measure in a transparent manner. To this end, Colombia shall, in writing, notify Canada and provide all relevant information regarding the measure within 60 days of its application. Colombia shall consult with Canada on Canada’s request regarding the application of the agricultural safeguard measure.

6. Colombia may maintain an agricultural safeguard measure only until the end of the calendar year in which it applies the measure.

7. Neither Party may apply duties under Article 5 of the WTO *Agreement on Agriculture* on goods of the other Party that are subject to tariff elimination under Annex 203.

8. For purposes of this Article and Annex 217, **agricultural safeguard measure** means a measure described in paragraph 1.

Article 218: Price Band System

Except as otherwise provided in this Agreement, Colombia may apply the PBS only with respect to the agricultural goods listed in Annex 218 and subject to any applicable conditions set out in Annex 218.

Article 219: Administration and Implementation of Tariff-Rate Quotas

1. Colombia shall implement and administer its TRQs in accordance with Article XIII of the GATT 1994, and the Import Licensing Agreement.

2. Colombia shall ensure that:

(a) its procedures for administering its TRQs are transparent, made available to the public, timely, non-discriminatory, responsive to market conditions and minimally burdensome to trade;

(b) subject to subparagraph (c), a person of a Party that fulfills Colombia's legal and administrative requirements for TRQs shall be eligible to apply and to be considered for an import license or an in-quota quantity allocation under Colombia's TRQs;

(c) it does not, under its TRQs:

(i) allocate any portion of an in-quota quantity to a producer or a producer's group,

(ii) condition access to an in-quota quantity on purchase of domestic production,

(iii) limit access to an in-quota quantity only to processors, or

(iv) allocate any portion of an in-quota quantity to a distributor or a distributor's group;

(d) only national governments or state-enterprises administer its TRQs and that this administration is not delegated to other persons except as otherwise provided in this Agreement; and

(e) it allocates in-quota quantities under its TRQs in commercially viable shipping quantities and, to the maximum extent possible, in the amounts that importers request.

3. Colombia shall make every effort to administer its TRQs in a manner that allows importers to fully utilize them.

4. Colombia may not condition application for or use of an in-quota quantity allocation under a TRQ on the re-export of an agricultural good.

5. Colombia may not count food aid or other non-commercial shipments in determining whether an in-quota quantity under a TRQ has been filled.

6. Colombia shall consult with Canada on Canada’s request regarding Colombia’s administration of TRQs.

Section F – Institutional Provisions

Article 220: Committee on Trade in Goods

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

2. The Committee shall meet on the request of a Party or the Commission to consider matters arising under this Chapter, Chapter Three (Rules of Origin), Chapter Four (Origin Procedures and Trade Facilitation) or Chapter Seven (Emergency Action and Trade Remedies).

3. The Committee's functions shall include:

(a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;

(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Commission for its consideration;

(c) providing to the Committee on Trade-Related Cooperation advice and recommendations on technical assistance needs regarding matters relating to this Chapter, Chapter Three (Rules of Origin), Chapter Four (Origin Procedures and Trade Facilitation) or Chapter Seven (Emergency Action and Trade Remedies);

(d) reviewing any subsequent amendments to the Harmonized System, and consulting to resolve any inconsistencies between:

(i) subsequent amendments to Harmonized System 2007 and Annex 203, or

(ii) Annex 203 and national nomenclatures; and,

(e) consulting on and endeavoring to resolve any difference that may arise between the Parties on matters related to the classification of goods under the Harmonized System.

Article 221: Agricultural Sub-Committee

1. At the request of a Party, the Parties shall establish a Sub-Committee on Agriculture comprising representatives of each Party.

2 The Sub-Committee shall have the following functions:

(a) monitoring and promoting cooperation on the implementation and administration of Section E in a way that real access to agricultural products is ensured;

(b) providing a forum for the Parties to consult on issues resulting from the implementation and administration of this Agreement for agricultural goods;

(c) consulting on matters related to Section E in coordination with other committees, sub-committees and other working groups established in this Agreement;

(d) evaluating agricultural trade development under this Agreement, its impacts in the agricultural sector of each Party, the operation of the Agreement’s tools, and recommending any necessary actions to the Committee on Trade in Goods;

(e) submitting to the Committee on Trade in Goods for its consideration any matter arising under this article;

(f) reporting to the Committee on Trade in Goods any other matter related to this Section; and

(g) undertaking any additional work that the Committee on Trade in Goods may assign.

3. The Sub-Committee shall meet within 60 days of a request by a Party or as otherwise agreed by the Parties. The meetings of the Sub-Committee shall be chaired by the representatives of the hosting Party of the meeting. The Sub-Committee shall inform the Committee on Trade in Goods of the results of its meetings.

4. All the decisions taken by the Sub-Committee shall be reached by consensus.

Section G – Definitions

Article 222: Definitions

For purposes of this Chapter:

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

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

agricultural export subsidies means export subsidies as defined in Article 1(e) of the WTO *Agreement on Agricul*ture, including any amendment to that definition in force for the Parties;

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

fixed component of the PBS means the External Common Tariff of the Andean Communities and is indicated as the base rate in Colombia's Tariff Schedule for Agricultural Goods, attached to Annex 203;

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

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

consumed means:

(a) actually consumed; or

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

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

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

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

(c) fee or other charge in connection with importation commensurate with the cost of services rendered;

duty-free means free of customs duty;

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

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

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

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

NANDINA means the common nomenclature classification system of the Andean Community (*Nomenclatura Comun de los Paises Miembros de la Comunidad Andina);*

PBS means the price band system established by *Decision 371 Sistema Andino de Franjas de Precios* of the Andean Community on 26 November 1994, and its amendments;

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

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

TRQ means a tariff rate quota set out in Section C(iii) of Annex 203.

Annex 202

Exceptions to National Treatment and Import and Export Restrictions

Section A - Measures of Colombia

Articles 202 and 207 do not apply to any measure, including that measure's continuation, prompt renewal or amendment, in respect of the following:

(a) controls on the export of coffee pursuant to Law No. 9 of 17 January 1991;

(b) measures relating to the taxation of all beverages with any grade of alcohol content, pursuant to Law No. 788 of 27 December 2002 and Law No. 223 of 22 December 1995, until two years after the date of entry into force of this Agreement;

(c) controls on the importation of goods listed in Article 3 of Decree 3803 of 2006, as amended, except for controls on remanufactured goods to which Articles 202 and 207 do apply;

(d) controls on the importation of automotive vehicles, including used vehicles and new vehicles whose importation occurs more than two years following their date of production, in accordance with Decree 3803 of 2006, as amended; and

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

Section B - Measures of Canada

Articles 202 and 207 do not apply to any measure, including that measure's continuation, prompt renewal or amendment, in respect of the following:

(a) controls by Canada on the export of logs of all species pursuant to the *Export and Import Permits* Act, R.S., 1985, c. E-19, as amended;

(b) controls by Canada on the export of unprocessed fish pursuant to the following statutes, as amended:

(i) *New Brunswick Fish Processing* Act, S.N.B.1982, c. F-18.01, and *Fisheries Development Act*, S.N.B. 1977 c. F-15.1,

(ii) Newfoundland *Fish Inspection* Act, R.S.N.L. 1990, c. F-12,

(iii) Nova Scotia *Fisheries and Coastal Resources* Act, S.N.S. 1996, c. 25,

(iv) Prince Edward Island *Fish Inspection Act*, R.S.P.E.I. 1988, c. F-13, and

(v) *The Marine Products Processing Act* of Quebec, R.S.Q. 1999, C.T-11-01;

(c) the importation of any goods of the prohibited provisions of tariff items 9897.00.00, 9898.00.00 and 9899.00.00 referred to in the Schedule of the *Customs Tariff* (1997, c. 36), as amended;

(d) Canadian excise duties on absolute alcohol used in manufacturing under the existing provisions of the *Excise Act*, 2001, 2002, c.22, as amended;

(e) measures by Canada relating to the use of ships in the coasting trade of Canada pursuant to the *Coasting Trade Act*, S.C. (1992, c. 31), as amended;

(f) the internal sale and distribution of wine and distilled spirits; and

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

Annex 203

Tariff Elimination

1. Except as otherwise provided in a Party's tariff schedule:

   (a) Canada shall apply the staging categories set out in Section A in eliminating customs duties pursuant to Article 203; and

   (b) Colombia shall apply the staging categories set out in Sections B and C in eliminating customs duties pursuant to Article 203.

2. The staging category for determining the rate of customs duty at each stage of reduction for an item shall be the category indicated for the item in a Party's tariff schedule.

3. Staged rates shall be rounded down, at least to the nearest tenth of a percentage point, or, if the rate of duty is expressed in monetary units, at least to the nearest 0.001 of the official monetary unit of the Party.

4. Year one means the year this Agreement enters into force as provided in Article 2304 (Final Provisions - Entry into Force).

5. Beginning in year two, each annual stage of tariff reduction shall take effect on January 1 of the relevant year.

Section A - Tariff Schedule of Canada

This Section applies only to goods listed in Canada's Tariff Schedule, which is attached to this Annex.

i. Staging Categories

1. The base rate of customs duty shall be the most-favoured-nation customs duty rate applied on 1 January 2007, which is indicated for an item in Canada's Tariff Schedule.

2. Duties on originating goods provided for in the items in staging category **A** shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force.

3. Duties on originating goods provided for in the items in staging category **B** shall be removed in three equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year three.

4. Duties on originating goods provided for in the items in staging category **C** shall be removed in seven equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year seven;

5. Duties on originating goods provided for in the items in staging category **D17** shall be removed in 17 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 17.

6. Duties on originating goods provided for in the items in staging category **E** are exempt from tariff elimination.

ii. Agriculture Transversal Clause

1. Notwithstanding the staging categories in Canada's Tariff Schedule, attached to this Annex, if the Trade Promotion Agreement between Colombia and the United States of America, signed on 22 November 2006, (TPA) enters into force within two years of the entry into force of this Agreement, Canada shall apply to goods of tariff item 17019900 originating in Colombia, from the date of entry into force of the TPA, the tariff elimination period prescribed in Colombia's Agricultural Tariff Schedule in the TPA for the corresponding good.

2. The corresponding tariff item in Colombia's Agricultural Tariff Schedule to the TPA is 17019900. This tariff item reflects the Tariff Schedule of Colombia in the TPA. as of 22 November 2006.

iii. Tariff Elimination Schedule of Canada

(Tariff Elimination Schedule attached as a separate volume)

Section B - Tariff Schedule of Colombia for Non-Agricultural Goods

This Section applies only to goods listed in Colombia's Tariff Elimination Schedule for Non-Agricultural Goods, which is attached to this Annex.

i. Staging Categories

1. The base rate of customs duty shall be the most-favoured-nation customs duty rate applied on 1 April 2007, which is indicated for an item in Colombia's Tariff Schedule for Non-Agricultural Goods.

2. Duties on originating goods provided for in the items in staging category **A** shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force.

3. Duties on originating goods provided for in the items in staging category **B** shall be removed in five equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year five.

4. Duties on originating goods provided for in the items in staging category **BU** shall be reduced by 10 percent of the base rate beginning on the date this Agreement enters into force. On January 1 of year two, duties shall be reduced by 20 percent of the base rate. On January 1 of year three, duties shall be reduced by 50 percent of the base rate. On January 1 of year four, duties shall be reduced by 70 percent of the base rate. On January 1 of year five, duties shall be eliminated entirely so that such goods shall be duty-free.

5. Duties on originating goods provided for in the items in staging category **C7** shall be removed in seven equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year seven.

6. Duties on originating goods provided for in the items in staging category **C** shall be removed in 10 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 10.

7. Duties on originating remanufactured goods of Canada, as defined in Chapter One (Initial Provisions and General Definitions), shall remain at base rates during years one through five. Beginning on January 1 of year six, duties on these goods shall be removed in five equal annual stages and such goods shall be duty-free, effective January 1 of year 10.

ii. Tariff Elimination Schedule of Colombia for Non-Agricultural Goods

(Tariff Elimination Schedule attached as a separate volume)

Section C - Tariff Schedule of Colombia for Agricultural Goods

This Section applies only to goods listed in Colombia's Tariff Elimination Schedule for Agricultural Goods, which is attached to this Annex.

i. Staging Categories

1. The base rate of customs duty is indicated for each item in Colombia's Tariff Schedule for Agricultural Goods.

2. "AEC" as used in Colombia's Tariff Schedule for Agricultural Goods refers to the tariff rate of the Common External Tariff of the Andean Communities (*Arancel Externo Común de los Países Miembros de la Comunidad Andina)* that is indicated in the base rate column.

3. Duties on originating goods provided for in the items in staging category **A s**hall be removed entirely and such goods shall be duty-free, effective the date this Agreement enters into force.

4. Duties on originating goods provided for in the items in staging category **B** shall be removed in five equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year five.

5. Duties on originating goods provided for in the items in staging category **C** shall be removed in 10 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 10.

6. Duties on originating goods provided for in the items in staging category **D** shall be removed in 15 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 15.

7. Duties on originating goods provided for in the items in staging category **E** shall be removed in six equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year six.

8. Duties on originating goods provided for in the items in staging category **F** shall be removed in seven equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year seven.

9. Duties on originating goods provided for in the items in staging category **G** shall be removed in five equal annual stages beginning in year three and such goods shall be duty-free, effective January 1 of year seven.

10. The fixed component of the PBS applied on originating goods provided for in the items in staging category **H** shall be removed in seven equal annual stages beginning on the date this Agreement enters into force and such goods shall be free of this fixed component, effective January 1 of year seven.

11. The fixed component of the PBS applied on originating goods provided for in the items in staging category **I** shall be removed completely in year seven so that such goods shall be free of this fixed component, effective January 1 of year seven.

12. Duties on originating goods provided for in the items in staging category **J** shall be removed in eight equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year eight.

13. The fixed component of the PBS applied on originating goods provided for in the items in staging category **K** shall be removed in 10 equal annual stages beginning on the date this Agreement enters into force and such goods shall be free of this fixed component, effective January 1 of year 10.

14. Duties on originating goods provided for in the items in staging category **L** shall be removed in seven equal annual stages beginning in year four and such goods shall be duty-free, effective January 1 of year 10.

15. The fixed component of the PBS applied on originating goods provided for in the items in staging category **M** shall be removed in seven equal annual stages beginning in year four and such goods shall be free of this fixed component, effective January 1 of year 10.

16. Duties on originating goods provided for in the items in staging category **N** shall be removed in 11 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 11.

17. The fixed component of the PBS applied on originating goods provided for in the items in staging category **O** shall be removed in 11 equal annual stages beginning on the date this Agreement enters into force and such goods shall be free of this fixed component, effective January 1 of year 11.

18. Duties on originating goods provided for in the items in staging category **P** shall be removed in 12 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 12.

19. The fixed component of the PBS applied on originating goods provided for in the items in staging category **Q** shall be removed completely in year 12 so that such goods shall be free of this fixed component, effective January 1 of year 12.

20. Duties on originating goods provided for in the items in staging category R shall be removed in 13 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 13.

21. The fixed component of the PBS applied on originating goods provided for in the items in staging category **S** shall be removed in 13 equal annual stages beginning on the date this Agreement enters into force and such goods shall be free of this fixed component, effective January 1 of year 13.

22. The fixed component of the PBS applied on originating goods provided for in the items in staging category **T** shall be removed in three equal annual stages beginning in year 11 and such goods shall be free of this fixed component, effective January 1 of year 13.

23. Duties on originating goods provided for in the items in staging category **U** shall be removed in 14 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 14.

24. Duties on originating goods provided for in the items in staging category **V** shall be reduced by 20 percentage points in 15 equal annual stages beginning on the date this Agreement enters into force and such goods shall maintain a duty of 25 percent, effective January 1 of year 15.

25. The fixed component of the PBS applied on originating goods provided for in the items in staging category **W s**hall be removed in 15 equal annual stages beginning on the date this Agreement enters into force and such goods shall be free of this fixed component, effective January 1 of year 15.

26. The fixed component of the PBS applied on originating goods provided for in the items in staging category **X** shall be removed in two equal annual stages beginning in year 16, and such goods shall be free of this fixed component, effective January 1 of year 17.

27. Duties on originating goods provided for in the items in staging category **Y** shall be removed in 17 annual stages, in which the duty at each stage is calculated as the MFN rate, less a percentage of preference that increases in equal annual increments beginning on the date this Agreement enters into force and reaches 100 per cent, and such goods shall be duty-free by January 1 of year 17.

28. Duties on originating goods provided for in the items in staging category **AA** shall be removed in 18 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 18.

29. Duties on originating goods provided for in the items in staging category **BB** shall be reduced by 15 percentage points in 16 equal annual stages beginning in year seven and such goods shall maintain a duty of 65 percent, effective January 1 of year 22.

30. Duties on originating goods provided for in the items in staging category **CC** shall be reduced by 20 percentage points in 16 equal annual stages beginning in year seven and such goods shall maintain a duty of 60 percent, effective January 1 of year 22.

31. Originating goods provided for in the items in staging category **Z** are exempt from tariff elimination.

ii. Agricultural Transversal Clause

Notwithstanding the staging categories in Colombia's Tariff Schedule for Agricultural Goods, attached to this Annex, if the Trade Promotion Agreement between Colombia and the United States of America, signed on 22 November 2006, (TPA) enters into force:

(a) within one year of the entry into force of this Agreement, Colombia shall apply to a good listed below that originates in Canada, from the date of entry into force of the TPA, the tariff elimination period set out below;

(b) between one and two years of the entry into force of this Agreement, Colombia shall apply to a good listed below that originates in Canada, from the date of entry into force of the TPA, the tariff elimination period set out below, plus one year.

NANDINA 2007	Elimination period
07133290	10 years
07133391	
07133392	
07133399	
07133999	

22083000	10 years
22086000	

17022000	5 years

17019910	15 years
17019990	

02011000	10 years
02012000A	
02012000B	
02013010	
02013090	
02021000	
02022000A	
02022000B	
02023010	
02023090	

02061000	10 years
02062100	
02062200	
02062900	
05040010	
05040020	
05040030	

iii. Tariff Rate Quotas

1. High Quality Beef

Duties on originating goods provided for in the items listed below shall be removed by Colombia in 12 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 12. Nevertheless, the following aggregate quantities shall be duty-free in any calendar year specified herein:

NANDINA 2007	Year	Quantity Metric Tonnes
02012000A 02022000A 02013010 02023010	1	1750
	2	1803
	3	1855
	4	1908
	5	1960
	6	2013
	7	2065
	8	2118
	9	2170
	10	2223
	11	2275
	12	Unlimited

(a) For purposes of this Section, "high quality beef" ("*Cortes Finos*") means any bone-in and boneless cuts, whether fresh, chilled or frozen, derived from carcasses graded "Canada Prime", "Canada AAA", "Canada AA" and "Canada A".

(b) On the importation of high-quality beef, and in addition to the requirements of Chapter Four (Origin Procedures and Trade Facilitation), an importer will be required by Colombia's competent authority to include information in conformity with the requirements *of Ley 914 de 2004, Decreto 1500 de 2007, Resolucion 2905 de 2007, Resolucion 5109 de 2005*, as amended, including labeling requirements such as the name of the cut, date of packaging, name of processing plant, and country of origin and weight).

2. Standard Quality Beef

Duties on originating goods provided for in the items listed below shall be removed by Colombia in 12 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 12. Nevertheless, the following aggregate quantities shall be duty-free in any calendar year specified herein:

NANDINA 2007	Year	Quantity Metric Tons
02011000 02012000B 02013090 02021000 02022000B 02023090	1	1750
	2	1803
	3	1855
	4	1908
	5	1960
	6	2013
	7	2065
	8	2118
	9	2170
	10	2223
	11	2275
	12	Unlimited

3. Variety Meats

Duties on originating goods provided for in the items listed below shall be removed by Colombia in 12 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 12. Nevertheless, the following aggregate quantities shall be duty-free in any calendar year specified herein:

NANDINA 2007	Year	Quantity Metric Tons
02061000 02062100 02062200 02062900 05040010 05040020 05040030	1	1750
	2	1803
	3	1855
	4	1908
	5	1960
	6	2013
	7	2065
	8	2118
	9	2170
	10	2223
	11	2275
	12	Unlimited

4. Swine meat

Duties on originating goods provided for in the items listed below shall be removed by Colombia in 13 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 13. Nevertheless, the duties on the following aggregate quantities shall be 20 per cent on the date this Agreement enters into force and shall thereafter be eliminated in five equal annual stages beginning in year two, so that the goods shall be duty-free effective January 1 of year six, as specified herein:

NANDINA 2007	Year	Quantity Metric Tons	In-Quota Tariff Rate
	1	5000	20%
02031100	2	5150	16%
02031200	3	5300	12%
02031900	4	5450	8%
02032100	5	5600	4%
02032200	6	5750	0%
02032900	7	5900	0%
02063000	8	6050	0%
02064100	9	6200	0%
02069000	10	6350	0%
02101200	11	6500	0%
02101900	12	6650	0%
	13	Unlimited	0%

5. Beans

Duties on originating goods provided for in the items listed below shall be removed by Colombia in 12 equal annual stages beginning on the date this Agreement enters into force and such goods shall be duty-free, effective January 1 of year 12. Nevertheless, the following aggregate quantities shall be duty-free in any calendar year specified herein:

NANDINA 2007	Year	Quantity Metric Tons
07133290 07133391 07133392 07133399 07133999	1	4000
	2	4120
	3	4240
	4	4360
	5	4480
	6	4600
	7	4720
	8	4840
	9	4960
	10	5080
	11	5200
	12	Unlimited

iv. Tariff Elimination Schedule of Colombia for Agricultural Goods

(Tariff Elimination Schedule attached as a separate volume)

Annex 210

Export Taxes

Colombia

Article 210 does not apply to the following measures, including those measures' continuation, prompt renewal or amendment:

(a) a charge on the export of coffee pursuant to *Law No. 101* of 1993; and

(b) a charge on the export of emeralds pursuant to *Law No. 488* of 1998.

Annex 217

Agricultural Safeguard Measures

1. Colombia may apply an agricultural safeguard measure, in accordance with Article 217, only on an originating agricultural good from Canada listed in the table below.

1. The agricultural safeguard trigger level shall be determined in any given year by multiplying the TRQ for that year, as determined in accordance with Section C to Annex 203, by the percentage set out in the table below.

Good	Tariff Classification	Trigger Level
High Quality Beef	02013010 02023010 02012000A 02022000A	150% of TRQ
Standard Quality Beef	02011000 02012000B 02013090 02021000 02022000B 02023090	120% of TRQ
Variety Meats	02061000 02062100 02062200 02062900 05040010 05040020 05040030	120% of TRQ
Beans	07133290 07133391 07133392 07133399 07133999	120% of TRQ

Annex 218

Price Band System

CHAPTER THREE

RULES OF ORIGIN

Article 301: Originating Goods

Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

(a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties, as defined in Article 318;

(b) the good fulfils the requirements set out for that good in Annex 301 as a result of production occurring entirely in the territory of one or both of the Parties;

(c) the good is produced entirely in the territory of one or both of the Parties, exclusively from originating materials; or

(d) except as provided in Annex 301 or except for a good of Chapter 1 through 24, heading 39.01 through 39.14 or Chapter 50 through 63 of the Harmonized System,

(i) the good is produced entirely in the territory of one or both of the Parties,

(ii) one or more of the non-originating materials used in the production of the good cannot satisfy the requirements set out in Annex 301 because both the good and the non-originating materials are classified in the same subheading, or heading that is not further subdivided into subheadings, and

(iii) the value of the non-originating materials classified as or with the good does not exceed 55 per cent of the transaction value of the good,

and the good satisfies all the other applicable requirements of this Chapter.

Article 302: Minimal Operations

Except for sets or assortments of goods referred to in Annex 301 or in Article 310, a good shall not be considered to be an originating good merely by reason of undergoing one or more of the following operations in the territory of a Party:

(a) packaging, re-packaging or breaking up for retail sale of the good;

(b) oiling or applying anti-rust paint or protective coatings to the good; or

(c) disassembly of a new good into its parts.

Article 303: Value Test

1. Except as provided in paragraph 2, where the applicable rule of origin in Annex 301 for the tariff provision under which a good is classified specifies a value test, the value test shall be satisfied provided the value of non-originating materials used in the production of the good does not exceed the percentage of the transaction value of the good set out in the rule of origin applicable to that good.

2. For purposes of a good of heading 87.01 through 87.08, at the choice of an exporter or a producer of such good, the value test shall be satisfied provided the value of non-originating materials used in the production of the good does not exceed the percentage of either the transaction value or the net cost of the good set out in the rule of origin applicable to that good.

3. The value of non-originating materials used by the producer in the production of a good shall not, for purposes of satisfying the value test under either paragraph 1 or 2, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

4. For purposes of paragraph 3, “the value of non-originating materials” in paragraphs 1 and 2 does not include:

(a) the value of any non-originating materials used by another producer to produce an originating material that is subsequently acquired and used in the production of the good by the producer of the good; or

(b) the value of non-originating materials used by the producer to produce an originating intermediate material.

5. For purposes of calculating the net cost of a good under paragraph 2, the producer of the good may:

(a) calculate the total cost incurred with respect to all goods produced by that producer, subtract any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, as well as non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocate the resulting net cost of those goods to the good;

(b) calculate the total cost incurred with respect to all goods produced by that producer, reasonably allocate the total cost to the good, and then subtract any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or

(c) reasonably allocate each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

6. For purposes of calculating the net cost of a good under paragraph 2, the producer may average its calculation over its fiscal year using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party:

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

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

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

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

(e) any other category as the Parties may agree.

7. For purposes of calculating the net cost under paragraph 2 with respect to a good of headings 87.06 through 87.08 produced in the same plant, the producer may:

(a) average its calculation,

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

(ii) over any quarter or month, or

(iii) over the automotive materials producer’s fiscal year,

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

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

(c) calculate the average in subparagraph (a) or (b) separately for those goods that are exported to the territory of the other Party.

Article 304: Value of Materials

1. For purposes of Article 303 and Article 307, the value of non-originating materials, including non-originating component goods referred to in Article 310, shall be:

(a) the transaction value or the customs value of the materials at the time of their importation into a Party, adjusted, if necessary, to include freight, insurance, packing and all other costs incurred in transporting the materials to the place of importation; or

(b) in the case of domestic transactions, the value of the materials determined in accordance with the principles of the *Customs Valuation Agreement* in the same manner as international transactions, with such modifications as may be required by the circumstances.

2. Notwithstanding paragraph 1, the value of an intermediate material shall be:

(a) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to that intermediate material; or

(b) the sum of all costs that comprise the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material.

Article 305: Intermediate Materials Used In Production

1. For greater certainty, if a non-originating material satisfies the requirements set out in Article 301 in the territory of one or both of the Parties, the resulting good shall be considered as originating and no account shall be taken of the non-originating material contained therein when that good is used in the subsequent production of another good.

2. For purposes of determining the origin of a good, a producer of a good may designate any intermediate material as a material to be taken into account as an originating or non-originating material, as the case may be, in determining whether the good satisfies the applicable requirements of the rules of origin.

Article 306: Accumulation

1. For purposes of determining whether a good is an originating good, a good originating in the territory of one or both of the Parties shall be considered as originating in the territory of either of the Parties.

2. For purposes of determining whether a good is an originating good, the production of the good in the territory of one or both of the Parties by one or more producers shall, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, be considered to have been performed in the territory of either of the Parties by that exporter or producer, provided that:

(a) all non-originating materials used in the production of the good satisfy the requirements set out in Annex 301 entirely in the territory of one or both of the Parties; and

(b) the good satisfies all other applicable requirements of this Chapter.

3. Subject to paragraph 4, where each Party has a trade agreement that, as contemplated by the WTO Agreement, concerns the establishment of a free trade area with the same non-Party, the territory of that non-Party shall be deemed to form part of the territory of the free trade area established by this Agreement, for purposes of determining whether a good is an originating good under this Agreement.

4. A Party shall apply paragraph 3 only once provisions with effect equivalent to those of paragraph 3 are in force between each Party and the non-Party with which each Party has separately concluded a free trade agreement. Where such provisions in force between a Party and the non-Party apply to only certain goods or under certain conditions, the other Party may limit the application of paragraph 3 to those goods and under those conditions and as otherwise set out in this Agreement.

Article 307: *De Minimis*

1. Except as provided in paragraphs 2 through 4, a good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex 301 does not exceed 10 per cent of the transaction value of the good, provided that:

(a) if the rule of origin of Annex 301 applicable to the good contains a percentage for the maximum value of non-originating materials, the value of such non-originating materials shall be included in calculating the value of non-originating materials; and

(b) the good satisfies all other applicable requirements of this Chapter.

2. Paragraph 1 does not apply to a non-originating material used in the production of a good of Chapters 1 through 24 of the Harmonized System unless the non-originating material is provided for in a different subheading from the good for which origin is being determined under this Article.

3. A good of any of Chapters 50 through 60 of the Harmonized System that does not originate because certain non-originating yarns used in the production of the good do not fulfil the requirements set out in Annex 301, shall nonetheless be considered to originate if the total weight of all such yarns does not exceed 15 per cent of the total weight of that good.

4. A good of any of Chapters 61 through 63 of the Harmonized System, that does not originate because certain non-originating yarns used in the production of the component of the good that determines the tariff classification of that good do not fulfil the requirements set out for that good in Annex 301, shall nonetheless be considered to originate if the total weight of all such yarns in that component does not exceed 15 per cent of the total weight of that component.

Article 308: Fungible Goods and Materials

1. For purposes of determining whether a good is an originating good:

(a) where originating and non-originating fungible materials are used in the production of a good, the determination of whether the materials are originating materials may be made in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party in which the production is performed; and

(b) where originating and non-originating fungible goods are physically combined or mixed in inventory in a Party and exported in the same form to another Party, the determination of whether the good is an originating good may be made in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party from which the good is exported.

2. A Party shall ensure that the person that selected an inventory management method pursuant to paragraph 1 for a particular fungible good or material continues to use such inventory management method for that fungible good or material throughout the fiscal year of that person.

Article 309: Indirect Materials

An indirect material shall be considered as originating without regard to where it is produced.

Article 310: Sets or Assortments of Goods

Except as provided in Annex 301, a set or assortment of goods, as referred to in General Rule 3 of the Harmonized System, shall be considered as originating, provided that:

(a) all the component goods, including packaging materials and containers, are originating; or

(b) where the set or assortment contains non-originating component goods, including packaging materials and containers, the value of the non-originating goods, including any non-originating packaging materials and containers for the set or assortment, does not exceed 15 percent of the transaction value of the set or assortment.

Article 311: Accessories, Spare Parts and Tools

Accessories, spare parts and tools delivered with a good that form part of the good's standard accessories, spare parts or tools, shall be considered as originating if the good is an originating good, and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable requirements set out in Annex 301 provided that:

(a) the accessories, spare parts and tools are not invoiced separately from the good, whether or not each is listed or detailed on the invoice; and

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

Article 312: Packaging Materials and Containers for Retail Sale

Except as provided for in Article 310, packaging materials and containers in which a good is packaged for retail sale shall be disregarded in determining:

(a) whether all the non-originating materials undergo the applicable requirements set out in Annex 301; or

(b) whether the good meets the requirements established in subparagraph (a) or (c) of Article 301.

Article 313: Packing Materials and Containers for Shipment

Packing materials, containers, pallets or similar articles in which a good is packed for shipment shall be disregarded in determining whether that good is originating.

Article 314: Transit and Transshipment

A good that qualifies as an originating good under this Chapter that is exported from a Party shall maintain its originating status only if the good:

(a) does not undergo further production or any other operation outside the territories of the Parties, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party; and

(b) remains under customs control while outside the territories of the Parties.

Article 315: Interpretation and Application

For purposes of this Chapter:

(a) the basis for tariff classification in this Chapter is the Harmonized System;

(b) where applying subparagraph (d) of Article 301, the determination of whether a heading or subheading under the Harmonized System provides for both a good and the materials that are used in the production of the good shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System; and

(c) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

Article 316: Consultation and Modifications

1. The Parties shall consult regularly to ensure that this Chapter is interpreted and administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter in accordance with Chapter Four (Origin Procedures and Trade Facilitation).

2. A Party that considers that this Chapter requires modification to take into account developments in production processes, lack of supply of originating materials or other matters may submit a modification proposal along with supporting rationale and any studies to the other Party for consideration and appropriate action under Chapter Two (National Treatment and Market Access for Goods).

Article 317: Short Supply

1. For purposes of determining the origin of a good of Chapter 50 through 63 of the Harmonized System, at the request of an interested entity of a Party, a Party shall, to the extent possible within 45 days of receiving the request, temporarily allow yarn or fabric from a non-Party to be considered originating, if the Party determines, based on information it considers necessary, that the yarn or fabric is not available in commercial quantities in a timely manner in the territory of any Party. Each Party shall implement such short-supply allowances in accordance with its applicable legal procedures.

2. The Party receiving a request for a short supply allowance pursuant to paragraph 1 shall notify the other Party of the request to the extent possible with 10 days of receiving the request. A Party may decline to grant a short-supply allowance if the other Party does not also grant such an allowance.

3. The Committee on Trade in Goods shall establish procedures to guide the administration of the short-supply allowances referred to in paragraphs 1 and 2.

Article 318: Definitions

For purposes of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding, protection from predators, etc.

chapter means a chapter of the Harmonized System;

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

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

(b) motor vehicles of subheading 8701.10 or 8701.30 through 8701.90;

(c) motor vehicles for the transport of 15 or fewer persons of subheading 8702.10 or 8702.90, and motor vehicles of subheading 8704.21 or 8704.31; or

(d) motor vehicles of subheading 8703.21 through 8703.90;

customs value means the value as determined in accordance with the Customs Valuation Agreement;

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

Generally Accepted Accounting Principles means the principles used in the territory of each Party, which provide substantial authorized support with regard to the recording of income, costs, expenses, assets and liabilities involved in the disclosure of information and preparation of financial statements. These principles may be broad guidelines of general application, as well as those standards, practices and procedures normally employed in accounting;

good means any merchandise, product, article or material;

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

(a) minerals and other non-living natural resources extracted or taken from the territory of one or both of the Parties;

(b) plants and plant products harvested or gathered in the territory of one or both of the Parties;

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

(d) goods obtained from live animals in the territory of one or both of the Parties;

(e) goods obtained from hunting, trapping, fishing or aquaculture in the territory of one or both of the Parties;

(f) goods (fish, shellfish and other marine life) taken from the sea, seabed or subsoil outside the territory of one or both of the Parties, by a vessel registered, recorded or listed with a Party, or leased by or chartered to an enterprise established in the territory of a Party, and entitled to fly its flag.

(g) goods produced on board a factory ship from the goods referred to in subparagraph (f), provided such factory ship is registered, recorded or listed with a Party, or leased by or chartered to an enterprise established in the territory of a Party, and entitled to fly its flag;

(h) goods other than fish, shellfish and other marine life, taken or extracted from the seabed, ocean floor or subsoil, outside the territories of the Parties by a Party or a person of a Party, provided that such Party or person of such Party has rights to exploit such seabed, ocean floor or subsoil;

(i) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in a non-Party;

(j) waste and scrap derived from:

(i) production in the territory of one or both of the Parties, or

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

(k) recovered goods collected in the territory of one or both of the Parties and used in the territory of one or both Parties in the production of remanufactured goods; and

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

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

(a) fuel and energy;

(b) tools, dies and moulds;

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

(d) lubricants, greases, compounding materials and other materials used in the production or the operation of equipment and buildings;

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

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

(g) catalysts and solvents; and

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

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

listed with a Party means a foreign registered vessel bare-boat chartered in accordance with the domestic law of a Party and whose registration in the foreign country is suspended for the duration of the charter;

material means any ingredient, component, part or other good that is used in the production of another good

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

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

non-allowable interest costs means interest costs incurred by a producer that exceed 700 basis points above the applicable national government interest rate identified for comparable maturities;

non-originating good or non-originating material means a good or material that does not qualify as originating under this Chapter;

other costs means all costs recorded on the books of the producer that are not product costs or period costs;

period costs means those costs other than product costs that are expensed in the period in which they are incurred, including selling expenses and general and administrative expenses;

product costs means those costs that are associated with the production of a good and include the value of materials, direct labour costs and direct overhead;

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

producer means a person who grows, mines, extracts, harvests, raises, fishes, hunts, traps, manufactures, processes, assembles or disassembles a good;

reasonably allocate means to apportion in a manner appropriate to the circumstances;

recovered good means a material in the form of an individual part that is the result of:

(a) the disassembly of a used good fit only for such recovery into individual parts, and

(b) cleaning, inspecting, testing or other processes as necessary for improvement to working condition;

royalties means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

(a) personnel training, without regard to where performed; and

(b) if performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services, or other services;

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

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

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

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

(d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

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

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centres, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

section means a section of the Harmonized System; and

shipping and packing costs means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding costs of preparing and packaging the good for retail sale;

tariff provision means a chapter, heading or subheading of the Harmonized System;

total cost means all product costs, period costs and other costs for a good incurred in the territory of one or both of the Parties. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

transaction value means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Agreement to include, *inter alia*, such costs as commissions, production assists, royalties or license fees;

transaction value of the good, transaction value of the set or **transaction value of the set or assortment** means:

(a) the transaction value of a good when sold by the producer at the place of production; or

(b) the customs value of that good;

and adjusted, if necessary, to exclude any costs incurred subsequent to the good leaving the place of production, such as freight and insurance.

CHAPTER FOUR

ORIGIN PROCEDURES AND TRADE FACILITATION

Section A - Origin Procedures

Article 401: Certificate of Origin

1. The Parties shall establish, no later than the date of entry into force of this Agreement, a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good. The Certificate of Origin may thereafter be modified as the Parties may decide.

2. Each Party shall permit the Certificate of Origin to be provided to its respective competent authority in English, French or Spanish. Nonetheless, each Party may require the importer to submit a translation of the Certificate of Origin into a language required by its domestic law.

3. Each Party shall:

(a) require an exporter in its territory to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment upon importation of the good into the territory of the other Party; and

(b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:

(i) its knowledge of whether the good qualifies as an originating good, based on information in the exporter’s possession,

(ii) its reasonable reliance on the producer's written representation that the good qualifies as an originating good, or

(iii) a completed and signed Certificate of Origin for the good, voluntarily provided to the exporter by the producer.

4. Each Party shall permit a Certificate of Origin to apply to:

(a) a single importation of one or more goods into the Party’s territory; or

(b) multiple importations of identical goods into the Party's territory that occur within a specified period not exceeding 12 months.

5. Each Party shall ensure that the Certificate of Origin is accepted by its competent authority for 4 years after the date on which the Certificate of Origin was signed.

Article 402: Obligations Regarding Importations

1. Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) make a written declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good;

(b) have the Certificate of Origin in its possession at the time the declaration is made;

(c) provide, on the request of that Party's competent authority, the Certificate of Origin and, if required by that competent authority, such other documentation relating to the importation of the good in accordance with the domestic law of the importing Party; and

(d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct.

2. For the purpose of subparagraph 1(c), where the competent authority of the importing Party determines that the Certificate of Origin has not been completed in accordance with Article 401, the importing Party shall ensure that the importer is granted no less than five working days to provide the competent authority with a corrected Certificate of Origin.

3. Where an importer claims preferential tariff treatment for a good imported from the territory of the other Party:

(a) the importing Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Chapter; and

(b) the importing Party shall not subject the importer to penalties for making an incorrect declaration if the importer voluntarily makes a correction of the declaration pursuant to subparagraph 1(d).

4. Each Party, through its competent authority, may require an importer to demonstrate that a good for which the importer claims preferential tariff treatment was shipped in accordance with Article 314 (Rules of Origin - Transit and Transshipment) by providing:

(a) bills of lading or waybills indicating the shipping route and all points of shipment and transhipment prior to the importation of the good; and

(b) where the good is shipped through or transhipped outside the territories of the Parties, a copy of the customs control documents indicating to that competent authority that the good remained under customs control while outside the territories of the Parties.

5. Where a good would have qualified as an originating good when it was imported into the territory of a Party, but no claim for preferential tariff treatment was made at the time of importation, the importing Party shall permit the importer, within no less than one year after the date of importation or for such longer period specified by the importing Party's law, to make a claim for preferential tariff treatment and apply for a refund of any excess duties paid as a result of the good not having been granted preferential tariff treatment, on presentation to the importing Party of:

(a) a written declaration stating that the good was originating at the time of importation;

(b) the Certificate of Origin; and

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

Article 403: Exceptions

A Party shall not require a Certificate of Origin for:

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

(b) an importation of a good for which the importing Party has waived the requirement for a Certificate of Origin,

provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 401 and 402.

Article 404: Obligations Regarding Exportations

1. Each Party shall provide that:

(a) on request of its competent authority, an exporter in its territory, or a producer in its territory that has provided a Certificate of Origin to that exporter in accordance with subparagraph 3(b)(iii) of Article 401, shall provide a copy of the Certificate of Origin to that competent authority;

(b) where an exporter or a producer in its territory has provided a Certificate of Origin and has reason to believe that the Certificate of Origin contains or is based on incorrect information, the exporter or producer shall promptly notify in writing any change that could affect the accuracy or validity of the Certificate of Origin to every person to whom the exporter or producer has provided the Certificate of Origin; and

(c) a false certification by an exporter or a producer in its territory that a good to be exported to the territory of the other Party is originating shall be subject to penalties equivalent to those that would apply to an importer in the territory of the exporting Party that makes a false statement or representation in connection with an importation, with appropriate modifications.

2. Each Party may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

3. Neither Party may impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to subparagraph 1(b) with respect to the making of an incorrect certification.

Article 405: Records

1. Each Party shall provide that an exporter or a producer in its territory that provides a Certificate of Origin in accordance with Article 401 shall maintain, for a minimum of 5 years after the date the certification was issued or for such longer period as specified in the Party's laws and regulations, all records necessary to demonstrate that the good for which the producer or exporter provided the Certificate of Origin was an originating good, including records concerning:

(a) the purchase of, cost of, value of, shipping of and payment for, the exported good;

(b) the purchase of, cost of, value of, and payment for all materials, including indirect materials, used in the production of the exported good; and

(c) the production of the good in the form in which it was exported.

2. Each Party shall require an importer claiming preferential tariff treatment for a good imported into its territory to maintain documentation relating to the importation of the good, including a copy of the Certificate of Origin, for five years after the date of importation of the good or for such longer period as specified in the Party's laws and regulations.

3. Where a Party requires importers, exporters and producers in its territory to maintain documentation or records in relation to the origin of a good, in accordance with that Party's laws and regulations, it shall permit them to do so in any medium, provided that the documentation or records can be retrieved and printed.

4. A Party may deny preferential tariff treatment to a good that is the subject of an origin verification where the exporter, producer or importer of the good that is required to maintain records or documentation under this Article:

(a) fails to maintain records or documentation relevant to determining the origin of the good in accordance with the requirements of the Chapter; or

(b) denies access to such records or documentation.

Article 406: Origin Verifications

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

(a) verification letters that request information from the exporter or producer of the good in the territory of the other Party;

(b) written questionnaires to the exporter or producer of the good in the territory of the other Party;

(c) visits to the premises of an exporter or producer in the territory of the other Party to review the records referred to in paragraph 1 of Article 405 and observe the facilities used in the production of the good; or

(d) such other procedures as the Parties may agree.

2. For purposes of verifying the origin of a good, the importing Party may request the importer of the good to voluntarily obtain and supply written information voluntarily provided by the exporter or producer of the good in the territory of the other Party, provided that the importing Party shall not consider the failure or refusal of the importer to obtain and supply such information as a failure of the exporter or producer to supply the information or as a ground for denying preferential tariff treatment.

3. Each Party shall allow an exporter or producer who receives a verification letter or a questionnaire pursuant to subparagraphs 1(a) and (b) no less than 30 days from the date of receipt of such letter or questionnaire to provide the information and documentation required or the completed questionnaire. On written request by the exporter or producer made during that period, the importing Party may grant the exporter or producer a single extension of the deadline for no more than 30 days.

4. Where an exporter or producer fails to provide the information and documentation required by a verification letter or fails to return a duly completed questionnaire within the period or extension set out in paragraph 3, an importing Party may deny preferential tariff treatment to the good in question in accordance with the procedures set out in paragraphs 15 and 16.

5. Prior to conducting a verification visit pursuant to subparagraph 1(c), a Party shall, through its competent authority:

(a) deliver a written notification of its intention to conduct the visit:

(i) to the exporter or producer whose premises are to be visited,

(ii) to the competent authority of the Party in whose territory the visit is to occur, and

(iii) if requested by the Party in whose territory the visit is to occur, to the embassy of that Party in the territory of the Party proposing to conduct the visit; and

(b) obtain the written consent of the exporter or producer whose premises are to be visited.

6. The notification referred to in paragraph 5 shall include:

(a) the name of the entity issuing the notification;

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

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

(d) the scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;

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

(f) the legal authority for the verification visit.

7. Where, within 30 days of receipt of a notification pursuant to paragraph 5, an exporter or producer has not given its written consent to a proposed verification visit, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

8. The Party whose competent authority receives notification pursuant to subparagraph 5(a)(ii) may, within 15 days of receipt of the notification, postpone the proposed verification visit for no more than 60 days from the date of such receipt or for such longer period as the Parties may decide.

9. Each Party shall allow, when the exporter or producer receives notification pursuant to subparagraph 5(a)(i), the exporter or producer to, on a single occasion, within 15 days of receipt of the notification, request the postponement of the proposed verification visit for no more than 60 days from the date of such receipt or for such longer period as agreed to by the notifying Party.

10. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraphs 8 or 9.

11. A Party shall permit an exporter or a producer whose good is the subject of a verification visit by the other Party to designate two observers to be present during the visit, provided that:

(a) the observers shall only participate as such; and

(b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

12. Where a Party conducts a verification of origin involving a value test, *"de minimis"* calculation or any other provision in Chapter Three (Rules of Origin) to which Generally Accepted Accounting Principles may be relevant, it shall apply such principles as are applicable in the territory of the other Party.

13. Where the producer of a good calculates the net cost of the good as set out in Article 303 (Rules of Origin - Value Test), the importing Party shall not verify, during the time period over which the net cost is being calculated, whether the good satisfies the value test.

14. The Party conducting a verification shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

15. Where a Party determines as a result of an origin verification that the good that is the subject of the verification does not qualify as an originating good, the Party shall include in its written determination under paragraph 14 a written notice of intent to deny preferential tariff treatment of the good.

16. A written notice of intent under paragraph 15 shall provide for no less than 30 days during which the exporter or producer of the good may provide, with regard to that determination, written comments or additional information that will be taken into account by the Party prior to completing the verification.

17. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter Three (Rules of Origin), in accordance with the Party's domestic law.

18. Where, in conducting a verification of origin of a good imported into its territory under this Article, a Party conducts a verification of the origin of a material that is used in the production of the good, the Party shall conduct the verification of the origin of the material in accordance with the procedures set out in paragraphs 1, 2, 3, 5, 6, 8, 9, 10, 11, 12, 13 and 20.

19. Where a Party conducts a verification pursuant to paragraph 18, the Party may consider the material to be non-originating in determining whether the good is an originating good where the producer or supplier of that material does not allow the Party access to information required to make a determination of whether the material is an originating material by the following or other means:

(a) denial of access to its records;

(b) failure to respond to a verification questionnaire or letter; or

(c) refusal to consent, within 30 days of receipt of notification under paragraph 5, to a verification visit.

20. For the purposes of this Article, the importing Party shall ensure that all communication to the exporter or producer and to the Party of export be sent by any means that can produce a confirmation of receipt. The periods referred to in this article will begin from the date of such receipt.

Article 407: Uniform Regulations

1. The Parties may establish and implement, through their respective laws, regulations or administrative policies, Uniform Regulations regarding the interpretation, application and administration of this Chapter.

2. Each Party shall implement any modification of or addition to the Uniform Regulations within such period as the Parties may agree.

Section B: Trade Faciliation

Article 408: Objectives and Principles

With the objectives of facilitating trade under this Agreement and cooperating in pursuing trade facilitation initiatives on a multilateral basis, the Parties agree to administer their import and export processes for goods traded under this Agreement on the basis that:

(a) procedures be efficient to reduce costs for importers and exporters and simplified where appropriate to achieve such efficiencies;

(b) procedures be based on any international trade instruments or standards to which the Parties have agreed;

(c) entry procedures be transparent to ensure predictability for importers and exporters;

(d) measures to facilitate trade also support mechanisms to protect persons through effective enforcement of and compliance with national requirements;

(e) the personnel and procedures involved in those processes reflect standards of integrity;

(f) the development of significant modifications to procedures of a Party include, in advance of implementation, consultations with the representatives of the trading community of that Party;

(g) procedures be based on risk assessment principles to focus compliance efforts on transactions that merit attention, thereby promoting effective use of resources and encouraging compliance with the obligations of importers and exporters; and

(h) the Parties encourage cooperation, technical assistance and the exchange of information, including information on best practices, for the purpose of promoting the application of and compliance with the trade facilitation measures agreed upon under this Agreement.

Article 409: Transparency

1. In addition to the obligations set out in Section A of Chapter Nineteen (Transparency), each Party shall:

(a) publish, including on the internet, its customs laws, customs regulations and general administrative procedures governing customs matters; and

(b) to the extent possible, publish in advance, including on the internet, any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.

2. Each Party shall designate or maintain one or more contact points to address inquiries by interested persons concerning customs matters and make available on the internet information concerning the procedures for making such inquiries. A Party may provide that such contact points be contacted by any means, including electronic mail.

Article 410: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures:

(a) for the release of goods within a period no greater than that required to ensure compliance with its law;

(b) that allow goods, and to the greatest extent possible controlled or regulated goods, to be released at the first point of arrival, without temporary transfer to warehouses or other facilities; and

(c) that allow importers to withdraw goods from customs before all applicable customs duties, taxes and fees have been paid. Before releasing the goods, a Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of the customs duties, taxes or fees in connection with the importation of the goods.

3. Each Party shall, to the greatest extent possible, ensure that its authorities and agencies involved in border and other export and import controls cooperate and coordinate to facilitate trade by, *inter alia*, converging import and export data and documentation requirements, and establishing a single location for one-time documentary and physical verification of consignments.

4. Each Party shall adopt or maintain procedures under which goods in need of emergency clearance may be released 24 hours a day, seven days a week, including on holidays.

5. Each Party shall ensure that the requirements of its agencies related to the import and export of goods are coordinated to facilitate trade, regardless of whether these requirements are administered by an agency or on behalf of that agency by the customs administration. In furtherance of this objective, each Party shall harmonize the data requirements of its respective agencies with the objective of allowing importers and exporters to present all required data to one agency.

6. Each Party shall establish means of consultation with its trade and business communities to promote greater cooperation and the electronic exchange of information between the Party and those communities.

Article 411: Automation

Each Party shall use information technologies that expedite procedures for the release of goods and shall:

(a) establish a means of providing for the electronic exchange of information between customs administrations and the trading community for the purpose of encouraging rapid release procedures;

(b) use international standards for such electronic exchange of information;

(c) develop electronic systems that are compatible as between the Parties' respective customs authorities to facilitate government-to-government exchange of international trade data;

(d) develop a set of common data elements and processes in accordance with WCO Customs Data Model and related WCO recommendations and guidelines;

(e) provide for advance electronic submission and processing of information and data before arrival of the goods to allow for release of goods on arrival;

(f) employ electronic or automated systems for risk analysis and targeting; and

(g) work towards developing or maintaining a fully interconected and compatible system for a single window in order to facilitate trade between the Parties.

Article 412: Risk Management

1. Each Party shall facilitate and simplify the processes and procedures for the release of low-risk goods, and shall improve controls on the release of high-risk goods. For these purposes, each Party shall base its examination and release procedures and its post-entry verification procedures on risk assessment principles, rather than examining each and every shipment offered for entry in a comprehensive manner for compliance with all import requirements. This shall not preclude a Party from conducting quality control and compliance reviews, which may require more extensive examinations.

2. The Parties shall cooperate to carry out an express and efficient release of goods. To this end, the Parties should take into account any certification made in the Party of export relating to the supply chain trade.

Article 413: Paperless Trade Administration

1. Each Party shall endeavour to make available by electronic means customs forms that are required for the import or export of goods.

2. Each Party shall, in accordance with its domestic law and procedures, permit the customs forms referred to in paragraph 1 to be submitted in electronic format.

Article 414: Cooperation

1. The Parties shall endeavour to cooperate in international fora, such as the WCO, to achieve mutually-recognized goals, such as those set out in the WCO Framework of Standards to Secure and Facilitate Global Trade.

2. The Parties recognize that technical cooperation between the Parties is fundamental to facilitating compliance with the obligations set forth in this Agreement and for reaching a better degree of trade facilitation.

3. The Parties, through their respective competent authorities, agree to develop a technical cooperation program in customs-related areas under mutually agreed terms, including scope, timing and cost of cooperative measures.

4. The Parties shall cooperate:

(a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement;

(b) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade and the standardization of data elements;

(c) to the extent practicable, in the harmonization of customs laboratories' methods and exchange of information and personnel between the customs laboratories;

(d) to the extent practicable, in jointly organizing training programs on customs-related issues, such as simulated audit environment exercises, for the officials and users who participate directly in customs procedures;

(e) in the development of effective mechanisms for communicating with the trade and business communities;

(f) to the extent practicable, in developing verification standards and a framework to ensure that both Parties act consistently in determining that goods imported into their territories are originating in accordance with Chapter Three (Rules of Origin); and

(g) to the extent practicable, to exchange information to assist each other in the tariff classification, valuation and determination of origin for preferential tariff treatment and country of origin marking purposes of imported and exported goods.

5. With respect to goods considered originating in accordance with Article 306 (Rules of Origin - Accumulation), the Parties may cooperate with a non-Party to develop procedures based on the principles of this Chapter.

6. Where a Party has reasonable grounds to suspect that an offence related to a fraudulent claim for preferential tariff treatment pursuant to this Agreement has occurred, it may request the other Party to provide it with information pertaining to the offence, such as:

(a) the name and address of persons and companies relevant to the investigation of the offence;

(b) shipping information relevant to the offence;

(c) customs clearance and accounting records or equivalent records for goods or materials imported into the territory of the Party;

(d) information related to the sourcing of materials, including indirect materials used in the production of goods exported from its territory; and

(e) information related to production capacity of an exporter or producer who has exported goods to the territory of the other Party.

7. Where a Party makes a request pursuant to paragraph 6, it shall:

(a) make its request in writing;

(b) specify the grounds for suspicion of a fraudulent claim for preferential tariff treatment that has been made pursuant to this Agreement and the purposes for which the information is sought; and

(c) identify the requested information with sufficient detail for the other Party to locate and provide the information.

8. Following the receipt of a request for information pursuant to paragraphs 6 and 7, a Party shall provide relevant information in accordance with its domestic law.

9. Officials of a Party may, with the consent of the other Party, contact or visit an exporter, supplier or producer in the territory of the other Party in order to obtain information to further an investigation related to a suspected fraudulent claim for preferential tariff treatment made pursuant to this Agreement.

10. Each Party shall, where possible on its own initiative, provide the other Party with information relating to fraudulent claims for preferential treatment made pursuant to this Agreement.

11. For the purposes of this Article, all documents provided by a Party shall be considered authentic.

12. Where a Party declines or postpones sharing information requested by the other Party pursuant to this Article, the Party shall provide reasons to the other Party.

13. The Parties shall explore negotiating policies and procedures on customs cooperation, such as a Customs Mutual Assistance Agreement.

Article 415: Confidentiality

1. Each Party shall maintain, in accordance with its domestic law, the confidentiality of the information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information. Where the Party receiving the information is required by its law to disclose information, that Party shall notify the Party or person who provided that information.

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

3. Notwithstanding paragraph 2, information collected pursuant to this Chapter or Chapter Three (Rules of Origin) may be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs related laws and regulations implementing Chapter Three (Rules of Origin) and this Chapter. A Party shall notify the person or Party who provided the information in advance of such use.

Article 416: Express Shipments

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

(a) where applicable, use the WCO *Guidelines for the Immediate Release of Consignments by Customs*;

(b) to the extent possible or where applicable, provide for advance electronic submission and processing of information before physical arrival of express shipments to enable their release upon arrival;

(c) to the extent possible, provide for clearance of certain goods with a minimum of documentation;

(d) provide for release of express shipments within a period no greater than that required to ensure compliance with its legislation;

(e) not be limited by a maximum weight; and

(f) consistent with the Party's legislation, provide simplified documentary requirements for the entry of low value goods as determined by that Party.

Article 417: Review and Appeal

Each Party shall, in accordance with its domestic law, ensure that decisions[1] made pursuant to this chapter, are subject to:

(a) at least one level of administrative review independent of either the official or office responsible for the decision under review; and

(b) judicial or quasi-judicial review of the decision taken at the final level of administrative review.

Article 418: Penalties

Each Party shall adopt or maintain measures that allow for the imposition of criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.

Article 419: Advance Rulings

1. Each Party shall, through its competent authority, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of the other Party, or its duly authorized representative as provided by domestic law, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning:

(a) tariff classification, applicable rate of customs duty, any tax applicable on importation or information about the application of quotas;

(b) whether a good re-entered into the territory of a Party after being temporarily exported to the territory of the other Party for repair or alteration qualifies for duty-free treatment in accordance with Article 205 (National Treatment and Market Access for Goods - Goods Re-Entered After Repair or Alteration);

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[1] For Colombia, for purposes of this Article, “decisions” means an administrative act.

(c) whether a good is originating in accordance with Chapter Three (Rules of Origin);

(d) such other matters as the Parties may decide upon.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling and, where practical and useful, a sample of the good.

3. Each Party shall provide that its competent authority:

(a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information to be provided within no less than 30 days, from the person requesting the ruling;

(b) shall, after it has obtained all necessary information from the person requesting an advance ruling, issue the ruling within 120 days; and

(c) shall provide to the person requesting the ruling a full explanation of the reasons for the ruling.

4. Where application to a Party's competent authority for an advance ruling involves an issue that is the subject of:

(a) a verification of origin;

(b) a review by or appeal to the competent authority; or

(c) judicial or, where applicable, quasi-judicial review, in that Party's territory,

the competent authority may decline or postpone the issuance of the ruling.

5. Each Party shall provide that an advance ruling shall be in effect from its date of issuance, or another date specified in the ruling, and will remain in effect unless relevant facts or circumstances change. Each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such later date as may be specified in the ruling.

6. Each Party shall provide consistent treatment with respect to the application for advance rulings, provided that the facts and circumstances are identical in all material respects.

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

8. Each Party shall provide that, where an importer claims that the preferential tariff treatment granted to an imported good should be governed by an advance ruling, the competent authority may evaluate whether the facts or circumstances of the importation are consistent with those on which the advance ruling was based.

Article 420: Trade Facilitation Sub-Committee

1. The Parties hereby establish a Sub-Committee on Trade Facilitation, which shall meet on request of the Committee on Trade in Goods or upon request of either Party. The functions of the Sub-Committee shall include:

(a) proposing to the Committee on Trade in Goods the adoption of customs practices and standards that facilitate commercial exchange between the Parties, in accordance with international standards;

(b) proposing to the Committee on Trade in Goods solutions to disagreements related to:

(i) interpretation, application and administration of this Chapter,

(ii) tariff classification and customs valuation matters related to determinations of origin, and

(iii) practices and procedures adopted by either Party that may affect the flow of trade between the Parties;

(c) any other matter considered appropriate by the Committee on Trade in Goods.

2. If the Sub-Committee on Trade Facilitation does not reach a decision on tariff classification, the Parties shall refer the matter to the WCO for decision. The Parties shall, to the greatest extent possible, apply that decision.

Article 421: Future Work Program

1. With the objective of developing further steps to facilitate trade under this Agreement, the Parties shall, as appropriate, identify and submit for the consideration of the Commission new measures aimed at facilitating trade between the Parties, taking as a basis the objectives and principles set forth in Article 408.

2. Through the Parties' respective customs administrations and other border-related authorities as appropriate, the Parties shall review relevant international initiatives on trade facilitation, such as the Compendium of Trade Facilitation Recommendations, developed by the United Nations Conference on Trade and Development and the United Nations Economic Commission for Europe, to identify areas where further joint action would facilitate trade between the Parties and promote shared multilateral objectives.

Article 422: Implementation

The obligations in Article 412 and Article 413 shall take effect for Colombia two years after the date of entry into force of this Agreement.

Article 423: Definitions

For purposes of this Chapter:

competent authority means:

(a) with respect to Canada, the Canada Border Services Agency or its successor notified in writing to the other Party;

(b) with respect to Colombia, the *Ministerio de Comercio, Industria y Turismo*, or the *Dirección de Impuestos y Aduanas Nacionales*, or their successors notified in writing to the other Party;

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

identical goods means goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods under Chapter Three (Rules of Origin);

pattern of conduct means at least two instances of false or unsupported representations by an exporter or producer of a good resulting in at least two written determinations being sent to that exporter or producer;

WCO means the World Customs Organization.

The following terms shall be interpreted as defined in Chapter Three (Rules of Origin):

(a) indirect material;

(b) material;

(c) net cost of a good;

(d) producer;

(e) production; and

(f) customs value.

CHAPTER FIVE

SANITARY AND PHYTOSANITARY MEASURES

Article 501: Objectives

1. The objectives of this Chapter are to:

(a) protect human, animal and plant life or health in the territory of each Party;

(b) ensure that the Parties' sanitary and phytosanitary measures do not create unjustified barriers to trade; and

(c) enhance the implementation of the SPS Agreement.

Article 502: Scope and Coverage

This Chapter applies to all sanitary and phytosanitary measures that may, directly or indirectly, affect trade between the Parties.

Article 503: Relation to other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.

2. The Parties agree to use the WTO dispute settlement procedures for any formal disputes regarding sanitary and phytosanitary measures.

Article 504: Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures, comprising representatives of each Party from the relevant trade and regulatory agencies, ministries or other institutions who have responsibilities for sanitary and phytosanitary matters.

2. The Committee shall consider, *inter alia*:

(a) the design, implementation and review of technical and institutional co-operation programs;

(b) consultations related to the development and application of sanitary and phytosanitary measures;

(c) as needed and taking into account guidelines developed or being developed by the WTO Committee on Sanitary and Phytosanitary Measures, the Committees of the Codex Alimentarius Commission, the International Plant Protection Convention (IPPC), and the World Organization for Animal Health (OIE), the development of guidelines for the practical implementation of:

(i) mutual recognition and equivalence agreements,

(ii) the recognition of pest-or disease-free areas,

(iii) risk assessment procedures, or

(iv) product control, inspection and approval procedures;

(d) the review and assessment of progress of specific bilateral sanitary and phytosanitary market access issues;

(e) the promotion of enhanced transparency of sanitary and phytosanitary measures;

(f) the identification and resolution of sanitary and phytosanitary-related problems;

(g) the promotion of bilateral consultations on sanitary and phytosanitary issues under discussion in multilateral and international fora such as the WTO SPS Committee, the Committees of the Codex Alimentarius Commission, the IPPC, the OIE, and other international and regional fora on food safety, human, animal, and plant health; and

(h) the establishment of ad hoc technical working groups, as needed.[1]

3. Unless the Parties otherwise agree, the Committee shall meet no later than six months following the entry into force of this Agreement. The Committee shall establish its rules of procedures and work program at that meeting.

4. Following its initial meeting, the Committee shall meet as required, normally on an annual basis, and report on its activities and work program to the Commission as necessary. The Committee may meet in person, through teleconference, videoconference, or by any other means that ensures its effective operation and the fulfilment of its responsibilities.

5. Upon entry into force of this Agreement, each Party shall designate a Contact Point to coordinate the Committee's agenda and to facilitate communications on trade-related sanitary and phytosanitary matters.

Article 505: Sanitary and Phytosanitary Issue Avoidance and Resolution

1. The Parties agree to work expeditiously to resolve any specific sanitary and phytosanitary trade-related issues and, to this end, commit to carry out the necessary technical level discussions to resolve any such issue including an assessment of the scientific basis of the measure at issue.

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[1] As used in subparagraphs (b) and (g), "consultations" does not mean consultations pursuant to Article 2104 (Dispute Settlement - Consultations).

2. The Parties agree to avail themselves of all reasonable options to avoid and resolve sanitary and phytosanitary issues, including meeting in person, using technological means (via teleconference, videoconference) and opportunities that may arise in international fora.

3. In the event that the Parties are unable to resolve an issue expeditiously by technical level discussions, a Party may refer the issue to the Committee. The Committee should consider any matter referred to it as expeditiously as possible.

4. Pursuant to paragraph 3, in the event that the Committee is unable to resolve an issue expeditiously, the Committee shall, upon request of a Party, report promptly to the Commission on the matter.

CHAPTER SIX

TECHNICAL BARRIERS TO TRADE

Article 601: Objectives

The objectives of this Chapter are to:

(a) improve the implementation of the TBT Agreement;

(b) ensure that standards, technical regulations, and conformity assessment procedures, including those related to metrology, do not create unnecessary obstacles to trade; and

(c) enhance joint cooperation between the Parties in order to resolve specific issues related to the development and application of standards, technical regulations and conformity assessment procedures, thereby facilitating the conduct of international trade in goods.

Article 602: Affirmation of the TBT Agreement

Further to Article 102 (Initial Provision and General Definitions - Relation to Other Agreements), the Parties affirm with respect to each other their existing rights and obligations under the TBT Agreement.

Article 603: Scope

1. The provisions of this Chapter apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures, including those related to metrology, of national government bodies, that may affect the trade in goods between the Parties.

2. This Chapter does not apply to:

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

(b) sanitary and phytosanitary measures.

Article 604: Joint Cooperation

1. The Parties shall strengthen their joint cooperation in the areas of standards, technical regulations, conformity assessment and metrology with a view to facilitating the conduct of trade between the Parties.

2. Pursuant to paragraph 1, the Parties shall seek to identify, develop and promote bilateral initiatives regarding standards, technical regulations, conformity assessment procedures and metrology that are appropriate for particular issues or sectors, taking into consideration the Parties' experience in regional and multilateral arrangements or agreements. Such initiatives may include:

(a) regulatory or technical cooperation programs directed at reaching effective and full compliance with the obligations set forth in this Chapter and the TBT Agreement;

(b) initiatives to develop common views on good regulatory practices such as transparency, the use of equivalency and regulatory impact assessment; and

(c) the use of mechanisms to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party's territory.

3. A Party shall give positive consideration to any reasonable sector-specific proposal made by the other Party for further cooperation under this Chapter.

Article 605: International Standards

1. Each Party shall use relevant international standards, guides and recommendations as a basis for its technical regulations and conformity assessment procedures in accordance with Articles 2.4 and 5.4 of the TBT Agreement.

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

3. Each Party shall encourage its national standardizing bodies to cooperate with the relevant national standardizing bodies of the other Party in international standardizing activities. Such cooperation may take place through the Parties' activities in regional and international standardizing bodies of which they are both members.

Article 606: Technical Regulations

1. Each Party shall give positive consideration to accepting technical regulations of the other Party as equivalent to its own, even if the regulations differ from its own, provided it is satisfied that the regulations adequately fulfil the objectives of its own regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, at the request of the other Party, explain its decision. The Parties recognize that it may be necessary to develop common views, methods and procedures to facilitate the use of equivalency.

3. At the request of a Party that has an interest in developing a technical regulation similar to that of the other Party, the other Party shall provide, to the extent practicable, relevant information, studies, or other documents, except for confidential information, on which it has relied in the development of the technical regulation. The Parties recognize that it may be necessary to agree on the scope of a specific request.

Article 607: Conformity Assessment

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

(a) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;

(b) a Party may recognize the results of conformity assessment procedures conducted in the territory of the other Party;

(c) a Party may agree with the other Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;

(d) a Party may designate conformity assessment bodies located in the territory of the other Party;

(e) a conformity assessment body located in the territory of a Party may enter into voluntary arrangements with a conformity assessment body located in the territory of the other Party to accept the results of each other's assessment procedures; and

(f) the importing Party may rely on a supplier's declaration of conformity.

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision so that corrective action may be taken, when appropriate, by the requesting Party.

3. Where a Party declines a request from the other Party to enter into negotiations to conclude an agreement for recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall explain the reasons for its decision.

4. Further to paragraph 2 of Article 604, the Parties shall cooperate by:

(a) exchanging information on the range of mechanisms that exist to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory;

(b) promoting the accreditation of conformity assessment bodies on the basis of relevant international standards and guides;

(c) promoting the acceptance of results of conformity assessment bodies that have been recognized under a relevant multilateral agreement or an arrangement between their respective accreditation systems or bodies; and

(d) encouraging their conformity assessment bodies, including accreditation bodies, to participate in cooperation arrangements that promote the acceptance of conformity assessment results.

Article 608: Transparency

1. Each Party shall ensure that transparency procedures regarding the development of technical regulations and conformity assessment procedures allow interested parties to participate at an early appropriate stage when amendments can still be introduced and comments taken into account, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Where a consultation process respecting the development of technical regulations and conformity assessment procedures is open to the public, each Party shall permit persons of the other Party to participate on terms no less favourable than those accorded to its own persons.

2. Each Party shall recommend to standardization bodies in its territory that they observe paragraph 1 with respect to their consultation processes for the development of standards and voluntary conformity assessment procedures.

3. Each Party shall transmit electronically to the other Party's enquiry point, established under Article 10 of the TBT Agreement, at the same time it submits its notification to the WTO Central Registry of Notifications in accordance with the TBT Agreement:

(a) its proposed technical regulations and conformity assessment procedures, and

(b) its technical regulations and conformity assessment procedures adopted to address urgent problems of safety, health, environmental protection or national security arising or threatening to arise.

4. Each Party shall transmit electronically to the other Party's enquiry point its proposed technical regulations and conformity assessment procedures that are in accordance with the technical content of the relevant international standards and that may have an effect on trade.

5. The transmission of technical regulations and conformity assessment procedures made pursuant to paragraphs 3 and 4 shall include an electronic link to, or a copy of, the full text of the notified document.

6. Further to subparagraph 3(a) and paragraph 4, each Party shall allow a period of at least 60 days following transmission of proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments. A Party shall give positive consideration to a reasonable request for extending the comment period.

7. Each Party shall publish or otherwise make publicly available, in print or electronically, its responses or a summary of its responses, to significant comments it receives, no later than the date it publishes the final technical regulation or conformity assessment procedure.

8. Each Party shall, upon request of the other Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure, that the Party has adopted or is proposing to adopt.

9. A Party shall give positive consideration to a reasonable request from the other Party, received prior to the end of the comment period following the transmission of a proposed technical regulation, to establish or extend the period of time between the adoption of the technical regulation and the day upon which it is applicable, except where such delay would be ineffective in fulfilling the legitimate objectives pursued.

10. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are published on official websites that are freely and publicly accessible.

11. Where a Party detains at a port of entry a good imported from the territory of the other Party on the ground that the good has failed to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention of the good.

12. Each Party shall implement this Article as soon as is practicable and under no circumstances later than two years from the date of entry into force of this Agreement.

Article 609: Country Coordinators on Technical Barriers to Trade

1. The Country Coordinators designated in Annex 609.1 shall work jointly to facilitate the implementation of this Chapter and the cooperation between the Parties on matters pertaining to this Chapter.

2. The Country Coordinators' functions include:

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

(b) promptly addressing any issue that a Party raises, under this Chapter or the TBT Agreement, related to the development, adoption or application of standards, technical regulations, or conformity assessment procedures;

(c) enhancing joint cooperation by the Parties in the development and improvement of standards, technical regulations, conformity assessment procedures and metrology;

(d) exchanging information on standards, technical regulations, and conformity assessment procedures;

(e) on a Party's written request, consulting on any matter arising under this Chapter;

(f) reviewing this Chapter in light of any developments under the TBT Committee or under the TBT Agreement, and, if necessary, developing recommendations for amendments to this Chapter;

(g) reporting to the Commission on the implementation of this Chapter as appropriate;

(h) establishing, if necessary to achieve the objectives of this Chapter, issue- or sector-specific *ad hoc* working groups;

(i) taking any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade between the Parties.

3. Consultations under subparagraph 2(e) shall constitute consultations under Article 2104 (Dispute Settlement - Consultations) and shall be governed by the procedures set out in that Article.

4. The Country Coordinator of each Party shall:

(a) be responsible for ensuring that the relevant institutions and persons in its territory participate, as appropriate, in the activities related to this Chapter and for coordinating such participation;

(b) elaborate their own work rules and shall meet at least once a year unless the Parties otherwise agree; and

(c) carry out their work through communication channels agreed to by the Parties, which may include electronic mail, videoconferencing or other means.

Article 610: Information Exchange

1. Where a Party makes a reasonable enquiry pursuant to the provisions of Articles 10.1 and 10.3 of the TBT Agreement, the other Party shall answer, in print or electronically, ordinarily within 30 days from the date of receipt of the enquiry, but may extend the period of time for answering by giving notice to the enquiring Party prior to the end of the 30 day period.

2. With respect to information exchanges referred to in paragraph 1, the Parties shall apply recommendations 3 and 4 of *Section IV (Procedure for information exchanges)* set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995*, G/TBT/1/Rev. 8, 23 May, 2002, issued by the TBT Committee.

Article 611: Definitions

For the purposes of this Chapter, the terms and definitions of Annex 1 of the WTO *Agreement on Technical Barriers to Trade* shall apply, and:

national government body means a central government body as defined in Annex 1 of the WTO *Agreement on Technical Barriers to Trade*;

TBT Agreement means the WTO *Agreement on Technical Barriers to Trade*; and

TBT Committee means the WTO Committee on Technical Barriers to Trade.

Annex 609.1

Country Coordinators on Technical Barriers to Trade

The Country Coordinators on Technical Barriers to Trade are:

(a) in the case of Colombia, *Ministerio de Comercio, Industria y Turismo* or its successor; and

(b) in the case of Canada, the Department of Foreign Affairs and International Trade, or its successor.

CHAPTER SEVEN

EMERGENCY ACTION AND TRADE REMEDIES

Section A - Emergency Action

Article 701: Article XIX of the GATT 1994 and the *Agreement on Safeguards*

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the *Agreement on Safeguards*, which shall exclusively govern global safeguard actions, including the resolution of any disputes in respect thereof.

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the *Agreement on Safeguards*, except that a Party taking a global safeguard measure may exclude imports of an originating good of the other Party if the competent investigating authority of that Party concludes that such imports are not a substantial cause of serious injury or threat thereof.

3. A Party may not apply or maintain with respect to the same good at the same time:

(a) an emergency action; and

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

Article 702: Imposition of an Emergency Action

1. A Party may apply an emergency action described in paragraph 2:

(a) during the transition period only; and

(b) if as a result of the reduction or elimination of a duty pursuant to this Agreement an originating good is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

2. If the conditions set out in paragraph 1 and Articles 703 and 704 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment:

(a) suspend the further reduction of any rate of duty provided for under this Agreement on the good; or

(b) increase the rate of duty on the good to a level not to exceed the lesser of:

(i) the most-favoured-nation (MFN) applied tariff rate in effect at the time the emergency action is taken, and

(ii) the base tariff rate as provided in the schedule to Annex 203.

Article 703: Notification and Consultation

1. A Party shall, in writing, promptly notify the other Party on and request consultations[1] in connection with:

(a) initiating an emergency action proceeding;

(b) making a finding of serious injury or threat thereof under the conditions set out in paragraph 1 of Article 702; and

(c) applying an emergency action.

[1] As used in this Article, "consultations" does not mean consultations pursuant to Article 2104 (Dispute Settlement - Consultations).

2. A Party shall, without delay, provide to the other Party a copy of the public version of any notice or any report by a competent investigating authority, issued in connection with matters notified pursuant to paragraph 1.

3. Upon request of a Party pursuant to paragraph 1, the Parties shall enter into consultations in order to review the notification under paragraph 1 or any document issued in connection with the emergency action proceeding.

4. Any emergency action shall be initiated no later than one year after the date of institution of the proceeding.

Article 704: Standards for an Emergency Action

1. No Party may maintain an emergency action:

(a) for a period exceeding three years; or

(b) beyond the expiration of the transition period.

2. No Party may apply an emergency action against a good originating in the territory of the other Party more than once.

3. On the termination of any emergency action, the rate of duty shall be the rate that, according to Annex 203 for the staged elimination of the tariff, would have been in effect but for the action.

4. In order to facilitate adjustment in a situation where the expected duration of an emergency action is over one year, the Party applying a measure under Article 702 shall progressively liberalize it at regular intervals during the period of application.

5. A Party taking an emergency action under Article 702 shall provide to the exporting Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to agree on compensation, the Party against whose goods the action is taken may take tariff action having trade effects substantially equivalent to the emergency action taken under Article 702. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects and in any event, only while the emergency action under Article 702 is being applied.

Article 705: Investigation Procedures and Transparency Requirements

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all emergency action proceedings.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in an emergency action proceeding to a competent investigating authority. Such determinations shall be subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. Each Party shall provide its competent investigating authority with the necessary resources to enable it to fulfil its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in paragraph 4 and 5 of this Article.

4. A Party shall apply an emergency action only following an investigation by the Party's competent authority in accordance with Articles 3, 4.2(b) and 4.2(c) of the *Agreement on Safeguards*. To this end, Articles 3, 4.2(b) and 4.2(c) of the *Agreement on Safeguards* are incorporated into and made part of this Agreement, *mutatis mutandis*.

5. In the investigation described in paragraph 3, a Party shall comply with the requirements of Article 4.2(a) of the *Agreement on Safeguards*. To this end, Article 4.2(a) of the *Agreement on Safeguards* is incorporated into and made part of this Agreement, *mutatis mutandis*.

Section B – Antidumping and Countervailing Measures

Article 706: Antidumping and Countervailing Measures

1. Each Party retains its rights and obligations under the WTO Agreement, which shall exclusively govern the application of antidumping and countervailing measures.

2. The WTO shall have exclusive jurisdiction in respect of the matters referred to in paragraph 1 and no provision of this Agreement, including the provisions of Chapter Twenty-One (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing measures.

Article 707: Definitions

For purposes of this Chapter:

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

competent investigating authority means:

(a) in the case of Canada, the Canadian International Trade Tribunal, or its successor; and

(b) in the case of Colombia, the *Subdirección de Prácticas Comerciales* of the *Ministerio de Comercio, Industria y Turismo*, or its successor;

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

emergency action means any emergency action described in Article 702;

serious injury means a significant overall impairment of a domestic industry;

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

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

transition period means the ten year period beginning on the entry into force of this Agreement, except where the tariff elimination for the good against which the action is taken occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good.

CHAPTER EIGHT

INVESTMENT

Section A – Investment

Article 801: Scope and Coverage

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

   (a) investors of the other Party;

   (b) covered investments; and

   (c) with respect to Articles 807, 815 and 816, all investments in the territory of the Party.

2. For greater certainty, the provisions of this Chapter do not bind a Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

3. Consistent with Articles 1305 (Competition Policy, Monopolies and State Enterprises – Designated Monopolies) and 1306 (Competition Policy, Monopolies and State Enterprises State Enterprises) the Parties confirm their understanding that nothing in this Chapter shall be construed to prevent a Party from designating a monopoly, or from maintaining or establishing a state enterprise.

Article 802: Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service into its territory does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to the cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Eleven (Financial Services).

4. Articles 904 (Cross-Border Trade in Services – Market Access) and 907 (Cross-Border Trade in Services – Domestic Regulation) are hereby incorporated into and made a part of this Chapter and apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment.[1]

Article 803: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

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[1] It is understood by the Parties that any reservation taken by a Party pursuant to Article 906 (Cross-Border Trade in Services – Non-Conforming Measures) against Article 904 (Cross-Border Trade in Services – Market Access) applies to measures of that Party covered under paragraph 4.

Article 804: Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

3. For greater clarity, treatment "with respect to establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments" referred to in paragraphs 1 and 2 does not encompass dispute resolution mechanisms, such as those in Section B of this Chapter, that are provided for in international treaties or trade agreements.

4. For greater certainty, the treatment accorded by a Party under this Article means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

Article 805: Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.[2] The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

[2] It is understood that the term "customary international law" refers to international custom, as evidence of a general practice accepted as law, in accordance with subparagraph 1(b) of Article 38 of the Statute of the International Court of Justice.

2. The obligation in paragraph 1 to provide "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 806: Compensation for Losses

1. Notwithstanding subparagraph 3(b) of Article 809, each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 803, but for subparagraph 3(b) of Article 809.

Article 807: Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of the other Party or of a non-Party in its territory to:[3]

(a) export a given level or percentage of goods or services;

(b) achieve a given level or percentage of domestic content;

(c) purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

[3] For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 3 does not constitute a "commitment or undertaking" for the purposes of paragraph 1.

(d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) transfer technology, a production process or other proprietary knowledge to a person in its territory;[4] or

(g) supply exclusively from the territory of the Party the goods that such investment produces or the services it supplies to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with subparagraph 1(f). For greater certainty, Articles 803 and 804 apply to the measure.

3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of the other Party or of a non-Party, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

[4] For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement or enforcing a commitment or undertaking to train workers in its territory, provided that such training does not require the transfer of technology, a production process, or other proprietary knowledge to a person in its territory.

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. (a) Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of the other Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Subparagraph 1(f) does not apply when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement[5] (c) For greater certainty, the Parties confirm their understanding that the exceptions in paragraph 3 of Article 2201 (Exceptions - General Exceptions) apply to performance requirements under this Article, including the exceptions concerning the protection of human animal or plant life or health, and the conservation of living or non-living exhaustible natural resources.

5. Paragraphs 1 and 3 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

6. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties.

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[5] The Parties recognize that a patent does not necessarily confer market power.

7. The provisions of:

(a) subparagraphs 1(a), (b) and (c), and 3(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;

(b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b), do not apply to procurement by a Party or a state enterprise; and

(c) subparagraphs 3(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

Article 808: Senior Management and Boards of Directors

1. A Party may not require that an enterprise of that Party that is a covered investment appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise that is a covered investment be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 809: Non-Conforming Measures

1. Articles 803, 804, 807 and 808 do not apply to:

(a) any existing non-conforming measure that is maintained by

(i) a national government, as set out in its Schedule to Annex I, or

(ii) a sub-national government,[6] as set out by Canada in its Schedule to Annex I, or

(iii) 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 immediately before the amendment, with Articles 803, 804, 807 and 808.

2. Articles 803, 804, 807 and 808 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

3. Articles 803, 804 and 808 do not apply to:

(a) procurement by a Party or a state enterprise; or

(b) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees, and insurance.

4. With respect to intellectual property rights, a Party may derogate from Articles 803, 804 and subparagraph 1(f) of Article 807 in a manner that is consistent with the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for both Parties, or waivers to the TRIPS Agreement made pursuant to Article IX of the WTO Agreement.

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[6] For purposes of this Article, sub-national government does not include local government.

Article 810: Transfers

1. Except as provided for in Annex 810, each Party shall permit all transfers relating to a covered investment to be made freely, and without delay, into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;

(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement;

(e) payments made pursuant to Articles 806 and 811; and

(f) payments arising under Section B.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

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

(b) issuing, trading or dealing in securities, including futures, options or derivatives thereof;

(c) criminal or penal offences;

(d) reports of transfers of currency or other monetary instruments; or

(e) ensuring compliance with orders or judgments in judicial, administrative or adjudicatory proceedings.

4. Neither Party may require its investors to transfer, or penalize its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party, provided that the investor is seeking to make, is making or maintains an investment in the territory of the other Party.

5. Paragraph 4 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters in subparagraphs (a) through (e) of paragraph 3.

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict transfers under the WTO Agreement and as set out in paragraph 3.

Article 811: Expropriation

1. Neither Party may nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation"), except:

(a) for a public purpose;[7]

(b) in a non-discriminatory manner;

(c) on prompt, adequate, and effective compensation in accordance with paragraphs 2 to 4; and

(d) in accordance with due process of law.

[7] The term "public purpose" is a concept of public international law and shall be interpreted in accordance with international law. Domestic law may express this or similar concepts using different terms, such as "social interest", "public necessity" or "public use".

2. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. To determine fair market value a Tribunal shall use appropriate valuation criteria, which may include going concern value, asset value including the declared tax value of tangible property, and other criteria.

3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of payment.

4. The investor affected shall have a right under the law of the expropriating Party, to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that Party in accordance with the principles set out in this Article.

5. This Article shall not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the WTO Agreement.

Article 812: Special Formalities and Information Requirements

1. Nothing in Article 803 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of covered investments, such as a requirement that agents of investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 803 and 804, a Party may require an investor of the other Party, or its covered investment, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 813: Subrogation

1. If a Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance against non-commercial risks it has entered into in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of the Party or agency thereof to any right or title held by the investor.

2. A Party or any agency thereof, which is subrogated to the rights of an investor in accordance with paragraph 1 of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. Such rights may be exercised by the Party or any agency thereof, or by the investor if the Party or any agency thereof so authorizes.

3. For greater certainty, paragraphs 1 and 2 shall be without prejudice to any right to subrogation that a Party or any agency thereof may have under applicable domestic law of the other Party.

Article 814: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of that investor if investors of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of that investor if investors of a non-Party or of the denying Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 815: Health, Safety and Environmental Measures

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party. The Parties shall make every attempt through consultations and exchange of information to address the matter.

Article 816: Corporate Social Responsibility

Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labour, the environment, human rights, community relations and anti-corruption. The Parties remind those enterprises of the importance of incorporating such corporate social responsibility standards in their internal policies.

Article 817: Committee on Investment

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

2. The Committee shall provide a forum for the Parties to consult on issues related to this Chapter that are referred to it by a Party.

3. The Committee shall meet at such times as agreed by the Parties and should work to promote cooperation and facilitate joint initiatives, which may address issues such as:

(a) capacity building, to the extent resources are available, in legal expertise on investor-State dispute settlement, investment negotiations and related advisory matters;

(b) promoting corporate social responsibility; and

(c) other investment-related issues identified as a priority by the Parties.

Section B – Settlement of Disputes between an Investor and the Host Party

Article 818: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter Twenty-One (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes.

Article 819: Claim by an Investor of a Party on Its Own Behalf

An investor of a Party may submit to arbitration under this Section a claim that the other Party has breached:

(a) an obligation under Section A, other than an obligation under paragraph 4 of Article 802, Articles 812, 815 or 816; or

(b) an obligation under subparagraph 3(a) of Article 1305 (Competition Policy, Monopolies and State Enterprises – Designated Monopolies) or paragraph 2 of Article 1306 (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under paragraph 4 of Article 802, Articles 812, 815 or 816,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

Article 820: Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached:

(a) an obligation under Section A, other than an obligation under paragraph 4 of Article 802, Articles 812, 815 or 816; or

(b) an obligation under subparagraph 3(a) of Article 1305 (Competition Policy, Monopolies and State Enterprises – Designated Monopolies) or paragraph 2 of Article 1306 (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under paragraph 4 of Article 802, Articles 812, 815 or 816,

and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 819 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 822, the claims should be heard together by a Tribunal established under Article 826, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

3. An investment may not make a claim under this Section.

Article 821: Conditions Precedent to Submission of a Claim to Arbitration

1. The disputing parties shall hold consultations and negotiations in an attempt to settle a claim amicably before a disputing investor may submit a claim to arbitration. Consultations shall be held within 30 days of the submission of the Notice of Intent to Submit a Claim to Arbitration under subparagraph 2(c), unless the disputing parties otherwise agree. Consultations and negotiations may include the use of non-binding, third-party procedures. The place of consultations shall be the capital of the disputing Party, unless the disputing parties otherwise agree.

2. A disputing investor may submit a claim to arbitration under Article 819 or Article 820 only if:

(a) the disputing investor and, where a claim is made under Article 820, the enterprise, consent to arbitration in accordance with the procedures set out in this Section;

(b) at least six months have elapsed since the events giving rise to the claim;

(c) the disputing investor has delivered to the disputing Party a written notice of its intent to submit a claim to arbitration (Notice of Intent) at least six months[8] prior to submitting the claim. The Notice of Intent shall specify:

(i) the name and address of the disputing investor and, where a claim is made under Article 820, the name and address of the enterprise,

(ii) the provisions of this Agreement alleged to have been breached and any other relevant provisions,

[8] With a view to encouraging the review, confirmation or modification of administrative acts prior to such acts becoming final, the Parties recognize that disputing investors should make every effort to exhaust administrative recourse under Colombian law. A disputing investor that fails to exhaust administrative recourse, where applicable, shall submit its Notice of Intent nine months prior to submitting a claim to arbitration.

(iii) the legal and the factual basis for the claim, including the measures at issue, and

(iv) the relief sought and the approximate amount of damages claimed;

(d) the disputing investor has delivered evidence establishing that it is an investor of the other Party with its Notice of Intent;

(e) in the case of a claim submitted under Article 819:

(i) not more than 39 months have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the disputing investor has incurred loss or damage thereby, and

(ii) the disputing investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the disputing investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the applicable law of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor’s or the enterprise´s rights and interests during the pendency of the arbitration; and

(f) in the case of a claim submitted under Article 820:

(i) not more than 39 months have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby, and

(ii) both the disputing investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the applicable law of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's or the enterprise's rights and interests during the pendency of the arbitration.

3. A consent and waiver required by this Article shall be in the form provided in Annex 821, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration. Where a disputing Party has deprived a disputing investor of control of an enterprise, a waiver from the enterprise under subparagraphs 2(e)(ii) or 2(f)(ii) shall not be required.

4. An investor may submit a claim relating to taxation measures covered by this Chapter to arbitration under this Section only if the taxation authorities of the Parties fail to reach the joint determinations specified in Article 2204 (Exceptions – Taxation) within six months of being notified in accordance with those provisions.

5. An investor of a Party who is also a national of a non-Party may not initiate or continue a proceeding under this Article if, as a national of the non-Party, it submits or has submitted, directly or indirectly, an investment claim with respect to the same measure or series of measures under any agreement between the other Party and that non-Party.

Article 822: Submission of a Claim to Arbitration

1. Except as provided in Annex 822, a disputing investor who meets the conditions precedent in Article 821 may submit the claim to arbitration under:

(a) the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

2. The Commission shall have the power to make rules supplementing the applicable arbitral rules and may amend any supplemental rules of its own making.[9] Such rules shall be binding on a Tribunal established under this Section, and on individual arbitrators serving on such a Tribunal.

3. The arbitration rules applicable under paragraph 1, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Section and supplemented by any rules adopted by the Commission under paragraph 2.

4. A claim is submitted to arbitration under this Section when:

(a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General; or

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[9] These supplemental rules shall further develop the existing arbitral rules referred to in paragraph 1.

(c) the notice of arbitration under Article 3 of the UNCITRAL Arbitration Rules is received by the disputing Party.

5. Delivery of notice and other documents on a Party shall be made to:

For Canada:

Office of the Deputy Attorney General of Canada
Justice Building
284 Wellington Street
Ottawa, Ontario
K1A 0H8, CANADA

For Colombia:

Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 # 13A – 15, Piso 3
Bogotá D.C. – COLOMBIA

6. The disputing investor shall provide with the request for arbitration or the notice of arbitration referred in paragraph 4:

(a) the name of the arbitrator that the disputing investor appoints; or

(b) the disputing investor's written consent for the Secretary-General to appoint that arbitrator.

Article 823: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Section. For greater certainty, failure to meet any of the conditions precedent listed in Article 821 shall nullify that consent.

2. The consent given in paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article II of the New York Convention for an agreement in writing; and

(c) Article I of the Inter-American Convention for an agreement.

Article 824: Arbitrators

1. Except in respect of a Tribunal established under Article 826, and unless the disputing parties agree otherwise, the Tribunal shall comprise three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a Tribunal, other than a Tribunal established under Article 826, has not been constituted within 90 days after the date that a claim is submitted to arbitration, either disputing party may ask the Secretary-General to appoint, in his or her discretion and, to the extent practicable, in consultation with the disputing parties, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall not be a national of either Party.

4. Arbitrators shall have expertise or experience in public international law, international investment or international trade rules, or the resolution of disputes arising under international trade or international investment agreements. Arbitrators shall be independent of, and not be affiliated with or take instructions from, either Party or the disputing investor.

5. If the disputing parties do not agree on the remuneration of the arbitrators before the constitution of the Tribunal, the prevailing ICSID rate for arbitrators shall apply.

Article 825: Agreement to Appointment of Arbitrators

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on paragraph 4 of Article 824 or on a ground other than citizenship or permanent residence:

(a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a disputing investor referred to in Article 819 may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor agrees in writing to the appointment of each member of the Tribunal; and

(c) a disputing investor referred to in Article 820 may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor and the enterprise agree in writing to the appointment of each member of the Tribunal.

Article 826: Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 822 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the terms of paragraphs 2 through 10 or with the agreement of all the disputing parties sought to be covered by the order.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a Tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a Tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the disputing investors;

(b) one arbitrator appointed by the disputing Party; and

(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the disputing Party fails or the disputing investors fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the disputing Party fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the disputing investors fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.

6. Where a Tribunal established under this Article is satisfied that two or more claims submitted to arbitration under Article 822 have a question of law or fact in common, and arise out of the same events or circumstances, the Tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

(c) instruct a Tribunal previously established under Articles 822 through 825 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

(i) that Tribunal, at the request of any disputing investor not previously a disputing party before that Tribunal, shall be reconstituted with its original members, except that the arbitrator for the disputing investors shall be appointed pursuant to subparagraph 4(a) and paragraph 5, and

(ii) that Tribunal shall decide whether any prior hearing shall be repeated.

7. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 822 and that has not been named in a request made under paragraph 2 may make a written request to the Tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the disputing investor;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

The disputing investor shall deliver a copy of its request to the Secretary-General.

8. A Tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A Tribunal established under Articles 822 through 825 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a Tribunal established under Articles 822 through 825 be stayed, unless the latter Tribunal has already adjourned its proceedings.

Article 827: Documents to, and Participation of, the Other Party

1. A disputing Party shall deliver to the other Party a copy of the notice of intent referred in subparagraph 2(c) of Article 821, the notice of arbitration referred in paragraph 4 of Article 822, and any other documents that are appended to such notices, no later than 30 days after the date that such documents have been delivered to the disputing Party. The other Party shall be entitled, at its cost, to receive from the disputing Party:

(a) pleadings, memorials and briefs submitted to the Tribunal by a disputing party and any written submissions submitted pursuant to Article 826 and Article 831;

(b) minutes or transcripts of hearings of the Tribunal, where available; and

(c) orders, awards and decisions of the Tribunal.

The Party receiving such information shall treat the information as if it were a disputing Party.

2. The other Party shall have the right to attend any hearings held under this Section. Upon written notice to the disputing parties, the other Party may make oral and written submissions to a Tribunal on a question of interpretation of this Agreement.

Article 828: Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a country that is a party to the New York Convention, selected in accordance with:

(a) the ICSID Additional Facility Rules, if the arbitration is under those Rules or the ICSID Convention; or

(b) the UNCITRAL Arbitration Rules, if the arbitration is under those Rules.

Article 829: Preliminary Objections

1. The Tribunal shall have the power to rule on preliminary objections to jurisdiction and admissibility.

2. Any preliminary objection that the dispute should not be admitted or registered, is not within the jurisdiction of the Tribunal or, for other reasons, is not within the competence of the Tribunal, shall be made in accordance with the applicable arbitration rules as early as possible.

Article 830: Public Access to Hearings and Documents

1. Any Tribunal award under this Section shall be publicly available, subject to the deletion of confidential information. All other documents submitted to, or issued by, the Tribunal shall be publicly available, unless the disputing parties otherwise agree, subject to the deletion of confidential information. A disputing party providing information that it claims is confidential has the burden of designating it as confidential.

2. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of hearings *in camera* to the extent necessary to ensure the protection of confidential information. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties.

3. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.

4. The Parties may share with officials of their respective national and sub-national governments all relevant unredacted documents in the course of dispute settlement under this Agreement, but they shall ensure that those persons protect any confidential information in such documents.

5. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

6. Nothing in this Section requires a disputing Party to disclose, furnish or allow access to information that it may withhold in accordance with Article 2202 (Exceptions – National Security) or Article 2205 (Exceptions – Disclosure of Information).

Article 831: Submissions by a Non-Disputing Party

1. A Tribunal shall have the authority to consider and accept written submissions from a person or entity that is not a disputing party and that has a significant interest in the arbitration. The Tribunal shall ensure that any non-disputing party submission does not disrupt the proceedings and that neither disputing party is unduly burdened or unfairly prejudiced by it.

2. An application to the Tribunal for leave to file a non-disputing party submission, and the filing of a submission, if allowed by the Tribunal, shall be made in accordance with Annex 831.

Article 832: Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.[10] An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section, and any award or other ruling under this Section shall be consistent with the interpretation.

2. Where a disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation set out in Annex I or Annex II, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission shall submit in writing its interpretation to the Tribunal. Further to paragraph 1, a Commission interpretation shall be binding on the Tribunal. If the Commission fails to submit its interpretation within 60 days of the delivery of the request, the Tribunal shall decide the issue.

Article 833: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party, or on its own initiative unless the disputing parties disapprove, may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party, subject to such terms and conditions as the disputing parties may agree.

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[10] In accordance with international law, and where relevant and as appropriate, a Tribunal may take into consideration the law of the disputing Party. However, a Tribunal does not have jurisdiction to determine the legality of a measure, alleged to be in breach of this Agreement, under the domestic law of the disputing Party.

Article 834: Interim Measures of Protection and Final Award

1. A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 819 and Article 820. For purposes of this paragraph, an order includes a recommendation.

2. Where a Tribunal makes a final award against the disputing Party, the Tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

The Tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

3. Subject to paragraph 2, where a claim is made under Article 820:

(a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise;

(b) an award of restitution of property shall provide that restitution be made to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

4. A Tribunal may not order a disputing Party to pay punitive damages.

Article 835: Finality and Enforcement of an Award

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of that particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Each Party shall provide for the enforcement of an award in its territory.

5. If the disputing Party fails to abide by or comply with a final award, on delivery of a request by the Party of the disputing investor a panel shall be established under Article 2106 (Dispute Settlement – Establishment of a Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) a recommendation that the disputing Party abide by or comply with the final award.

6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 836: Receipts under Insurance or Guarantee Contracts

In an arbitration under this Section, a disputing Party shall not assert as a defence, counterclaim, right of setoff or for any other reason that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Article 837: Exclusions

The dispute settlement provisions of this Section and of Chapter Twenty-One (Dispute Settlement) shall not apply to the matters referred to in Annex 837.

Section C - Definitions

Article 838: Definitions

For purposes of this Chapter:

administrative recourse means administrative recourse under *Colombia's Código Contencioso Administrativo* or other similar provisions of Colombian administrative law, including *Ley 142 de 1994* and *Ley 1150 de 2007;*

confidential information means:

(a) confidential business information; and

(b) information that is privileged or otherwise protected from disclosure under the law of a Party;

covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party existing on the date of entry into force of this Agreement, as well as investments made or acquired thereafter;

disputing investor means an investor that makes a claim under Section B;

disputing Party means a Party against which a claim is made under Section B;

disputing party means the disputing investor or the disputing Party;

enterprise means an enterprise as defined in Article 105 (Initial Provisions and General Definitions – Definitions of General Application), and a branch of any such entity;

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

ICSID means the International Centre for Settlement of Investment Disputes established by the ICSID Convention;

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

ICSID Convention means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, done at Washington on 18 March 1965;

intellectual property rights means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs of integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights;

Inter-American Convention means the *Inter-American Convention on International Commercial Arbitration*, done at Panama on 30 January 1975;

investment means:

(a) an enterprise;

(b) shares, stocks and other forms of equity participation in an enterprise;

(c) bonds, debentures and other debt instruments of an enterprise, but does not include a debt instrument of a state enterprise;

(d) a loan to an enterprise, but does not include a loan to a state enterprise;

(e) an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;

(g) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

(h) intellectual property rights; and

(i) any other tangible or intangible property, moveable or immovable property, and related property rights acquired in the expectation or used for the purpose of economic benefit or other business purposes;

but **investment does not mean**,[11]

(j) claims to money arising solely from

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to a national or an enterprise in the territory of the other Party, or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or

(k) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) to (i);

investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;

[11] For greater certainty, the following are not investments:

(a) an order or judgment obtained in a judicial or administrative action;
(b) a loan issued by one Party to the other Party; and
(c) public debt operations of a Party or a state enterprise.

investor of a Party means a Party or state enterprise thereof, or an enterprise or national of a Party, that seeks to make,[12] is making or has made an investment. A natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship. A natural person who is a citizen of a Party and a permanent resident of the other Party shall be deemed to be exclusively a national of the Party of which he or she is a citizen.

New York Convention means the United Nations C*onvention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958;

non-disputing Party means the Party that is not a party to an investment dispute under Section B;

Secretary-General means the Secretary-General of ICSID;

Statute of the International Court of Justice means the *Statute of the International Court of Justice*, done at San Francisco on 26 June 1945;

Tribunal means an arbitration tribunal established under Articles 822 through 825 or Article 826;

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

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December, 1976.

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[12] For greater certainty, it is understood that an investor "seeks to make an investment" only when the investor has taken concrete steps necessary to make said investment, such as when the investor has duly filed an application for a permit or license required to make an investment and has obtained the financing providing it with the funds to set up the investment.

Section D: Dispute Settlement for Juridical Stability Contracts

Article 839: Dispute Settlement for Juridical Stability Contracts

1. Subject to paragraph 2, a Canadian investor may submit an arbitration claim concerning the interpretation of, or compliance by the Colombian Government with, a Juridical Stability Contract only in accordance with Colombian law and paragraph 3 of this Annex.

2. Paragraph 1 is without prejudice to the right of a Canadian investor to make a claim under Section B of this Chapter that a measure taken by Colombia in connection with a Juridical Stability Contract breaches an obligation under Section A of this Chapter.

3. In the case of an arbitration under Colombian law in accordance with paragraph 1:

(a) the Tribunal shall have its seat in Bogotá, Colombia;

(b) the Tribunal shall consist of three arbitrators, one appointed by each disputing party and the third, who shall be the President of the Tribunal, appointed by the two disputing party-appointed arbitrators;

(c) an arbitrator shall be independent of, and not affiliated with, or take instructions from, either Party or the disputing investor;

(d) an arbitrator may be of any nationality, except the President of the Tribunal who may not be a national of a Party;

(e) unless otherwise agreed by the disputing parties, the Tribunal shall conduct the arbitration in accordance with the UNCITRAL Arbitration Rules, except to the extent modified by this paragraph;

(f) where a Tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration, the appointing authority under the UNCITRAL Arbitration Rules, on the request of either disputing party, shall appoint, in his or her discretion and, to the extent practicable, in consultation with the disputing parties, the arbitrator or arbitrators not yet appointed, consistent with the criteria set out in this provision; and

(g) the Tribunal shall decide the issues in dispute in accordance with Colombian law and such rules of international law as may be applicable.

4. For the purpose of this Annex, "Juridical Stability Contract" means a contract between the Colombian Government and a Canadian investor in accordance with *Ley 963 de 2005, Decreto 2950 de 2005* and their amendments, where the Colombian Government undertakes the obligation to maintain over the length of the contract those provisions and binding administrative interpretations - including tax provisions - which are considered as decisive for the investment. Such contracts may cover laws, decrees, administrative acts of general application and binding administrative interpretations, subject to the limitations of *Ley 963 de 2005, Decreto 2950 de 2005* and their amendments.

Annex 810

Capital Controls

1. Colombia reserves the right to maintain or adopt measures to maintain or preserve the stability of its currency, in accordance with Colombian domestic legislation, including *Law 9 of 1991* and *Law 31 of 1992*. These measures shall not affect outward transfers or foreign direct investment transfers. For transparency purposes, Colombia maintains the following measure as of the date of entry into force of this Agreement:

(a) pursuant to *Resolution 8 of 2000*, a non-interest bearing deposit requirement on foreign credits relating to an investment equivalent to zero per cent of the credit.

Deposits under this paragraph may be reimbursed before the due date subject to a financial penalty.

2. Colombia shall have the right to adopt any reasonable measure that is necessary to prevent the circumvention of measures taken pursuant to paragraph 1.

3. Any measure maintained or adopted by Colombia pursuant to paragraph 1 or 2 shall:

(a) be temporary and be eliminated as soon as the circumstances leading to their imposition no longer exist;

(b) be of general application;

(c) be imposed and be applied in good faith;

(d) be consistent with Articles 803 and 804; and

(e) not impose, with respect to deposits of investors of Canada, any terms or conditions that are more restrictive than those applied at the time such deposits were made.

4. Upon adopting a measure pursuant to paragraph 1 or 2, Colombia shall provide to Canada the reasons for the adoption of the measure as well as any relevant information.

5. For the purposes of this Annex:

foreign credit means any type of foreign debt financing whatever its nature, form or maturity period; and

foreign direct investment means an investment of an investor of Canada, other than a foreign credit, made in order to:

(a) establish a Colombian enterprise or increase the capital of an existing Colombian enterprise; or

(b) acquire equity of an existing Colombian enterprise, but excludes such an investment that is of a purely financial character and is designed only to gain indirect access to the financial market of Colombia.

Annex 811

Indirect Expropriation

The Parties confirm their shared understanding that:

1. Paragraph 1 of Article 811 addresses two situations. The first situation is direct expropriation, where an investment is nationalized or otherwise directly expropriated as provided for under international law.

2. The second situation is indirect expropriation, which results from a measure or series of measures of a Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether a measure or series of measures of a Party constitute an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,

(ii) the extent to which the measure or series of measures interfere with distinct, reasonable investment-backed expectations, and

(iii) the character of the measure or series of measures;

(b) Except in rare circumstances, such as when a measure or series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted in good faith, non-discriminatory measures by a Party that are designed and applied to protect legitimate public welfare objectives, for example health, safety and the protection of the environment, do not constitute indirect expropriation.

Annex 821

Standard Waiver and Consent
In Accordance with Article 821 of this Agreement

In the interest of facilitating the filing of waivers as required by Article 821 of this Agreement, and to facilitate the orderly conduct of the dispute resolution procedures set out in Section B, the following standard waiver forms shall be used, depending on the type of claim.

Claims filed under Article 819 must be accompanied by either Form 1, where the investor is a national of a Party, or Form 2, where the investor is a Party, a state enterprise thereof, or an enterprise of such Party.

Where the claim is based on loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, either Form 1 or 2 must be accompanied by Form 3.

Claims made under Article 820 must be accompanied by either Form 1, where the investor is a national of a Party, or Form 2, where the investor is a Party, a state enterprise thereof, or an enterprise of such Party, and Form 4.

Form 1

Consent and waiver for an investor bringing a claim under Article 819 or Article 820 (where the investor is a national of a Party) of the *Free Trade Agreement between Canada and the Republic of Colombia* done on (date of signature):

I, (Name of investor), consent to arbitration in accordance with the procedures set out in this Agreement, and waive my right to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of (Name of disputing Party).

(To be signed and dated)

Form 2

Consent and waiver for an investor bringing a claim under Article 819 or Article 820 (where the investor is a Party, a state enterprise thereof, or an enterprise of such Party) of the F*ree Trade Agreement between Canada and the Republic of Colombia done* on (date of signature):

I, (Name of declarant), on behalf of (Name of investor), consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of (Name of investor) to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged to be a breach referred to in Article 819 or Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of (Name of disputing Party). I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of (Name of investor).

(To be signed and dated)

Form 3

Waiver of an enterprise that is the subject of a claim by an investor under Article 819 of the *Free Trade Agreement between Canada and the Republic of Colombia* done on (date of signature):

I, (Name of declarant), waive the right of (Name of the enterprise) to initiate or continue before any administrative tribunal or court under the law of either Party to this Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged by (Name of investor) to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of (Name of disputing Party). I hereby solemnly declare that I am duly authorised to execute this waiver on behalf of (Name of the enterprise).

(To be signed and dated)

Form 4

Consent and waiver of an enterprise that is the subject of a claim by an investor under Article 820 of the *Free Trade Agreement between Canada and the Republic of Colombia* done on (date of signature):

I, (Name of declarant), on behalf of (Name of enterprise), consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of (Name of enterprise) to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged by (Name of investor) to be a breach referred to in Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of (Name of disputing Party). I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of (Name of the enterprise).

(To be signed and dated)

Annex 822

Submission of a Claim to Arbitration

1. An investor of Canada may not submit to arbitration under Section B a claim that Colombia has breached an obligation under Section A either:

(a) on its own behalf under paragraph 1 of Article 819; or

(b) on behalf of an enterprise of Colombia that is a juridical person that the investor owns or controls directly or indirectly under paragraph 1 of Article 820,

if the investor or the enterprise, respectively, has alleged the breach of the obligation under Section A in proceedings before a court or administrative tribunal of Colombia, or to any other binding dispute settlement proceeding agreed by the disputing parties.

2. For greater certainty, if an investor of Canada elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of Colombia, or to any other binding dispute settlement proceeding agreed by the disputing parties, that election shall be definitive, and the investor may not thereafter submit the claim to arbitration under Section B.

3. The forms in Annex 821 that require an investor to waive the right to continue certain proceedings, do not refer to investors that have elected to submit a claim referred to in paragraph 1, and shall not be construed to allow such investors to circumvent paragraphs 1 and 2 and to bring a claim to arbitration under Section B.

4. Paragraphs 1 and 2 do not apply to an investor of Canada exhausting administrative recourse under Colombian law.

Annex 831

Submissions by Non-Disputing Parties

1. The application for leave to file a non-disputing party submission shall:

(a) be made in writing, dated and signed by the applicant, and include the applicant's address and other contact details;

(b) be no longer than five typed pages;

(c) describe the applicant, including, where relevant, its membership and legal status (e.g., company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);

(d) disclose whether the applicant has any affiliation, direct or indirect, with any disputing party;

(e) identify any government, person or organization that has provided any financial or other assistance in preparing the submission;

(f) demonstrate that the applicant has a significant interest and specify the nature of this interest in the arbitration;

(g) identify the specific issues of fact or law in the arbitration that the applicant will address in its written submission;

(h) explain why the Tribunal should accept the submission; and

(i) be made in a language of the arbitration.

2. The submission filed by a non-disputing party shall:

(a) be dated and signed by the person filing the submission;

(b) be concise, and in no case longer than 20 typed pages, including any appendices;

(c) set out a precise statement supporting the applicant’s position on the issues; and

(d) only address matters within the scope of the dispute.

Annex 837

Exclusions from Dispute Settlement

1. A decision by Canada following a review under the *Investment Canada Act* (1985, c.28, 1st supp.), with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).

2. A decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or its investment, pursuant to Article 2202 (Exceptions –National Security) shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).

3. Article 815 shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).

CHAPTER NINE

CROSS-BORDER TRADE IN SERVICES

Article 901: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party, including measures affecting:

(a) the production, distribution, marketing, sale and delivery of a service;

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

(c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of the other Party; and

(e) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. This Chapter does not apply to:

(a) financial services as defined in Chapter Eleven (Financial Services);

(b) air services[1] and related services in support of air services, other than:

(i) aircraft repair and maintenance services,

(ii) the selling and marketing of air transport services, and

(iii) computer reservation system ("CRS") services;

[1] For greater certainty, the term "air services" includes but is not limited to traffic rights.

(c) procurement by a Party or a state enterprise; and

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

3. This Chapter does not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory and does not confer any right on that national with respect to that access or employment.

Article 902: National Treatment

1. Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own service suppliers.

2. The treatment accorded by a Party under paragraph 1 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to service suppliers of the Party of which it forms a part.

Article 903: Most-Favoured-Nation Treatment

Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to service suppliers of a non-Party.

Article 904: Market Access

Neither Party may adopt or maintain measures that:

(a) impose limitations on:

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

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

(iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test,[2] or

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

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 905: Local Presence

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

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[2] Subparagraph (a)(iii) of this Article does not cover measures of a Party that limit inputs for the supply of services.

Article 906: Non-Conforming Measures

1. Articles 902, 903, 904 and 905 do not apply to:

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

(i) national government, as set out by that Party in its Schedule to Annex I,

(ii) provincial or territorial government, as set out by that Party in its Schedule to Annex I, or

(iii) 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 immediately before the amendment, with Articles 902, 903, 904 and 905.

2. Articles 902, 903, 904 and 905 do not apply to measures that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.

Article 907: Domestic Regulation

1. The Parties note their mutual obligations related to domestic regulation in Article VI:4 of the GATS and affirm their commitment respecting the development of any necessary disciplines pursuant to Article VI:4. To the extent that any such disciplines are adopted by the WTO Members, the Parties shall, as appropriate, review them jointly with a view to determining whether this Article should be supplemented.

2. Where authorisation by a Party is required for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application that is considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

Article 908: Recognition[3]

1. For the purposes of fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based on an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford, if the other Party is interested, adequate opportunity for the other Party to negotiate accession to such an agreement or arrangement or to negotiate a comparable agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognized.

3. No Party may accord recognition in a manner that would constitute a means of discrimination in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

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[3] Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 903 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

4. The Parties shall endeavour to ensure that the relevant professional bodies in their respective territories of certain professional service sectors:

(a) exchange information on existing standards and criteria for the authorization, licensing and certification of professional service providers;

(b) meet within 12 months to discuss the development of an agreement or arrangement referred to in paragraph 1;

(c) be guided by Annex 908.4 for the negotiation of such agreements or arrangements; and

(d) provide notification following the conclusion of an agreement or arrangement to the Commission.

The professional service sectors to which this paragraph applies shall be determined by the Working Group within six months following the entry into force of this Agreement.

5. On receipt of a notification referred to in subparagraph 4(d), the Commission shall review the agreement or arrangement within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall ensure that its competent authorities, where appropriate, implement the agreement or arrangement within a mutually agreed time.

Article 909: Temporary Licensing

1. Where the Parties agree, each Party shall encourage the relevant professional bodies in its territory to develop procedures for the temporary licensing of professional services suppliers of the other Party.

2. Each Party shall consider establishing a work program to provide for the temporary licensing in its territory of nationals of the other Party who are licensed as engineers in the territory of the other Party. To this end, each Party shall coordinate with the relevant professional bodies of its territory as appropriate.

3. In furtherance of paragraph 2, the Working Group established under Article 912 shall consult with the relevant professional bodies to obtain their recommendations on:

(a) the development of procedures for the temporary licensing of engineers to permit them to practice as engineers in each jurisdiction in each of the Parties' territory;

(b) the development of model procedures for adoption by the competent authorities throughout each of the Parties' territory to facilitate the temporary licensing of engineers;

(c) the engineering specialties to which priority should be given in developing temporary licensing procedures; and

(d) other matters relating to the temporary licensing of engineers identified by the Working Group.

4. The Working Group shall request that the relevant professional bodies make recommendations on the matters referred to in paragraph 3 within 18 months of the date of their first meeting.

5. The Working Group shall encourage the relevant professional bodies of each Party to meet at the earliest opportunity with a view to cooperating in the development of joint recommendations, within two years following the entry into force of this Agreement, on the matters referred to in paragraph 3. The Working Group shall request an annual report from the relevant professional bodies on the progress achieved in developing recommendations.

6. The Working Group shall promptly review a recommendation made pursuant to paragraphs 4 or 5 to ensure its consistency with this Agreement. If the recommendation is consistent with this Agreement, the Working Group shall encourage the competent authorities of each Party to implement the recommendation within one year.

Article 910: Transfers and Payments

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws relating to:

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

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 911: Denial of Benefits

A Party may deny the benefits of this Chapter to a service supplier of the other Party:

(a) where the Party establishes that the service is being provided by an enterprise owned or controlled by nationals of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise;

(b) if the service supplier is an enterprise owned or controlled by persons of a non-Party and the enterprise has no substantial business activities in the territory of the other Party; or

(c) if the service supplier is an enterprise owned or controlled by persons of the denying Party and the enterprise has no substantial business activities in the territory of the other Party.

Article 912: Working Group

1. The Parties shall establish a Working Group at the entry into force of this Agreement comprising representatives of each Party. The representatives of each Party shall be:

For Canada: Director
Services Trade Policy Division
Department of Foreign Affairs and International Trade

For Colombia: *Director*
Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo

or their respective successors.

2. The Working Group's functions shall include:

(a) meeting annually, or as otherwise agreed by the representatives, to review matters concerning the implementation and operation of this Chapter and consider issues of interest to the Parties affecting cross-border trade in services;

(b) coordinating enquiries from one Party to the other for information regarding measures that pertain to or may affect cross-border trade in services;

(c) considering the development of procedures to increase the transparency of measures described in Article 906;

(d) reviewing the professional service sectors referred to in paragraph 4 of Article 908; and

(e) monitoring the work and developments of the relevant professional bodies in each Party regarding mutual recognition agreements on authorization, licensing and certification of professional service providers, and providing reports annually or as otherwise agreed to the Commission on initiatives and progress undertaken by the Parties with respect to the implementation of Article 908.

Article 913: Definitions

For purposes of this Chapter:

aircraft repair and maintenance services mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

computer reservation system ("CRS") services mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

cross-border trade in services or **cross-border supply of services** means the supply of a service:

(a) from the territory of one Party into the territory of the other Party;

(b) in the territory of one Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by a covered investment, as defined in Article 838 (Investment – Definitions);

enterprise means an enterprise as defined in Article 106 (Initial Provisions and General Definitions – Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise organized or constituted under the laws of a Party and a branch located in the territory of a Party and carrying out business activities there;

measures adopted or maintained by a Party means measures adopted or maintained by:

(a) national, provincial, territorial or local governments, and authorities; and

(b) non-governmental bodies in the exercise of any regulatory, administrative or other governmental authority delegated by national, provincial, territorial or local governments and authorities;

professional services means services, the supply of which requires specialized post secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by trades-persons or vessel and aircraft crew members;

selling and marketing of air transport services mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions; and

service supplier of a Party means a person of that Party that seeks to supply or supplies a service[4].

[4] For purposes of Articles 902 and 903, the treatment that a Party is required to accord to a service provider of the other Party pursuant to these Articles shall extend to the relevant service(s) provided by that service provider. For purposes of Articles 902, 903 and 904 “services suppliers” has the same meaning as “services and service suppliers” as used in Articles XVII, II and XVI of the GATS, respectively.

Annex 908.4

Guidelines for Mutual Recognition Agreements or Arrangements ("MRAs") for the Professional Services Sector

Introduction

This Annex provides practical guidance for governments, negotiating entities or other entities entering into mutual recognition negotiations for the professional services sector. The guidelines contained in it are non-binding but a Party shall consider them when negotiating MRAs. They do not modify or affect the rights and obligations of the Parties under this Agreement.

The objective of these guidelines is to make it easier for each Party to negotiate MRAs.

The examples listed under the various sections of these guidelines are provided by way of illustration. The listing of these examples is indicative and is intended neither to be exhaustive nor as an endorsement of the application of such measures by a Party.

A. Conduct of Negotiations and Relevant Obligations under this Agreement

With reference to the obligations under Article 908, this section sets out elements considered useful in the discharge of these obligations.

1. Opening of Negotiations

The information supplied by a Party to the Commission should include the following:

(a) the intent to enter into negotiations;

(b) the entities involved in discussions (e.g. governments, national organisations in the professional services sector or institutes which have authority - statutory or otherwise - to enter into such negotiations);

(c) a contact point to obtain further information;

(d) the subject of negotiations (specific activities covered); and

(e) the expected time of the start of negotiations and an indicative date for the expression of interest by governments or entities.

2. Results

On the conclusion of an MRA by a Party, the information it should supply to the Commission should include:

(a) the content of the MRA (if it is new); or

(b) significant modifications to the MRA (if one already exists).

3. Follow-Up Actions

Follow-up actions by the Parties supplying information under paragraph 1 should include ensuring that:

(a) the conduct of negotiations and the MRA itself comply with the provisions of this Chapter, in particular Article 908; and

(b) they adopt any measures and undertake any actions required to ensure the implementation and monitoring of the MRA in accordance with paragraph 5 of Article 908.

4. Single negotiating entity

Where no single negotiating entity exists, the Party is encouraged to establish one.

B. Form and Content of MRA

This section sets out various issues that may be addressed in any negotiations and, if so agreed, included in the final MRA. It outlines some basic ideas on what a Party might require of foreign professionals seeking to take advantage of an MRA.

1. Participants

The MRA should identify clearly:

(a) the parties to the MRA (e.g. governments, national professional associations or institutes);

(b) competent authorities or organisations other than the parties to the MRA, if any, and their position in relation to the MRA; and

(c) the status and area of competence of each party to the MRA.

2. Purpose of MRA

The purpose of the MRA should be clearly stated.

3. Scope of agreement

The MRA should set out clearly:

(a) the scope of the MRA in terms of the specific profession or titles and professional activities it covers in the territories of the parties;

(b) who is entitled to use the professional titles concerned;

(c) whether the recognition mechanism is based on qualifications, or on the licence obtained in the country of origin, or some other requirement; and

(d) whether the MRA covers temporary and/or permanent access to the profession concerned.

4. Mutual recognition provisions

The MRA should clearly specify the conditions to be met for recognition in the territories of each party and the level of equivalence agreed between the parties. The precise terms of the MRA will depend on the basis on which the MRA is founded, as discussed above. In case the requirements of the various sub-national jurisdictions of a party to an MRA are not identical, the difference should be clearly presented. The MRA should address the applicability of the recognition granted by one sub-national jurisdiction in the other sub-national jurisdictions of the party.

(a) Eligibility for recognition

(i) Qualifications

If the MRA is based on recognition of qualifications, then it should, where applicable, state:

- the minimum level of education required (e.g. entry requirements, length of study, subjects studied),

- the minimum level of experience required (e.g. location, length and conditions of practical training or supervised professional practice prior to licensing, framework of ethical and disciplinary standards),

- examinations passed (especially examinations of professional competence),

- the extent to which home country qualifications are recognised in the host country, and

- the qualifications which the parties are prepared to recognise, for instance, by listing particular diplomas or certificates issued by certain institutions, or by reference to particular minimum requirements to be certified by the authorities of the country of origin, including whether the possession of a certain level of qualification would allow recognition for some activities but not others.

(ii) Registration

If the MRA is based on recognition of the licensing or registration decision made by regulators in the country of origin, it should specify the mechanism by which eligibility for such recognition may be established.

(b) Additional requirements for recognition in the host country

(i) Where it is considered necessary to provide for additional requirements, in order to ensure the quality of the service, the MRA should set out the conditions under which those requirements may apply, e.g. in case of shortcomings in relation to qualification requirements in the host country or knowledge of local law, practice, standards and regulations. This knowledge should be essential for practice in the host jurisdiction or required because there are differences in the scope of licensed practice, and

(ii) Where additional requirements are deemed necessary, the MRA should set out in detail what they entail (e.g. examination, aptitude test, additional practice in the host country or in the country of origin, practical training, and language used for examination).

5. Mechanisms for implementation

The MRA should state:

(a) the rules and procedures to be used to monitor and enforce the provisions of the MRA;

(b) the mechanisms for dialogue and administrative co-operation between the parties; and

(c) the means of arbitration for disputes under the MRA.

As a guide to the treatment of individual applicants, the MRA should include details on:

(a) the focal point of contact in each party for information on all issues relevant to the application (e.g. name and address of competent authorities, licensing formalities, information on additional requirements which need to be met in the host country);

(b) the length of procedures for the processing of applications by the relevant authorities of the host country;

(c) the documentation required of applicants and the form in which it should be presented and any time limits for applications;

(d) acceptance of documents and certificates issued in the country of origin in relation to qualifications and licensing;

(e) the procedures of appeal to or review by the relevant authorities; and

(f) any fees that might be reasonably required.

The MRA should also include the following commitments:

(a) that requests about the measures will be promptly dealt with;

(b) that adequate preparation time will be provided where necessary;

(c) that any exams or tests will be arranged with reasonable frequency;

(d) that fees to applicants seeking to take advantage of the terms of the MRA will be in proportion to the cost to the host country or organisation; and

(e) to supply information on any assistance programmes in the host country for practical training, and any commitments of the host country in that context.

6. Licensing and other provisions in the host country

Where applicable:

(a) the MRA should also set out the means by which, and the conditions under which, a licence is actually obtained following the establishment of eligibility, and what this licence entails (e.g. a licence and its content, membership of a professional body, use of professional and/or academic titles). Any licensing requirements other than qualifications should be explained, and should include such information as:

(i) an office address, an establishment requirement or a residency requirement,

(ii) a language requirement,

(iii) proof of good conduct and financial standing,

(iv) professional indemnity insurance,

(v) compliance with host country's requirements for use of trade/firm names, and

(vi) compliance with host country ethics (e.g. independence and inappropriate behaviour);

(b) in order to ensure the transparency of the system, the MRA should include the following details for each party:

(i) the relevant laws and regulations to be applied (e.g. disciplinary action, financial responsibility, liability),

(ii) the principles of discipline and enforcement of professional standards, including disciplinary jurisdiction and any consequential limitations on the professionals,

(iii) the means for ongoing verification of competence,

(iv) the criteria for and procedures relating to revocation of the registration of professionals, and

(v) regulations relating to any nationality and residency requirements needed for the purposes of the MRA.

7. Revision of the MRA

If the MRA includes terms under which it can be reviewed or revoked, the details should be clearly stated.

CHAPTER TEN

TELECOMMUNICATIONS

Article 1001: Scope and Coverage

1. This Chapter applies to:

(a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services;

(b) measures adopted or maintained by a Party relating to obligations of suppliers of public telecommunications transport networks and services;

(c) other measures adopted or maintained by a Party relating to public telecommunications transport networks and services; and

(d) measures adopted or maintained by a Party relating to the supply of value-added services.

2. This Chapter does not apply to any measure of a Party affecting the transmission by any means of telecommunications, including broadcast and cable distribution of radio or television programming intended for reception by the public.[1]

3. Nothing in this Chapter shall be construed to:

(a) require a Party to authorize an enterprise of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services, other than as specifically provided in this Agreement;

[1] For greater certainty, this Chapter applies to measures affecting service suppliers that are engaged in the transmission of radio or television programming intended for reception by the public, but only in respect of the provision of public telecommunications transport networks or services by such service suppliers.

(b) require a Party (or require a Party to compel any enterprise) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally; or

(c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third persons.

Article 1002: Access to and Use of Public Telecommunications Transport Networks and Services[2]

1. Subject to a Party's right to restrict the supply of a service in accordance with its reservations in Annexes I and II, a Party shall ensure that enterprises of the other Party are accorded access to and use of public telecommunications transport networks and services, on reasonable and non-discriminatory terms and conditions.

2. Each Party shall ensure that such enterprises are permitted to:

(a) purchase or lease and attach terminal or other equipment that interfaces with the public telecommunications transport networks;

(b) connect private leased or owned circuits with public telecommunications transport networks and services of that Party or with circuits leased or owned by another enterprise;

(c) perform switching, signalling, and processing and conversion functions; and

(d) use operating protocols of their choice.

[2] For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply public telecommunications transport networks or services within its territory.

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

4. Further to Article 2201 (Exceptions – General Exceptions), and notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) to protect the non-public information of users of public telecommunications transport services,

subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or 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 transport networks or services other than as necessary to:

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

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

(c) ensure that service suppliers of the other Party do not supply services limited by the Party’s Reservations in Annexes I and II.

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

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

(b) requirements, where necessary, for the inter-operability of such services;

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

(d) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; and

(e) notification, registration, permits and licensing.

Article 1003: Conduct of Major Suppliers

Treatment by Major Suppliers

1. Each Party shall ensure that major suppliers in its territory provide access to public telecommunications transport networks and services required by the other Party under terms and conditions set out in tariffs approved by the Party's regulatory body, or under market conditions where services are deregulated.

2. With respect to regulated tariffs, each Party shall guarantee reasonable tariffs, as well as tariffs that do not unjustly discriminate or give an undue or unreasonable preference toward any person.

Competitive Safeguards

3. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

(b) The anti-competitive practices referred to in subparagraph (a) include:

(i) engaging in anti-competitive cross-subsidization;

(ii) using information obtained from competitors with anti-competitive results; and

(iii) not making available, to other service suppliers on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications transport services.

Regulated Wholesale Supply

4. Each Party may require owners of facilities or suppliers of public telecommunications transport networks or services, which are classified under a Party's domestic regime as essential wholesale facilities or services, to make their facilities or public telecommunications transport networks or services, available on a regulated wholesale basis.

Resale

5. Each Party may identify the public transport telecommunications services or the public telecommunications transport network elements available, and the classes of competitors eligible to access the services and elements, for provision on a mandatory resale basis. For the public telecommunications transport network and services available on mandatory resale basis, each Party shall ensure that suppliers do not unjustly discriminate or give an undue preference concerning the conditions or limitations on the resale of such services.

Unbundling

6. Each Party may identify the public telecommunications transport services or the public telecommunications transport network elements available for provision on a mandatory unbundled basis, and the classes of competitors eligible to access the services and elements. For the public telecommunications transport network and services available on an unbundled basis, each Party shall ensure that suppliers do not unjustly discriminate or give an undue preference concerning the conditions or limitations on the unbundling of such services.

Interconnection

7. (a) General Terms and Conditions

Except as limited by a Party's reservations in Annexes I or II, each Party shall ensure that major suppliers in its territory provide interconnection:

(i) at any technically feasible point in the network;

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(iii) of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

(iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

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

(b) Options for Interconnecting with Major Suppliers

Options for suppliers of public telecommunications transport services of a Party to interconnect their facilities and equipment with those of major suppliers in the territory of the other Party may include:

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

(ii) the terms and conditions of an interconnection agreement in force; or

(iii) negotiation of a new interconnection agreement.

Article 1004: Independent Regulatory Bodies and Government-Owned Telecommunications Suppliers

1. Each Party shall ensure that its regulatory body is separate from, and not accountable to, any supplier of public telecommunications transport networks or services and of value-added services.

2. Each Party shall ensure that its regulatory body's decisions and procedures are impartial with respect to all market participants.

3. No Party may accord more favourable treatment to a supplier of public telecommunications transport services than that accorded to a like supplier of the other Party, on the basis that the supplier receiving more favourable treatment is owned, wholly or in part, by the national government of the Party.

Article 1005: Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to adopt or maintain and shall administer those obligations in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligations are not more burdensome than necessary for the kind of universal service defined by the Party.

Article 1006: Licenses and Other Authorizations

1. Where a Party requires a supplier of public telecommunications transport networks or services to have a license, concession, permit, registration or other type of authorization, the Party shall make publicly available:

(a) all applicable licensing or authorization criteria and procedures;

(b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration or other type of authorization; and

(c) the terms and conditions of all licenses or authorizations it has issued.

2. Where a Party requires a supplier of public telecommunications transport networks or services to have a license, concession, permit, registration or other type of authorization, the Party shall make the decision on the application for a license, concession, permit, registration or other type of authorization within a reasonable period of time and, in the event that it denies the application, shall on the request of the applicant, give the reasons for the denial.

Article 1007: Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner.

2. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with Article 904 (Cross-Border Trade in Services - Market Access) as it applies to either Chapters Eight (Investment) or Nine (Cross-Border Trade in Services). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies which may limit the number of suppliers of public telecommunications transport services. Each Party also retains the right to allocate frequency bands, taking into account present and future needs and spectrum availability.

3. When making a spectrum allocation for non-government telecommunications services, each Party shall endeavour to rely on an open and transparent public comment process that considers the overall public interest. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial non-government telecommunications services.

Article 1008: Enforcement

Each Party shall maintain appropriate procedures and authority to enforce the Party's measures relating to the obligations set out in Articles 1002 and 1003. Such procedures shall include the ability to impose appropriate sanctions, which may include financial penalties, injunctive relief (on an interim basis), corrective orders or the modification, suspension or revocation of licenses or other authorizations.

Article 1009: Resolution of Domestic Telecommunication Disputes

Further to Articles 1903 (Transparency - Administrative Proceedings) and 1904 (Transparency – Review and Appeal), each Party shall ensure that:

(a) suppliers of public telecommunications transport networks or services or value-added services of the other Party have timely recourse to its regulatory body to resolve disputes regarding the Party's measures that relate to matters covered in Articles 1002 and 1003 and that, under the domestic law of the Party, are within the competence of the regulatory body;

(b) suppliers of public telecommunications transport networks or services of the other Party requesting interconnection with a major supplier in the Party's territory have recourse within a reasonable and publicly specified period after the supplier requests interconnection, to its regulatory body to resolve disputes regarding the appropriate terms, conditions, and rates for interconnection with such major supplier; and

(c) any supplier of public telecommunications transport networks or services or value-added services aggrieved or whose interests are adversely affected by a determination or decision of its regulatory body may petition that body for reconsideration of that determination or decision.[3,4]

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[3] With respect to Canada, paragraph 2 of Article 1009 does not apply to any determination or decision related to the establishment and application of spectrum and frequency management policies.

[4] With respect to Colombia, suppliers of public telecommunication transport networks or services or value-added services may not petition for reconsideration of rulings of general application, as defined in Article 1906 (Transparency - Definitions), unless provided for under its law and regulation.

(d) Any supplier of public telecommunications transport networks or services or value-added services that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's regulatory body may obtain judicial, quasi-judicial or administrative review of such determination or decision by an independent authority. It is understood that this obligation does not add to the obligations set out in Article 1904 (Transparency - Review and Appeal).

Article 1010: Transparency

Further to Articles 1901 (Transparency - Publication) and 1902 (Transparency - Notification and Provision of Information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall:

(a) ensure that:

(i) regulations, including the basis for such regulations, of its regulatory body and tariffs filed with its regulatory body are promptly published or otherwise made publicly available, and

(ii) interested persons are provided, to the extent possible, with adequate advance public notice of, and the opportunity to comment on, any regulation that its regulatory body proposes.

(b) make publicly available:

(i) information on bodies responsible for preparing, amending, and adopting standards-related measures,

(ii) the current state of allocated frequency bands, but is not required to disclose detailed identification of frequencies allocated for specific government use,

(iii) relevant procedures of its regulatory body, including those related to interconnection and licensing, and

(iv) its measures relating to public telecommunications transport networks or services and value-added services, including measures relating to:

(A) tariffs and other terms and conditions of service,

(B) procedures relating to judicial and other adjudicatory proceedings,

(C) specifications of technical interfaces,

(D) conditions applying to attachment of terminal and other equipment to the public telecommunications transport network, and

(E) notification, permit, registration, or licensing requirements, if any;

(c) require major suppliers in its territory to make publicly available their interconnection agreements, reference interconnection offers, or other standard interconnection offers containing the terms, and conditions, and where specified, rates, that the major suppliers offer generally to suppliers of public telecommunications transport services; and

(d) ensure that interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications transport services in its territory are made publicly available.

Article 1011: Flexibility in the Choice of Technologies

Neither Party may prevent suppliers of public telecommunications transport services from choosing the technologies that they use to supply their services subject to requirements necessary to satisfy legitimate public policy interests, including the use of protocols and interoperability.

Article 1012: Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may refrain from applying a regulation to a telecommunications service when:

(a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of such regulation is not necessary for the protection of consumers; or

(c) it is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications transport networks or services.

Article 1013: Conditions for the Provision of Value-Added Services

1. No Party may require an enterprise providing value-added services to:

(a) provide those services to the public generally;

(b) cost justify its rates;

(c) file or register a tariff;

(d) interconnect its networks with any particular customer or network; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnections to a public telecommunications transport network.

2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anti-competitive under its domestic law, or to otherwise promote competition or safeguard the interests of consumers.

Article 1014: Relation to Other Chapters

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

Article 1015: International Standards and Organizations

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 1016: Definitions

For the purpose of this Chapter:

cost-oriented means based on cost (including a reasonable profit), and may involve different cost methodologies for different facilities or services;

enterprise means an “enterprise” as defined in Article 106 (Initial Provisions and General Definitions - Definitions of General Application) and includes a branch of an enterprise;

enterprise of the other Party means an enterprise constituted or organized under the law of the other Party and owned or controlled by a person of the other Party;

essential facilities means facilities of a public telecommunications transport network or service that:

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

(b) cannot feasibly be economically or technically substituted in order to supply a service.

interconnection means linking suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

intra-enterprise communications means telecommunications through which an enterprise communicates within the enterprise or with or among its subsidiaries, branches and, subject to a Party’s domestic law, affiliates. Intra-enterprise communications exclude 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;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customers choosing;

major supplier means a supplier of public telecommunications transport services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications transport networks or services as a result of:

(a) its control over essential facilities; or

(b) the use of its position in the market.

network element means a facility or equipment used in supplying a public telecommunications transport service, including features, functions and capabilities provided by means of such facility or equipment;

network termination points means the final demarcation of the public telecommunications transport network at the user's premises;

non-discriminatory means treatment no less favourable than that accorded to any other user in like circumstances of like public telecommunications transport networks or services;

private network means a telecommunications network that is used exclusively for intra-enterprise communications;

public telecommunications transport network means the public telecommunications infrastructure that permits telecommunications between defined network termination points;

public telecommunications transport service means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications transport services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

regulatory body means a body responsible for the regulation of telecommunications;

service supplier means a person of a Party that seeks to supply or supplies a service, including a supplier of telecommunications networks or services;

supply of a service means the provision of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party by a person of that Party to a person of the other Party;

(c) by a service supplier of a Party, through an enterprise in the territory of the other Party; or

(d) by a national of a Party in the territory of the other Party.

telecommunications means the transmission and reception of signals by any electromagnetic means;

user means a service consumer or a service supplier;

value-added services means those services that add value to public telecommunications transport services through enhanced functionality by:

(a) acting on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) providing a customer with additional, different or restructured information; or

(c) involving customer interaction with stored information.

CHAPTER ELEVEN

FINANCIAL SERVICES

Article 1101: Scope and Coverage

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

(a) financial institutions of the other Party;

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

(c) cross-border trade in financial services.

2. Chapters Eight (Investment) and Nine (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

(a) Articles 810 (Investment - Transfers), 811 (Investment - Expropriation), 812 (Investment-Special Formalities and Information Requirements), 814 (Investment - Denial of Benefits), 815 (Investment - Health, Safety and Environmental Measures) and 911 (Cross-Border Trade in Services - Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

(b) Section B of Chapter Eight (Investment - Settlement Of Disputes Between An Investor And The Host Party) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 810 (Investment - Transfers), 811 (Investment - Expropriation), or 814 (Investment - Denial of Benefits), as incorporated into this Chapter.

(c) Article 910 (Cross-Border Trade in Services - Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 1105.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:

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

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

4. Annex 1101.3(a) sets out the Parties' understanding with respect to certain activities or services described in subparagraph 3(a).

5. Annex 1101.5 sets out, for greater certainty, certain understandings between the Parties regarding financial services measures.

Article 1102: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favourable than that it accords to its own financial institutions and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in paragraph 1 of Article 1105, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors in financial institutions, financial institutions, investments of investors in financial institutions and financial service suppliers, of the Party of which it forms a part.

5. Differences in market share, profitability or size do not in themselves establish a breach of the obligations under this Article.

Article 1103: Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors of the other Party in financial institutions and cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded unilaterally;

(b) achieved through harmonization or other means; or

(c) based upon an agreement or arrangement with the non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under subparagraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement or to negotiate a comparable agreement or arrangement.

Article 1104: Right of Establishment

1. A Party shall permit an investor of the other Party that does not own or control a financial institution in the Party's territory to establish a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment, without the imposition of numerical restrictions or requirements to take a specific juridical form. The obligation not to impose requirements to take a specific juridical form does not prevent a Party from imposing conditions or requirements in connection with the establishment of a particular type of entity chosen by an investor of the other Party.

2. A Party shall permit an investor of the other Party that owns or controls a financial institution in the Party's territory to establish such additional financial institutions as may be necessary for the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions. Subject to Article 1102, a Party may impose terms and conditions on the establishment of additional financial institutions and determine the institutional and juridical form that shall be used for the supply of specified financial services or the carrying out of specified activities.

3. The right of establishment under paragraphs 1 and 2 shall include the acquisition of existing entities.

4. Subject to Article 1102, a Party may, in exceptional circumstances, prohibit a particular financial service or activity. Such a prohibition may not apply to all financial services or to a complete financial services sub-sector such as banking.

5. For the purpose of this Article, without prejudice to other forms of prudential regulation, a Party may require that an investor of the other Party be engaged in the business of providing financial services in the territory of that Party.

6. For the purpose of this Article, “numerical restrictions” means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory of a Party, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.

Article 1105: Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 1105.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this Article so long as such definitions are not inconsistent with the obligation of paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

Article 1106: New Financial Services

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt new laws or modify existing laws.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party would permit the new financial service and authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

3. Nothing in this Article prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is not supplied within either Party's territory. Such application shall be subject to the domestic law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of this Article.

Article 1107: Treatment of Certain Information

Nothing in this Chapter requires a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 1108: Senior Management and Boards of Directors

1. Neither Party may require financial institutions of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. Neither Party may require that more than a simple majority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, natural persons residing in the territory of the Party, or a combination thereof.

Article 1109: Non-Conforming Measures

1. Articles 1102, 1103, 1104 and Article 1108 do not apply to:

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

(i) national government, as set out in Section I of its Schedule to Annex III, or

(ii) provincial, territorial or 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 immediately before the amendment, with Articles 1102, 1103, 1104 and Article 1108.

2. Article 1105 does not apply to:

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

(i) national government, as set out in Section I of its Schedule to Annex III, or

(ii) provincial, territorial or 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 upon the entry into force of this Agreement, with Article 1105.

3. Articles 1102, 1103, 1104, 1105 and 1108 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section II of its Schedule to Annex III.

4. Section III of each Party's Schedule to Annex III sets out certain specific commitments by that Party.

5. Where a Party has set out a reservation to Article 803 (Investment - National Treatment), 804 (Investment - Most Favoured Nation Treatment), 902 (Cross-Border Trade in Services - National Treatment) or 903 (Cross-Border Trade in Services -Most Favoured Nation Treatment) in its Schedule to Annex I or II, the reservation also constitutes a reservation to Article 1102 or 1103, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.

Article 1110: Exceptions

1. Nothing in this Chapter or Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services), Chapter Ten (Telecommunications), Chapter Twelve (Temporary Entry of Business Persons), Chapter Thirteen (Competition Policy, Monopolies and State Enterprises), or Chapter Fifteen (Electronic Commerce) shall be construed to prevent a Party from adopting or maintaining measures for prudential reasons,[1] including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's obligations under such provisions.

[1] The term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

2. Nothing in this Chapter or Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services), Chapter Ten (Telecommunications), Chapter Twelve (Temporary Entry of Business Persons), Chapter Thirteen (Competition Policy, Monopolies and State Enterprises), or Chapter Fifteen (Electronic Commerce) applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 807 (Investment - Performance Requirements) with respect to measures covered by Chapter Eight (Investment), Article 810 (Investment - Transfers) or Article 910 (Cross- Border Trade in Services - Transfers and Payments).

3. Notwithstanding Article 810 (Investment - Transfers) and Article 910 (Cross Border Trade in Services - Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services, as covered by this Chapter.

Article 1111: Transparency

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.

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. Each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt;

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations; and

(c) allow reasonable time between publication of final regulations and their effective date,

and these requirements shall replace those set out in Article 1901 (Transparency - publication).

4. Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.

5. On the request of an applicant, a regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

6. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

7. Each Party shall maintain or establish appropriate mechanisms that will, as soon as practicable, respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

Article 1112: Self-Regulatory Organizations

Where 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 organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 1102, 1103, 1104, 1111 and other relevant Articles of this Chapter by such self-regulatory organization.

Article 1113: Payment and Clearing Systems

Under terms and conditions that accord national treatment, 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 as well as access to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article 1114: Financial Services Committee

1. The Parties hereby establish the Financial Services Committee (the “Committee”). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 1114.

2. In accordance with Article 2001 (Administration of the Agreement – The Joint Commission), the Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

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

(c) participate in the dispute settlement procedures in accordance with Article 1117.

3. The Committee shall meet annually, or as it otherwise agrees, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 1115: Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Officials from the authorities specified in Annex 1114 shall participate in the consultations under this Article.

3. A Party may request that regulatory authorities of the other Party participate in consultations under this Article regarding that other Party’s measures of general application which may affect the operations of financial institutions or cross-border financial service suppliers in the requesting Party’s territory.

4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations pursuant to paragraph 3 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial institution in the other Party's territory or a cross-border financial service supplier in the other Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

6. Nothing in this Article shall be construed to require a Party to derogate from its domestic law regarding the sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article 1116: Dispute Settlement

1. Chapter Twenty-One (Dispute Settlement), as modified by this Article, applies to the settlement of disputes arising under this Chapter.

2. Consultations held pursuant to Article 1115 with respect to a measure or matter constitute consultations under Article 2104 (Dispute Settlement - Consultations), unless the Parties otherwise agree. If the matter has not been resolved within 45 days after commencing consultations under Article 1115 or 90 days after the delivery of the request for consultations pursuant to Article 1115, whichever is earlier, the complaining Party may request in writing the establishment of a panel.

3. The following procedures shall replace Article 2108 (Dispute Settlement - Panel Selection):

(a) the panel shall comprise three panelists;

(b) each Party shall, within 30 days of the receipt of the request for the establishment of the panel, appoint a panelist who may be a national of that Party and notify the other Party in writing of the appointment. If a Party fails to appoint a panelist within 30 days, the other Party may request the Appointing Authority to appoint, in its discretion, and subject to paragraph 4, the panelist not yet appointed;

(c) the Parties shall endeavour to agree on the appointment of the third panelist who shall chair the panel and, unless the Parties agree otherwise, shall not be a national of either Party. If the chair of the panel has not been appointed within 30 days of the most recent appointment under subparagraph (b), either Party may request the Appointing Authority to appoint, in its discretion, and subject to paragraph 4, the chair of the panel, who shall not be a national of either Party;

(d) subparagraphs (b) and (c) shall apply *mutatis mutandis* where a panelist or the chair of the panel withdraws, is removed or becomes unable to serve on the panel. In such a case, any time period applicable to the panel proceeding shall be suspended for a period beginning on the date a panelist ceases to serve and ending on the date the replacement is appointed.

4. Each panelist appointed under this Chapter shall have the qualifications required by Article 2107 (Dispute Settlement - Qualification of Panelists) with the exception of subparagraph 1(d) of that Article. In addition, each panelist shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

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

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

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

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

Article 1117: Investment Disputes in Financial Services

1. Where an investor of a Party submits a claim under Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise) to arbitration under Section II of Chapter Eight (Investment) and the respondent invokes an exception under Article 1110, on request of the respondent the Tribunal shall refer the matter in writing to the Committee for a decision in accordance with paragraph 2. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 1110 is a valid defence to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, either Party may, within 10 days thereafter, request the establishment of a panel under Article 2106 (Dispute Settlement - Establishment of a Panel) to decide the issue. The panel shall be constituted in accordance with Article 1116. Further to Article 2110 (Dispute Settlement - Panel Reports), the panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days after the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the issue.

Article 1118: Definitions

For purposes of this Chapter:

Appointing Authority means the Secretary-General, Deputy Secretary-General or next senior member of the staff of the International Centre for Settlement of Investment Disputes, who is not a national of either Party;

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or **cross-border supply of financial services** means the supply of a financial service:

(a) from the territory of one Party into the territory of the other Party;

(b) in the territory of a Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

(a) Direct insurance (including co-insurance):

(i) life,

(ii) non-life;

(b) Reinsurance and retrocession;

(c) Insurance intermediation, such as brokerage and agency;

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

Banking and other financial services (excluding insurance)

(e) Acceptance of deposits and other repayable funds from the public;

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

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit cards, travelers cheques, and bankers drafts;

(i) Guarantees and commitments;

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

(i) money market instruments (including cheques, bills, certificates of deposits),

(ii) foreign exchange,

(iii) derivative products including, futures and options,

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

(v))transferable securities,

(vi) other negotiable instruments and financial assets, including bullion,

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

(l) money broking;

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

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

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

(p) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means “investment” as defined in Article 838 (Investment-Definitions), except that, with respect to “loans” and “debt instruments” referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty:

(c) a loan to, or debt instrument issued by, a Party or a state enterprise thereof is not an investment; and

(d) a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 838 (Investment-Definitions);

investor of a Party means “investor of a Party” as defined in Article 838 (Investment - Definitions);

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 106 (Initial Provisions and General Definitions - Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; for greater certainty, a public entity shall not be considered a designated monopoly or a state enterprise for the purposes of Chapter Thirteen (Competition Policy, Monopolies and State Enterprises); and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; for greater certainty, a self-regulatory organization shall not be considered a designated monopoly for purposes of Chapter Thirteen (Competition Policy, Monopolies and State Enterprises).

Annex 1101.3(a)

Understanding Concerning Subparagraph 3(a) of Article 1101

1. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or supplying in its territory the activities and services described in subparagraph 3(a) of Article 1101. Further, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures relating to those contributions with respect to which such activities or services are exclusively conducted or supplied.

2. For greater certainty, with respect to the activities or services referred to in subparagraph 3(a) of Article 1101 it shall not be inconsistent with this Chapter for a Party to:

(a) designate, formally or in effect, a monopoly, including a financial institution, to conduct or supply some or all activities or services;

(b) permit or require participants to place all or part of their relevant contributions under the management of an entity other than the government, a public entity, or a designated monopoly;

(c) preclude, whether permanently or temporarily, some or all participants from choosing to have certain activities or services conducted or supplied by an entity other than the government, a public entity, or a designated monopoly; and

(d) require that some or all activities or services be conducted or supplied by financial institutions located within the Party's territory. Such activities or services may include the management of some or all contributions or the provision of annuities or other withdrawal (distribution) options using certain contributions.

3. For purposes of this Annex, "contribution" means an amount paid by or on behalf of an individual with respect to, or otherwise subject to, a plan or system described in subparagraph 3(a) of Article 1101.

Annex 1101.5

Understandings Regarding Financial Services Measures

1. Nothing in Article 1106 prohibits a Party from requiring the issuance of a decree, resolution, or regulation by the executive branch, regulatory agencies, or central bank, in order to authorize new financial services not specifically authorized in its law.

2. A Party may adopt excise or other taxes levied on cross-border services to the extent such taxes are consistent with Articles 902 (Cross-Border Trade in Services - National Treatment), 903 (Cross-Border Trade in Services - Most-Favored-Nation Treatment), 1102, and 1103, subject to Article 2204 (Exceptions - Taxation).

3. With respect to cross-border trade in financial services, and without prejudice to other means of prudential regulation, a Party may require the authorization of cross-border financial service suppliers of the other Party and of financial instruments.

4. A Party may apply solvency and integrity requirements to branches of insurance companies of the other Party established in its territory, including measures requiring that capital assigned to a branch and technical reserves be effectively brought into the Party's territory and converted into local currency, in accordance with the Party's law.

5. Without limiting the other applications or meaning of paragraph 2 of Article 1110, including its final sentence, paragraph 2 of Article 1110 permits a Party to apply non-discriminatory exchange rate regulations of general application to the acquisition by its residents of financial services from cross-border financial service suppliers.

Annex 1105

Cross-Border Trade

Canada

Insurance and Insurance-Related Services

1. Paragraph 1of Article 1105 applies to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 1118, with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom, and

(ii) goods in international transit; and

(b) reinsurance and retrocession, services auxiliary to insurance as described in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as described in subparagraph (c) of the definition of financial service.

2. Canada’s commitments on cross-border insurance and insurance-related services apply only where a Colombian entity is not in itself or through an agent insuring in Canada a risk.

Banking and Other Financial Services (excluding insurance)

3. Paragraph 1 of Article 1105 applies to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 1118, with respect to:

(a) the provision and transfer of financial information and financial data processing as described in subparagraph (o) of the definition of financial service; and

(b) advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

4. Canada's commitments on cross-border trade of banking and other financial services (excluding insurance) are made on the basis that neither the foreign bank nor one of its affiliates, if subject to the *Bank Act*, 1991, c. 46, maintains a financial establishment in Canada.

Colombia

Insurance and insurance-related services

1. Paragraph 1 of Article 1105 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 1118 with respect to:

(a) insurance of risks relating to:

(i) international maritime shipping, international commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) consultancy, risk assessment, actuarial and claims settlement services; and

(d) brokerage of insurance risks relating to subparagraphs (a) and (b).

2. Paragraph 1 of Article 1105 applies to the cross-border supply of or trade in financial services as defined in paragraph (c) of the definition of cross-border supply of financial services in Article 1118 with respect to services listed in paragraph 1 above.

3. Colombia’s commitments in paragraphs 1 and 2 with regard to insurance risks described in subparagraphs 1(a)(i) and (ii) and brokerage of such insurance risks shall become effective four years after the entry into force of this Agreement or when Colombia has adopted and implemented the necessary modifications to its relevant legislation, whichever occurs first.

4. Colombia's commitments on cross-border insurance and insurance-related services apply only where a Canadian entity is not in itself or through an agent insuring in Colombia a risk.

Banking and other financial services (excluding insurance)

5. Paragraph 1 of Article 1105 applies with respect to:

(a) provision and transfer of financial information as referred to in subparagraph (o) of the definition of financial service in Article 1118;

(b) financial data processing[2] and related software as referred to in subparagraph (o) of the definition of financial service in Article 1118;[3] and

(c) advisory and other auxiliary financial services,[4] excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service in Article 1118.

6. Notwithstanding subparagraph 5(c), in the event that, after the date of entry into force of this Agreement, Colombia allows credit reference and analysis to be supplied by cross-border financial service suppliers, it shall accord national treatment (as specified in paragraph 3 of Article 1102) to cross-border financial service suppliers of Canada. Nothing in this commitment shall be construed to prevent Colombia from subsequently restricting or prohibiting the supply of credit reference and analysis services by cross-border financial service suppliers.

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[2] It is understood that, where the financial information or financial data processing referred to in subparagraphs (a) and (b) of this paragraph involve personal data, the treatment of such personal data shall be in accordance with Colombian law regulating the protection of such data.

[3] It is understood that a trading platform, whether electronic or physical, does not fall within the range of services specified in this subparagraph.

[4] It is understood that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 1118.

Annex 1114

Authorities Responsible for Financial Services

The authority of each Party responsible for financial services shall be:

(a) for Canada, the Department of Finance of Canada; and

(b) for Colombia, the *Ministerio de Hacienda y Crédito Público*, in coordination with the *Ministerio de Comercio, Industria y Turismo*, the *Banco de la República*; and the Superintendencia Financiera de Colombia;

or their respective successors.

CHAPTER TWELVE

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 1201: General Principles

Further to Article 1202, this Chapter reflects the preferential trading relationship between the Parties, the mutual objective to facilitate temporary entry for business persons on a reciprocal basis and in accordance with Annex 1203, and the need to establish transparent criteria and procedures for temporary entry and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

Article 1202: General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1201 and, in particular, shall expeditiously apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. Nothing in this Chapter shall be construed to prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

Article 1203: Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who comply with its immigration measures applicable to temporary entry such as those relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 1203.

2. Subject to each Party's labour legislation, a Party may refuse to issue a work permit or authorization to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. Each Party shall limit any fees for processing applications for temporary entry of business persons so as to not unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

Article 1204: Provision of Information

1. Further to Article 1901 (Transparency - Publication), and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall:

(a) provide to the other Party relevant materials as will enable the other Party to become acquainted with its measures relating to this Chapter; and

(b) no later than six months after the date of entry into force of this Agreement, make available explanatory material regarding the requirements for temporary entry under this Chapter, in such a manner as will enable business persons of the other Party to become acquainted with those requirements.

2. Each Party shall collect and maintain, and, on request, make available to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation.

Article 1205: Contact Points

1. The Parties hereby establish the following Contact Points:

(a) in the case of Canada:

Director
Temporary Resident Policy
Immigration Branch
Citizenship and Immigration Canada

(b) in the case of Colombia:

Coordinador
Coordinación de Visas e Immigración
Ministerio de Relaciones Exteriores

or their respective successors.

2. The Contact Points shall exchange information as described in Article 1204 and shall meet as required to consider matters pertaining to this Chapter, such as:

(a) the implementation and administration of this Chapter;

(b) the development and adoption of common criteria and interpretations for the implementation of this Chapter;

(c) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;

(d) proposed modifications to this Chapter; and

(e) measures that affect the temporary entry of business persons under this Chapter;

Article 1206: Dispute Settlement

1. A Party may not initiate proceedings under Chapter Twenty-One (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

(a) the matter involves a pattern of practice;

(b) the business person has exhausted the available administrative remedies regarding the particular matter; and

(c) the Contact Points have been unable to resolve the issue.

2. The remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 1207: Relation to Other Chapters

No provision of this Agreement shall be interpreted to impose any obligation on a Party regarding its immigration measures, except as specifically identified in this Chapter and Chapters One (Initial Provisions and General Definitions), Twenty-One (Dispute Settlement), Nineteen (Transparency), Twenty (Administration of the Agreement), and Twenty-Three (Final Provisions).

Article 1208: Transparency and Processing of Applications

1. Further to Chapter Nineteen (Transparency), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding applications and procedures relating to the temporary entry of business persons.

2. Each Party shall endeavor to, within a reasonable period that should not exceed 30 days after an application requesting temporary entry is considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party shall endeavor to provide, without undue delay, information concerning the status of the application

Article 1209: Definitions

For purposes of this Chapter:

business person means a national of a Party who is engaged in trade in goods, the supply of services or the conduct of investment activities;

immigration measures applicable to temporary entry means:

(a) with respect to Canada, the *Immigration and Refugee Protection Act*, S.C. 2001, c.27, as amended and the associated *Immigration and Refugee Protection Regulations*, SOR/2002-227 as amended; and

(b) with respect to Colombia, *El Decreto 4000 de 2004*, publicado en el Diario Oficial de Colombia el 1 de diciembre de 2004, y las *Resoluciones 0255 y 0273* de enero de 2005, as amended.

immigration measure means any measure affecting the entry or sojourn of a foreign national;

labour dispute means a conflict or controversy between a union and employer relating to terms or conditions of employment;

management trainee on professional development means an employee with a post-secondary degree who is on a temporary work assignment intended to broaden that employee's knowledge of and experience in a company in preparation for a senior leadership position within the company;

professional means a national of a Party who is engaged in a specialty occupation[1] requiring:

(a) theoretical and practical application of a body of specialized knowledge and the appropriate certification/license to practice; and

(b) attainment of a post-secondary degree in the specialty requiring four or more years of study, as a minimum for entry into the occupation[2] ;

technician means a national of a Party who is engaged in a specialty occupation[3] requiring :

(a) theoretical and practical application of a body of specialized knowledge and the appropriate certification/license to practice; and

(b) attainment of a post-secondary or technical degree requiring two or more years of study as a minimum for entry into the occupation[4];

specialist means an employee who possesses specialized knowledge of the company's products or services and its application in international markets, or an advanced level of expertise or knowledge of the company's processes and procedures;

temporary entry means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

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1 In the case of Canada, a professional specialty occupation is an occupation which falls within the National Occupation Classification (NOC) levels O and A.

2 In the case of Canada, these requirements are defined in the NOC. In the case of Colombia, the requirements are stated in the specific laws for regulated professions, which will be provided in accordance with Article 1204.

3 In the case of Canada, a technical specialty occupation is an occupation which falls within the National Occupation Classification (NOC) level B.

4 In the case of Canada, these requirements are defined in the NOC. In the case of Colombia, the requirements are stated in the specific laws for regulated professions, which Colombia shall provide in accordance with Article 1204.

Annex 1203

Temporary Entry For Business Persons

Section A - Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 1203.A, without requiring that person to obtain a work permit or an employment authorization, provided that the business person otherwise complies with its immigration measures applicable to temporary entry, on presentation of:

(a) proof of nationality, citizenship or permanent residency status of a Party;

(b) documentation demonstrating that the business person will be engaged in a business activity set out in Appendix 1203.A and describing the purpose of entry; and

(c) evidence demonstrating that the proposed business activity is international in scope and the business person is not seeking to enter the local labour market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside the territory of the Party granting temporary entry.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer or the representing organization, attesting to these matters as sufficient proof.

3. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

4. Notwithstanding paragraph 3, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section B - Traders and Investors

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person seeking to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the Party into which entry is sought, or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with its immigration measures applicable to temporary entry.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section C - Intra-Company Transferees

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof as an executive or manager, a specialist, or a management trainee on professional development, provided that the business person otherwise complies with the immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for six months within the three-year period immediately preceding the date of the application for admission.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section D – Professionals and Technicians

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person seeking to engage in an occupation at a professional or technical level in accordance with Appendix 1203.D, if the business person otherwise complies with its immigration measures applicable to temporary entry, on presentation of:

(a) proof of nationality, citizenship or permanent residency status of a Party; and

(b) documentation demonstrating that the business person is seeking to enter the other Party to provide pre-arranged professional services in the field for which the business person has the appropriate qualifications.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section E – Spouses

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a spouse of a business person qualifying for temporary entry under Section B (Traders and Investors), Section C (Intra-Company Transferees), or Section D (Professionals and Technicians), if the spouse otherwise complies with its immigration measures applicable to temporary entry.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a spouse of a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Appendix 1203.A

Business Visitors

Meetings and Consultations

Business persons attending meetings, seminars or conferences; or engaged in consultations with business associates.

Research and Design

Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party.

Growth, Manufacture and Production

Purchasing and production management personnel, conducting commercial transactions for an enterprise located in the territory of the other Party.

Harvester owners supervising a harvesting crew.

Marketing

Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of the other Party.

Trade-fair and promotional personnel attending a trade convention.

Sales

Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services.

Buyers purchasing for an enterprise located in the territory of the other Party.

Distribution

Transportation operators transporting goods or passengers to the territory of a Party from the territory of the other Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of the other Party.

Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

After-Sales or After-Lease Service

Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer software, purchased or leased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

General Service

Professionals and technicians engaging in a business activity at a professional or technician level as set out in Appendix 1203.D

Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party.

Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

Cook personnel (cookers and assistants) attending or participating in gastronomic events or exhibitions, or consulting with business associates.

Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party.

Information and communication technology service providers attending meetings, seminars, or conferences, or engaged in consultations with business associates

Franchise traders and developers who seek to offer their services in the territory of the other Party.

Appendix 1203.D

Professionals and Technicians

Professionals:

The professionals listed below are not covered under this Chapter:

1. All Health, Education, and Social Services occupations and related occupations, including:

(a) Managers in Health/Education/Social & Community Services

(b) Physicians/Dentists/Optometrists/Chiropractors/Other Health Professions

(c) Pharmacists, Dieticians & Nutritionists

(d) Therapy & Assessment Professionals

(e) Nurse Supervisors & Registered Nurses

(f) Psychologists/Social Workers

(g) University Professors & Assistants

(h) College & Other Vocational Instructors

(i) Secondary/Elementary School Teachers & Counsellors

2. All professional occupations related to cultural industries as defined in Article 2208 (Exceptions – Definitions), including:

(a) Managers in Libraries, Archives, Museums and Art Galleries

(b) Managers – Publishing, Motion Pictures, Broadcasting and Performing Arts

(c) Creative & Performing Artists

3. Recreation, Sports and Fitness Program and Service Directors

4. Managers in Telecommunication Carriers

5. Managers in Postal and Courier Services

6. Managers in Manufacturing

7. Managers in Utilities

8. Managers in Construction and Transportation

9. Judges, Lawyers and Notaries except foreign legal consultants

Technicians

The technicians listed below are covered under this chapter:

1. Civil Engineering Technologists and Technicians

2. Mechanical Engineering Technologists and Technicians

3. Industrial Engineering and Manufacturing Technologists and Technicians

4. Construction Inspectors and Estimators

5. Engineering Inspectors, Testers and Regulatory Officers

6. Supervisors in the following: Machinists and Related Occupations, Printing and Related Occupations, Mining and Quarrying, Oil and Gas Drilling and Service, Mineral and Metal Processing, Petroleum, Gas and Chemical Processing and Utilities, Food, Beverage and Tobacco Processing, Plastic and Rubber Products Manufacturing, Forest Products Processing, Textile Processing

7. Contractors and Supervisors in the following: Electrical Trades and Telecommunications Occupations, Pipefitting Trades, Metal Forming, Shaping and Erecting Trades, Carpentry Trades, Mechanic Trades, Heavy Construction Equipment Crews, Other Construction Trades, Installers, Repairers and Servicers

8. Electrical and Electronics Engineering Technologists and Technicians[5]

9. Electricians[6]

10. Plumbers

11. Industrial Instrument Technicians and Mechanics

12. Aircraft Instrument, Electrical and Avionics Mechanics, Technicians and Inspectors

13. Underground Production and Development Miners

14. Oil and Gas Well Drillers, Servicers and Testers

15. Graphic Designers and Illustrators

16. Interior Designers

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5 Including electronic service technicians.

6 Including industrial electricians.

17. Chefs

18. Computer and Information System Technicians

19. International Purchasing and Selling Agents

CHAPTER THIRTEEN

COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES

Article 1301: Objectives

Recognizing that conduct subject to this Chapter has the potential to restrict bilateral trade and investment, the Parties believe that proscribing such conduct, implementing economically sound competition policies and cooperating in matters covered by this Chapter will help secure the benefits of this Agreement.

Article 1302: Competition Law and Policy

1. Each Party shall maintain its independence in developing and enforcing its competition law.

2. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect to such conduct.

3. Each Party shall ensure that the measures it adopts or maintains to proscribe anti-competitive business conduct and the enforcement actions it takes pursuant to those measures are consistent with principles of transparency, non-discrimination and procedural fairness. Exclusions from these measures shall be transparent. Each Party shall make available to the other Party public information concerning exclusions provided under its competition laws.

4. Each Party should periodically assess its own exclusions to determine whether they are necessary to achieve its overriding policy objectives.

5. Colombia may implement its obligations under this Article through the Andean Community competition laws or an Andean Community enforcement authority.

Article 1303: Consultations

Subject to the independence of each Party to develop, maintain and enforce its competition policy and legislation, the Parties, on request of a Party, shall enter into consultations to foster understanding between them, or to address a specific matter under this Chapter. The requesting Party shall indicate in its request how the matter affects trade or investment between the Parties. The other Party shall give full and sympathetic consideration to the concerns of the requesting Party.

Article 1304: Cooperation

Each Party recognizes the importance of cooperation and coordination between their authorities to further effective competition law enforcement in the free trade area. In this regard, the Parties, through their respective competition authorities, shall negotiate a cooperation instrument that may address, among other matters, notification, consultation, positive and negative comity, technical assistance and exchange of information.

Article 1305: Designated Monopolies

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.

2. Where a Party intends to designate a monopoly and the designation may affect the interests of the other Party, the designating Party shall, whenever possible, provide prior written notification to the other Party of the designation.

3. Each Party shall ensure that any privately-owned monopoly that it designates following the entry into force of this Agreement and any government monopoly that it designates, or has designated prior to the date of entry into force of this Agreement:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;

(b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d) ;

(c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiaries or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.

4. Paragraph 3 does not apply to procurement by government of goods or services or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale.

Article 1306: State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from establishing or maintaining a state enterprise.

2. Each Party shall ensure that any state enterprise that it establishes or maintains, acts in a manner that is not inconsistent with the Party's obligations under Chapters Eight (Investment) and Eleven (Financial Services) wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

3. Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to covered investments.

Article 1307: Dispute Settlement

1. No Party may have recourse to dispute settlement under Chapter Twenty-One (Dispute Settlement) for any matter arising under this Chapter except for those matters arising under Articles 1305 and 1306.

2. For the purposes of this Chapter, an investor may have recourse to investor-state dispute settlement pursuant to subparagraph 1(b) of Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or subparagraph 1(b) of Article 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise) only for matters arising under subparagraph 3(a) of Article 1305 or paragraph 2 of Article 1306.

Article 1308: Definitions

For purposes of this Chapter:

covered investment means "covered investment" as defined in Article 847 (Investment – Definitions);

designate means to establish, authorize, or to expand the scope of a monopoly to cover an additional good or service after the date of entry into force of this Agreement;

designated monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider 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 such grant;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the national government of a Party, or by another such monopoly;

in accordance with commercial considerations means consistent with normal business practices of privately-held (private) enterprises in the relevant business or industry;

market means the geographic and commercial market for a good or service;

non-discriminatory treatment means the better of national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and

state enterprise means, except as set out in Annex 1308, an enterprise owned, or controlled through ownership interests, by a Party.

Annex 1308

Country-Specific Definitions of State Enterprises

1. For purposes of paragraph 3 of Article 1306 "state enterprise" means, with respect to Canada, a Crown Corporation within the meaning of the *Financial Administration Act* (Canada), a Crown Corporation within the meaning of any comparable provincial law or equivalent entity that is incorporated under other applicable provincial law.

2. For the purposes of paragraphs 2 and 3 of Article 1306 “state enterprise”, with respect to Colombia, means an enterprise that is owned, or controlled through ownership interests, by a Party, except the “*Monopolios Rentísticos*” of the level “*departamental*” referred to in Article 336 of the Colombian Constitution.

CHAPTER FOURTEEN

GOVERNMENT PROCUREMENT

Article 1401: Scope and Coverage

Application of Chapter

1. This Chapter applies to any measure adopted or maintained by a Party relating to procurement by a procuring entity listed in Annex 1401:

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

(b) for which the value, as estimated in accordance with paragraph 5, equals or exceeds the relevant threshold specified in Annex 1401; and

(c) subject to the terms of Annex 1401.

2. This Chapter does not apply to:

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

(b) government provision of goods or services to persons or to sub-national governments;

(c) purchases for the direct purpose of providing foreign assistance;

(d) purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter;

(e) 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. For greater certainty, this Chapter does not apply to procurement of banking, financial, or specialized services related to the following activities:

(i) the incurring of public indebtedness; or

(ii) public debt management;

(f) hiring of government employees and related employment measures; or

(g) procurements made by an entity or state enterprise from another entity or state enterprise of that Party.

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

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

Valuation

5. In estimating the value of a procurement for the purpose of ascertaining whether it is a procurement covered by this Chapter, 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;

(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) where the procurement provides for the possibility of option clauses, the estimated maximum total value of the procurement, inclusive of optional purchases; and

(c) where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation of the total maximum value of the procurement over its entire duration.

Article 1402: 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 which 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 defense purposes.

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

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

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

(c) necessary to protect intellectual property; or

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

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

Article 1403: General Principles

National Treatment and Non-Discrimination

1. With respect to any measure relating to procurement covered by this Chapter, each Party shall accord immediately and unconditionally to the goods and services of the other Party, and to the suppliers of the other Party of such goods or services, treatment no less favourable than the most favourable treatment the Party accords to domestic goods, services and suppliers.

2. With respect to any measure relating to procurement covered by this Chapter, a Party 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.

Conduct of Procurement

3. A procuring entity shall conduct procurement covered by this Chapter in a transparent and impartial manner that:

(a) is consistent with this Chapter;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

Tendering Procedures

4. A procuring entity shall use open tendering except where subparagraphs 6 through 9 of Article 1406 or Article 1409 apply.

Rules of Origin

5. With regard to the procurement of goods covered by this Chapter, each Party shall apply the rules of origin that it applies in the normal course of trade to those goods.

Offsets

6. A Party, including its procuring entities, shall not seek, take account of, impose, or enforce offsets at any stage of a procurement covered by this Chapter.

Measures Not Specific to Procurement

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

Article 1404: Publication of Procurement Information

Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application**,** and procedure regarding procurement covered by this Chapter, 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.

Article 1405: Publication of Notices

Notice of Intended Procurement

1. For each procurement covered by this Chapter, a procuring entity shall publish a notice inviting suppliers to submit tenders ("notice of intended procurement"), or where appropriate, a notice inviting applications for participation in the procurement. Any such notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering. Each Party shall maintain a gateway electronic site that includes links to all notices of procuring entities for procurements covered by this Chapter.

2. Each notice of intended procurement shall include:

(a) a description of the procurement, including the nature, and where known, the quantity of the goods or services to be procured;

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

(c) a list of conditions for participation of suppliers;

(d) 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 applicable**;**

(e) the address and time limits for the submission of tenders or applications for participation**;**

(f) the time-frame for delivery of the goods or services to be procured or the duration of the contract;

(g) where, pursuant to Article 1406, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

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

Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year notices regarding their respective procurement plans. Such notices should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement.

Article 1406: Conditions for Participation

General Requirements

1. Where a Party, including its procuring entities, requires suppliers to satisfy registration, qualification or any other requirements or conditions for participation in a separate process in order to participate in a procurement covered by this Chapter, the procuring entity shall publish a notice inviting suppliers to apply for participation. The procuring entity shall publish the notice sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the procuring entity to evaluate and make its determination based on such applications.

2. A procuring entity shall limit any conditions for participation in a procurement covered by this Chapter 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.

3. 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; and

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

4. 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 the procuring entity has specified in advance in its notices or tender documentation.

5. In assessing whether a supplier satisfies the conditions for participation, a Party, including its procuring entities, shall recognize as qualified all domestic suppliers and suppliers of the other Party that satisfy the conditions for participation.

Multi-use Lists

6. A procuring entity may establish or maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:

(a) published annually; and

(b) where published by electronic means, made available continuously.

7. The notice provided for in paragraph 6 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 and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;

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

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

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

8. 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.

Selective Tendering

9. Where a Party’s law allows the use of selective tendering procedures, a procuring entity shall, for each intended procurement covered by this Chapter:

(a) publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the entity to evaluate, and make its determinations based on, such applications; and

(b) allow all domestic suppliers and suppliers of the other Party that the entity has determined satisfy the conditions for participation to submit a tender, unless the entity has stated in the notice of intended procurement or, where publicly available, in the tender documentation, a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

Information on Procuring Entity Decisions

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

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

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

(a) bankruptcy;

(b) false declarations; or

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

13. Procuring entities of each Party shall not adopt or maintain any 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.

Article 1407: 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 international trade between the Parties.

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

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

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

3. 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, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

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

5. 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

6. 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, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;

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

(c) all evaluation criteria to be considered in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

(d) where there will be a public opening of tenders, the date, time, and place for the opening of tenders; and

(e) any other terms or conditions relevant to the evaluation of tenders.

7. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in a procurement covered by this Chapter, except that the entity shall not make available information with regard to a specific procurement in a manner that would give the requesting supplier an advantage over its competitors in the procurement.

Modifications

8. Where a 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, amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating in the procurement at the time of the modification, amendment or re-issuance, where such 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 such suppliers to modify and submit amended tenders, as appropriate.

Article 1408: Time Limits for the Submission of Tenders

1. A procuring entity shall provide suppliers sufficient time to submit applications to participate in a procurement covered by this Chapter and prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.

Deadlines

2. Except as provided for in paragraphs 3 and 4, 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 entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

3. A procuring entity may reduce by five days the time limit established under paragraph 2 for the submission of tenders, 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.

4. A procuring entity may establish a time limit of less than 40 days for the submission of tenders provided that the time given to suppliers is sufficient to enable them to prepare and submit responsive tenders and is in no case less than 10 days before the final date for the submission of tenders, where:

(a) the procuring entity published a separate notice containing the information specified in paragraph 3 of Article 1405 at least 40 days and not more than 12 months in advance, and such separate notice contains a description of the procurement, the relevant time limits for the submission of tenders, or, where applicable, applications for participation, and the address from which documents relating to the procurement may be obtained;

(b) in the case of the second or subsequent publications of notices for procurement of a recurring nature;

(c) the procuring entity procures commercial goods or services; or

(d) a state of urgency duly substantiated by the procuring entity renders impracticable the time limits specified in paragraph 2, or where applicable, paragraph 3.

Article 1409: Limited Tendering

1. Provided that a procuring entity does not use this provision to avoid competition among suppliers, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, the procuring entity may contact a supplier or suppliers of its choice and may choose not to apply Articles 1405, 1406, 1407, 1408 and 1410 in any of the following circumstances:

(a) where the requirements of the tender documentation are not substantially modified and:

(i) no tenders were submitted or no suppliers applied to participate in a procurement covered by this Chapter,

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

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

(iv) the tenders submitted have been collusive;

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

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

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

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

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

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

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

(d) for goods purchased on a commodity market;

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

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

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

(i) the contest has been organized 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;

(h) where a procuring entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest; and

(i) 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.

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 1410: 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. A procuring entity shall treat tenders in confidence until at least the opening of the tenders.

3. Where 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 entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for award, a tender must be submitted in writing by a supplier that satisfies the conditions for participation and must, at the time of opening, comply with the essential requirements of the notices and tender documentation.

5. 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 entity has determined to be fully capable of undertaking the contract and, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

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

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

Information Provided to Suppliers

7. A procuring entity shall promptly inform suppliers participating in the procurement of the entity's contract award decisions and, on request, shall do so in writing. Subject to Article 1411, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

8. Not later than 72 days after an award, a procuring entity shall publish in an officially designated publication, which may be in either an electronic or paper medium, a notice that includes, at a minimum, the following information about the contract:

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

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

(c) the date of award;

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

(e) the contract value; and

(f) the procurement method used and, in cases where a procedure has been used pursuant to paragraph 1 of Article 1409, a description of the circumstances justifying the use of such procedure.

Maintenance of Records

9. A procuring entity shall maintain reports and records of tendering procedures relating to procurements covered by this Chapter, including the reports provided for in paragraph 2 of Article 1409, and shall retain such reports and records for a period of at least three years after the award of a contract.

Article 1411: Disclosure of Information

Provision of Information to a Party

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender**.** In cases where release of the information would prejudice competition in future tenders, the Party that receives that information shall not disclose it to any supplier, except after consultation with, and 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, may not provide information to a particular supplier that might prejudice fair competition between suppliers.

3. A Party, including its procuring entities, authorities, and review bodies, are not required under this Chapter to release confidential information where release:

(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 1412: Domestic Review Procedures

1. Each Party shall ensure that its entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement covered by this Chapter in which they have, or have had, an interest. Each Party shall encourage suppliers to seek clarification from its entities through consultations with a view to facilitating the resolution of any such complaints.

2. 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 suppliers ("challenge") arising in the context of a procurement covered by this Chapter in which the supplier has, or has had, an interest.

3. Each Party shall ensure that any authority it establishes or designates under paragraph 2 has written procedures that are generally available. Such procedures shall be timely, effective, transparent, non-discriminatory and 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 in the challenge shall:

(i) have the right to be heard prior to a decision of the review body being made on the challenge,

(ii) have the right to be represented and accompanied,

(iii) have access to all challenge proceedings,

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

and

(c) decisions or recommendations relating to challenges shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

4. 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 to the supplier or reasonably should have become known to the supplier.

5. Each Party shall provide that an authority it establishes or designates under paragraph 2 has authority to take interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures for taking interim measures 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.

6. Each Party shall ensure that a supplier’s submission of a challenge will not prejudice the supplier’s participation in ongoing or future procurements.

7. Where a body other than an authority referred to in paragraph 2 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.

Article 1413: Modifications and Rectifications to Coverage

1. Where a Party modifies its coverage of procurement under this Chapter, the Party shall:

(a) notify the other Party in writing; and

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

2. Notwithstanding subparagraph 1(b), a Party need not provide compensatory adjustments where:

(a) the modification in question is a minor amendment or rectification of a purely formal nature; or

(b) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence.

3. If the other Party does not agree that:

(a) an adjustment proposed under subparagraph 1(b) is adequate to maintain a comparable level of mutually agreed coverage;

(b) the proposed modification is a minor amendment or a rectification under subparagraph 2(a); or

(c) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence under subparagraph 2(b),

it must object in writing within 30 days of receipt of the notification referred to in paragraph 1 or be deemed to have agreed to the adjustment or proposed modification, including for the purposes of Chapter Twenty-One (Dispute Settlement).

4. Where the Parties are in agreement on the proposed modification, rectification, or minor amendment, including where a Party has not objected within 30 days under paragraph 3, they shall give effect to the agreement by modifying forthwith the relevant Annex.

Article 1414: Committee on Procurement

The Parties hereby establish a Committee on Procurement to address matters related to the implementation of this Chapter with a view to maximizing access to government procurement.

Article 1415: Further Negotiations

1. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that contains different procurement procedures and practices, including the introduction of shorter bid periods, on the request of either Party, the Parties shall enter into negotiations with a view to harmonising this Chapter with the new international agreement.

2. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that provides greater access to its procurement market than is provided under this Chapter, including with respect to provincial, territorial or local government procurement, on the request of either Party, the Parties may agree to enter into negotiations with a view to achieving an equivalent level of market access under this Chapter as is contained in the other international agreement.

Article 1416: Information technology

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

Article 1417: Definitions

For purposes of this Chapter:

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;

conditions for participation means any registration, qualification or other pre-requisites for participation in a procurement;

construction services means a contractual arrangement for the realization by any means of civil or building works, whether paid for directly by the Party or through, for a specified period of time, any grant to the supplier of temporary ownership or a right to control and operate, and demand payment for the use of such works, for the duration of the contract;

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

limited tendering means a procurement method where the procuring entity contacts a supplier or suppliers of its choice;

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;

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;

offsets 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 actions or requirements;

open tendering means a procurement method where all interested suppliers may submit a tender;

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

procuring entity means an entity listed in Annex 1401-1 or 1401-2;

selective tendering means a procurement method where only suppliers satisfying the conditions for participation are invited by the procuring entity to submit a tender;

services includes construction services, unless otherwise specified;

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

supplier means a person or group of persons that provides or could provide goods or services to a procuring entity; and

technical specification means a tendering requirement that:

(a) 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

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

CHAPTER FIFTEEN

ELECTRONIC COMMERCE

Article 1501: Scope and Coverage

1. The Parties confirm that this Agreement, including Chapter Nine (Cross-Border Trade in Services), Chapter Two (National Treatment and Market Access for Goods), Chapter Eight (Investment), Chapter Fourteen (Government Procurement), Chapter Eleven (Financial Services), Chapter Ten (Telecommunications), and Chapter Twenty-Two (Exceptions) applies to trade conducted by electronic means.[1] In particular, the Parties recognize the importance of the access and use provisions of Chapter Ten (Telecommunications) in enabling trade conducted by electronic means.

2. Nothing in this Chapter imposes obligations on a Party to allow products to be delivered electronically, except in accordance with the obligations of that Party in other chapters in this Agreement.

Article 1502: General Provisions

1. The Parties recognize the economic growth and opportunities provided by electronic commerce and the applicability of WTO rules to electronic commerce.

2. Considering the potential of electronic commerce as a social and economic development tool, the Parties recognize the importance of:

(a) clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce;

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[1] For greater certainty, the application of this Agreement to trade conducted by electronic means includes the application of the reservations or exceptions taken by a Party as set out in its schedule to Annex I, II, or III.

(b) encouraging self-regulation by the private sector to promote trust and confidence in electronic commerce, having regard to the interests of users, through initiatives such as industry guidelines, model contracts and codes of conduct;

(c) interoperability, innovation and competition in facilitating electronic commerce;

(d) ensuring that global and domestic electronic commerce policy takes into account the interest of all stakeholder, including business, consumers, non-government organizations and relevant public institutions;

(e) facilitating the use of electronic commerce by micro, small and medium sized enterprises; and

(f) protecting personal information in the on-line environment.

3. Each Party shall endeavour to adopt measures to facilitate trade conducted by electronic means by addressing issues relevant to the electronic environment.

4. The Parties recognize the importance of avoiding unnecessary barriers to trade conducted by electronic means. Having regard to its national policy objectives, each Party shall endeavour to guard against measures that:

(a) unduly hinder trade conducted by electronic means; or

(b) have the effect of treating trade conducted by electronic means more restrictively than trade conducted by other means,

Article 1503: Customs Duties

1. Neither Party may apply customs duties, fees or charges on or in connection with the importation or exportation of products by electronic means.

2. For greater clarity, this Chapter does not preclude a Party from imposing internal taxes or other internal charges on products delivered electronically, provided that such taxes or charges are imposed in a manner that is not inconsistent with this Agreement.

Article 1504: Consumer Protection

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices in electronic commerce.

2. To this end, Parties should exchange information and experiences on national approaches for the protection of consumers engaging in electronic commerce.

Article 1505: Paperless Trade Administration

1. Each Party shall endeavour to make trade administration documents available to the public in electronic form.

2. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such documents.

Article 1506: Protection of Personal Information

1. Each Party should adopt or maintain laws, regulations or administrative measures for the protection of personal information of users engaged in electronic commerce.

2. The Parties should exchange information and experiences regarding their domestic regimes for the protection of personal information.

Article 1507: Cooperation

1. Recognizing the global nature of electronic commerce, the Parties affirm the importance of:

a) working together to facilitate the use of electronic commerce by micro, small and medium sized enterprises;

b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence, security in electronic communications, authentication, intellectual property rights, and electronic government;

c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;

d) fostering electronic commerce through the encouragement of the private sector to adopt codes of conduct, model contracts, guidelines, and enforcement mechanisms; and

e) actively participating in regional and multilateral fora, to promote the development of electronic commerce.

2. Parties may work together through various means, including through information and communication technologies, face to face meetings or a working group of experts to further the objectives of this Chapter, in particular Articles 1504, 1506 and 1507.

Article 1508: Relation to Other Chapters

In the event of an inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

Article 1509: Definitions

For purposes of this Chapter:

authentication means the process or act of establishing the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

delivered electronically means delivered through telecommunications, alone or in conjunction with other information and communication technologies;

interoperability means the ability of two or more systems or components to exchange information and to use the information that has been exchanged;

personal information means any information relating to an identified or identifiable natural person;

trade administration documents means forms that a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods; and

trade conducted by electronic means trade conducted through telecommunications, alone or in conjunction with other information and communication technologies.

CHAPTER SIXTEEN

LABOUR

Article 1601: Affirmations

The Parties affirm their obligations as members of the International Labour Organization (ILO) and their commitments to the *ILO Declaration on Fundamental Principles and Rights at Work* (1998) and its Follow-Up as well as their continuing respect for each other's Constitution and laws.

Article 1602: Non-Derogation

The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws.

Article 1603: Objectives

The Parties wish to build on their respective international commitments, strengthen their cooperation on labour and in particular:

(a) improve working conditions and living standards in each Party's territory;

(b) promote their commitment to the internationally recognized labour principles and rights;

(c) promote compliance with and effective enforcement by each Party of its labour laws;

(d) promote social dialogue on labour matters among workers and employers, their respective workers' and employers' organizations, and governments;

(e) pursue cooperative labour-related activities on the basis of mutual benefit;

(f) strengthen the capacity of the ministries responsible for labour affairs and other institutions responsible for administering and enforcing labour laws in their territories; and

(g) foster full and open exchange of information between the Parties in regard to their labour law, its application and institutions in each Party's territory.

Article 1604: Obligations

In order to further the foregoing objectives, the Parties' mutual obligations are set out in the *Labour Cooperation Agreement between Canada and the Republic of Colombia* (LCA) that addresses, *inter alia*:

(a) general commitments concerning the internationally recognized labour principles and rights that are to be embodied in each Party's labour laws;

(b) a commitment not to derogate from domestic labour laws in order to encourage trade or investment;

(c) effective enforcement of labour laws through appropriate government action, private rights of action, procedural guarantees, public information and awareness;

(d) institutional mechanisms to oversee the implementation of the LCA, such as a Ministerial Council and national Points of Contact to receive and review public communications on specified labour law matters and to enable cooperative activities to further the objectives of the LCA;

(e) general and ministerial consultations regarding the implementation of the LCA and its obligations; and

(f) independent review panels to hold hearings and make determinations regarding alleged non-compliance with the terms of the LCA and, if requested, monetary assessments.

Article 1605: Cooperative Activities

The Parties recognize that labour cooperation is an essential element in raising the level of compliance with labour standards and as such the LCA provides for the development of a plan of action for cooperative labour activities for the promotion of the objectives of the LCA. An indicative list of areas of possible cooperation between the Parties is set out in that Agreement.

CHAPTER SEVENTEEN

ENVIRONMENT

Article 1701: Affirmations

1. The Parties recognize that each Party has sovereign rights and responsibilities to conserve and protect its environment and affirm their environmental obligations under their domestic law, as well as their international obligations under multilateral environmental agreements to which they are party.

2. The Parties recognize the mutual supportiveness between trade and environment policies and the need of implementing this Agreement in a manner consistent with environmental protection and conservation and sustainable use of their resources.

Article 1702: Non-derogation

Neither Party shall encourage trade or investment by weakening or reducing the levels of protection afforded in their respective environmental laws.

Article 1703: Agreement on Environment

In furtherance of these principles, the Parties have set out their mutual obligations in the *Agreement on the Environment between Canada and the Republic of Colombia* ("Agreement on the Environment") that addresses, *inter alia*:

(a) conservation, protection and improvement of the environment in the territory of each Party for the well being of present and future generations;

(b) a commitment not to derogate from domestic environmental laws in order to encourage trade or investment;

(c) conservation and sustainable use of biological diversity and protection and preservation of traditional knowledge;

(d) development of, compliance with and enforcement of environmental laws;

(e) transparency and public participation on environmental matters; and

(f) cooperation between the Parties on the advancement of environmental issues of common interest.

Article 1704: Relationship between this Agreement and the Agreement on the Environment

1. The Parties recognize the importance of balancing trade obligations and environmental obligations, and affirm that the Agreement on the Environment complements this Agreement, and that the two are mutually supportive.

2. The Commission shall consider, as appropriate, reports and recommendations from the Committee on Environment established under the Agreement on Environment, in respect of any trade and environment-related issues.

CHAPTER EIGHTEEN

TRADE-RELATED COOPERATION

Article 1801: Objectives

Recognizing that trade-related cooperation is a catalyst for the reforms and investments necessary to foster trade-driven economic growth and adjustment to liberalized trade, the Parties agree to promote trade-related cooperation pursuant to the following objectives:

(a) to strengthen the capacities of the Parties to maximize the opportunities and benefits deriving from this Agreement;

(b) to strengthen and develop cooperation at a bilateral, regional or multilateral level;

(c) to foster new opportunities for trade and investment, stimulating competitiveness and encouraging innovation, including dialogue and cooperation among their respective academies of science, governmental organizations, non-governmental organizations, universities, colleges, as well as their science, research and technological centers and institutes, and private sector enterprises and firms in areas of mutual interest relating to science and technology and innovation; and

(d) to promote sustainable economic development, with an emphasis on small and medium sized enterprises, in order to contribute to the reduction of poverty through trade.

Article 1802: Committee on Trade-Related Cooperation

1. Pursuant to Article 1801, the Parties hereby establish a Committee on Trade-Related Cooperation comprising representatives of each Party.

2. Each Party should provide, and periodically update, an Action Plan to the Committee describing proposed trade-related cooperation initiatives.

3. The Committee shall:

(a) seek the prioritization and promote the realization of trade-related cooperation initiatives outlined in the Action Plans of the Parties;

(b) invite appropriate international donor institutions, private sector entities, and non-governmental organizations to assist in the development and implementation of trade-related cooperation initiatives in accordance with the priorities set out by the Committee pursuant to subparagraph 3(a);

(c) work with other committees or working groups established under this Agreement, including through joint meetings, to support the implementation of trade-related cooperation provisions outlined in the Agreement, in accordance with the priorities set out by the Committee pursuant to subparagraph 3(a);

(d) establish rules and procedures for the conduct of its work; all decisions of the Committee shall be taken by consensus, unless otherwise agreed;

(e) monitor and assess the progress in implementing trade-related cooperation initiatives;

(f) provide an annual report to the Commission describing the activities of the Committee, unless otherwise agreed; and

(g) meet annually, or as otherwise agreed, in person or by any other technological means available.

4. The Committee may establish *ad hoc* working groups, which may comprise government and non-government representatives.

5. The implementation of trade-related cooperation initiatives is subject to the joint decision of the Parties.

CHAPTER NINETEEN

TRANSPARENCY

Section A - Transparency

Article 1901: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures**.**

Article 1902: Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement**.**

Article 1903: Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 1901 to particular persons, goods or services of the other Party in specific cases:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when permitted by time, the nature of the proceeding, and the public interest; and

(c) its procedures are in accordance with domestic law**.**

Article 1904: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue**.**

Article 1905: Cooperation on Promoting Increased Transparency

The Parties agree to cooperate in bilateral, regional and multilateral fora on means to promote transparency in respect of international trade and investment.

Article 1906: Definitions

For purposes of this Section:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Section B - Anti-Corruption

Article 1907: Statement of Principles

The Parties affirm their resolve to prevent and combat bribery and corruption in international trade and investment.

Article 1908: Anti-Corruption Measures

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish, in matters affecting international trade or investment, as criminal offences when committed intentionally:

(a) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(c) the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in reloffenation to the performance of official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and

(d) aiding, abetting or conspiring to commit any of the offences described in subparagraphs (a) through (c).

2. Each Party shall adopt such measures as may be necessary to establish its jurisdiction over offences committed in its territory.

3. Each Party shall make the commission of an offence covered by this Agreement liable to sanctions that take into account the gravity of that offence.

4. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of enterprises for participation in the offences covered by this Agreement. In particular, each Party shall ensure that enterprises held liable in accordance with this Article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

5. Each Party shall consider incorporating in its domestic legal system at the national level appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Agreement.

Article 1909: Cooperation in International Fora

The Parties recognize the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in international trade and investment. The Parties agree to work together to advance efforts in regional and multilateral fora to prevent and combat bribery and corruption in international trade and investment, including encouraging and supporting appropriate initiatives.

Article 1910: Definitions

For purposes of this Section:

foreign public official means any natural person holding a legislative, executive, administrative, or judicial office of a foreign country, whether appointed or elected, and any natural person exercising a public function for a foreign country, including for a public agency or public enterprise;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party or its institutions, at any level of its hierarchy; and

public official means any natural person holding a legislative, executive, administrative or judicial office of a Party, whether appointed or elected and whether permanent or temporary.

CHAPTER TWENTY

ADMINISTRATION OF THE AGREEMENT

Article 2001: The Joint Commission

1. The Parties hereby establish a Joint Commission**,** comprising cabinet-level representatives of the Parties, or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) review the general functioning of this Agreement;

(c) assess the outcomes of the application of this Agreement;

(d) oversee the further elaboration of this Agreement;

(e) supervise the work of all committees, working groups and country coordinators established under this Agreement and referred to in Annex 2001;

(f) approve the Model Rules of Procedure; and

(g) consider any other matter that may affect the operation of this Agreement.

3. The Commission may:

(a) adopt interpretive decisions concerning this Agreement binding on panels established under Article 2106 (Dispute Settlement - Establishment of a Panel) and Tribunals established under Section B of Chapter Eight (Investment);

(b) seek the advice of non-governmental persons or groups;

(c) take any other action in the exercise of its functions as the Parties may agree; and

(d) further the implementation of the objectives of this Agreement by approving any revisions of:

(i) the Schedules to Annex 203, with the purpose of adding one or more goods excluded in the schedule of a Party,

(ii) the phase-out periods established in the tariff elimination, schedule, with the purpose of accelerating the tariff reduction,

(iii) the specific rules of origin established in Annex 301,

(iv) the procuring entities listed in Annex 1401, and

(v) any Uniform Regulations on Origin Procedures that the Parties may develop;

(e) consider any amendments or modifications to the rights and obligations under this Agreement; and

(f) establish the amount of remuneration and expenses that will be paid to panelists.

4. On the request of the Committee on the Environment established under the *Agreement on the Environment between Canada and the Republic of Colombia*, the Commission may consider modifying Annex 103 to include other Multilateral Environment Agreements (MEAs), or to include amendments to any MEAs or remove any MEAs listed in that Annex.

5. Any revision referred to in subparagraph 3(d) shall be subject to the completion of any necessary domestic legal procedures of either Party.

6. The Commission may review the impacts, including any benefits, of this Agreement on the small and medium-size businesses of the Parties. Towards that end, the Commission may:

(a) designate working groups to evaluate the effects of this Agreement on small and medium-size businesses and make relevant recommendations to the Commission, including working plans focused on the needs of small and medium-size businesses. Any working group recommendations with respect to trade capacity building shall be referred to the Committee on Trade-Related Cooperation for consideration; and

(b) receive information, input and views from representatives of small and medium-size businesses and their business associations.

7. The Commission may establish and delegate responsibilities to committees, working groups and country coordinators. Except where specifically provided for in this Agreement, the committees, working groups and country coordinators shall work under a mandate recommended by the Agreement Coordinators referred to in Article 2002 and approved by the Commission.

8. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by mutual agreement.

9. The Commission shall normally convene once a year, or upon the request in writing of either Party**.** Unless otherwise agreed by the Parties, sessions of the Commission shall be held alternately in the territory of each Party, or by any technological means available.

Article 2002: Agreement Coordinators

1. Each Party shall appoint an Agreement Coordinator and notify the other Party within 60 days following the entry into force of this Agreement.

2. The Agreement Coordinators shall jointly:

(a) monitor the work of all committees, working groups and country coordinators established under this Agreement, referred to in Annex 2001**;**

(b) recommend to the Commission the establishment of such committees, working groups and country coordinators as they consider necessary to assist the Commission;

(c) coordinate preparations for Commission meetings;

(d) follow up with any decisions taken by the Commission, as appropriate;

(e) receive all notifications and information provided, pursuant to this Agreement and, as necessary, facilitate communications between the Parties on any matter covered by this Agreement; and

(f) consider any other matter that may affect the operation of this Agreement as mandated by the Commission.

3. The Coordinators shall meet as often as required.

4. Each Party may request in writing at any time that a special meeting of the Coordinators be held. Such a meeting shall take place within 30 days of receipt of the request.

Annex 2001

Committees, Working Groups and Country Coordinators

1. Committees:

   (a) Committee on Trade in Goods (Article 220);

      (i) Subcommittee on Agriculture (Article 221),

      (ii) Subcommittee on Trade Facilitation (Article 420);

   (b) Committee on Sanitary and Phytosanitary Measures (Article 504);

   (c) Committee on Investment (Article 817);

   (d) Committee on Financial Services (Article 1114);

   (e) Committee on Procurement (Article 1414);

   (f) Committee on Trade Related Cooperation (Article 1802).

2. Working Groups:

   (a) Working Group in Cross-Border Trade in Services (Article 912).

3. Country Coordinators:

   Country Coordinators on Technical Barriers to Trade (Article 609).

CHAPTER TWENTY-ONE

DISPUTE SETTLEMENT

Article 2101: Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 2102: Scope of Application

1. Except for any matter arising under Chapters Sixteen (Labour) and Seventeen (Environment) and as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that:

(a) an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement;

(b) the other Party has otherwise failed to carry out its obligations under this Agreement; or

(c) any benefit that the Party could reasonably have expected to accrue to it under any provision of:

(i) Chapters Two (National Treatment and Market Access for Goods), Three (Rules of Origin), Four (Origin Procedures and Trade Facilitation) Seven (Emergency Action and Trade Remedies) or Fourteen (Government Procurement), or

(ii) Chapter Nine (Cross-Border Trade in Services),

is being nullified or impaired as a result of the application of any measure of the other Party that is not inconsistent with this Agreement.

2. In any dispute in respect of subparagraph 1(c), a panel established under this Chapter shall take into consideration the jurisprudence interpreting Article XXIII:1(b) of the GATT 1994 and Article XXIII(3) of GATS. A Party may not invoke subparagraph 1(c)(ii) with respect to any measure subject to an exception under Article 2201 (Exceptions - General Exceptions) nor invoke paragraph 1(c) with respect to any measure subject to the exception under Article 2206 (Exceptions - Cultural Industries).

Article 2103: Choice of Forum

1. Subject to paragraph 2, disputes regarding any matter arising under both this Agreement and the WTO Agreement or any another free trade agreement to which both Parties are party, or any successor agreement thereto, may be settled in either forum at the discretion of the complaining Party.

2. In any dispute referred to in paragraph 1 where the Party complained against claims that its measures are subject to Article 103 (Initial Provisions and General Definitions - Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party, in respect of that matter, may have recourse to dispute settlement procedures only under this Agreement**.**

3. Where the complaining Party requests the establishment of a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the other, unless the Party complained against makes a request pursuant to paragraph 2.

Article 2104: Consultations

1. A Party may request in writing consultations with the other Party regarding any matter referred to in Article 2102.

2. The requesting Party shall deliver the request to the other Party, and shall set out the reasons for the request, including the identification of the measure or other matter at issue under Article 2102 and an indication of the legal basis for the complaint.

3. The other Party shall respond in writing and, subject to paragraph 4, the Parties shall, unless they otherwise agree, enter into consultations within 30 days of the date of receipt of the request by the other Party.

4. In cases of urgency, including those concerning perishable goods or otherwise involving goods or services that rapidly lose their trade value, such as certain seasonal goods or services, consultations shall commence within 15 days of the date of receipt of the request by the other Party.

5. The requesting Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

6. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article. To this end, each Party shall:

(a) provide sufficient information to enable a full examination of the measure or other matter at issue; and

(b) treat any confidential or proprietary information received in the course of consultations on the same basis as the Party providing the information.

7. Consultations are confidential and without prejudice to the rights of the Parties in proceedings under this Chapter.

8. Consultations may be held in person or by any other means agreed to by the Parties.

Article 2105: Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation.

2. Such alternative methods of dispute resolution shall be conducted according to procedures agreed to by the Parties.

3. Proceedings established under this Article may begin at any time and be suspended or terminated at any time by either Party.

4. Proceedings involving good offices, conciliation or mediation are confidential and without prejudice to the rights of the Parties in any other proceedings.

Article 2106: Establishment of a Panel

1. Unless the Parties agree otherwise, and subject to paragraph 3, if a matter referred to in Article 2104 has not been resolved within:

(a) 45 days after the date of receipt of the request for consultations; or

(b) 25 days after the date of receipt of the request for consultations for matters referred to in paragraph 4 of Article 2104;

the complaining Party may refer the matter to a dispute settlement panel.

2. The complaining Party shall deliver the written request for panel establishment to the other Party, indicating the reason for the request, identifying the specific measures or other matters at issue and providing a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. A dispute settlement panel may not be established to review a proposed measure.

Article 2107: Qualifications of Panelists

1. Each panelist shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or in the settlement of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of and not be affiliated with or take instructions from, either Party;

(d) not be a national of either Party, nor have his or her usual place of residence in the territory of either Party, nor be employed by either of them; and

(e) comply with a Code of Conduct that the Commission shall approve at its first session following the entry into force of this Agreement.

2. Individuals who have been involved in any of the possible alternative dispute settlement proceedings referred to in Article 2105 may not serve as panelists in the same dispute.

Article 2108: Panel Selection

1. The panel shall comprise three panelists.

2. Each Party shall, within 30 days after the date of receipt of the request for panel establishment, appoint a panelist, propose up to four candidates to serve as the chair of the panel and notify the other Party in writing of the appointment and its proposed candidates to serve as the chair. If a Party fails to appoint a panelist within this time, the panelist shall be selected by lot within seven days from the candidates proposed for the chair.

3. The Parties shall, within 45 days after the date of receipt of the request for panel establishment, endeavour to agree on and appoint the chair from among the candidates proposed. If the Parties fail to agree on the chair within this time, within a further seven days the chair shall be selected by lot from the candidates proposed.

4. If a panelist appointed by a Party withdraws, is removed, or becomes unable to serve, a replacement shall be appointed by that Party within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 2. If the chair of the panel withdraws, is removed, or becomes unable to serve, the Parties shall agree on the appointment of a replacement within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 3. If there are no remaining candidates, each Party shall propose up to three additional candidates within a further 30 days and the panelist or chair shall be selected by lot within seven days thereafter from among the candidates proposed. In any case, any time period applicable to the proceeding shall be suspended beginning on the date the panelist or chair withdraws, is removed, or becomes unable to serve and ending on the date the replacement is selected.

Article 2109: Rules of Procedure

1. The Commission shall approve Model Rules of Procedure at its first session following the entry into force of this Agreement.

2. Any panel established under this Chapter shall follow the Model Rules of Procedure. A panel may establish, in consultation with the Parties, supplementary rules of procedure that do not conflict with the provisions of this Chapter.

3. Unless the Parties agree otherwise, the rules of procedure shall ensure:

(a) the opportunity for each Party to provide initial and rebuttal written submissions;

(b) the right to at least one hearing before the panel, which, subject to subparagraph (g), shall be open to the public;

(c) that the Parties have the right to present and receive written submissions and present and hear oral arguments in any of the Parties' official languages;

(d) subject to subparagraph (g), that each Party's written submissions, written versions of its oral statements and written responses to requests or questions from the panel may be made public;

(e) that the panel allow non-governmental persons in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submission and arguments of the Parties;

(f) all submissions and comments made to the panel shall be available to the other Party; and

(g) the protection of information designated by either Party for confidential treatment.

4. Unless the Parties otherwise agree within 15 days after the date of the establishment of the panel, the terms of reference shall be:

"To examine, objectively and in the light of the relevant provisions of the Agreement, the matter referred to in the request for the establishment of the panel and to make findings, determinations and recommendations as provided in Article 2110."

5. If the complaining Party wishes to argue that a matter has nullified or impaired benefits, in the sense of subparagraph 1(c) of Article 2102, the terms of reference shall so indicate.

6. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of any measure determined:

(a) to be inconsistent with the obligations of the Agreement; or

(b) to have caused nullification or impairment in the sense of subparagraph 1(c) of Article 2102,

the terms of reference shall so indicate.

7. On the request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body it deems appropriate in accordance with the Model Rules of Procedure.

8. The panel may rule on its own jurisdiction.

9. The panel may delegate to the chair authority to make administrative and procedural decisions.

10. Findings, determinations and recommendations of the panel in the sense of Article 2110 shall be made by a majority of its members.

11. Panelists may furnish separate opinions on matters not unanimously agreed. No panel may disclose which panelists are associated with majority or minority opinions.

12. The Parties shall bear the expenses of a panel, including the remuneration of its members, in accordance with the Model Rules of Procedure.

Article 2110: Panel Reports

1. Unless the Parties otherwise agree, the panel shall issue reports in accordance with the provisions of this Chapter.

2. The panel shall base its reports on the provisions of this Agreement applied and interpreted in accordance with the rules of interpretation of public international law, the submissions and arguments of the Parties and on any information and technical advice put before it pursuant to the provisions of this Chapter.

3. The panel shall present to the Parties an initial report within 90 days after the last panelist is selected, unless the Parties agree on a different period of time. The report shall contain:

(a) findings of fact;

(b) determinations as to whether or not a Party has conformed with its obligations under this Agreement and any other finding or determination requested in the terms of reference; and

(c) recommendations for resolution of the dispute, if requested by a Party.

4. Notwithstanding the provisions of Article 2109, the initial report of the panel shall be confidential**.**

5. A Party may submit written comments to the panel on its initial report, subject to time limits that may be set by the panel. After considering any such comments, the panel, on its own initiative or on the request of a Party, may:

(a) request the views of a Party;

(b) reconsider its report; or

(c) make any further examination that it considers appropriate**.**

6. The panel shall present to the Parties a final report within 30 days of presentation of the initial report**.**

7. Unless the Parties decide otherwise, the final report of the panel may be published by either Party 15 days after it is transmitted to the Parties, subject to subparagraph 3(g) of Article 2109.

Article 2111: Request for Clarification of the Report

1. Within 10 days after the presentation of the final report, a Party may submit a written request to the panel for clarification of any determinations or recommendations in the report that the Party considers ambiguous. The panel shall respond to the request within 10 days after the presentation of such request.

2. The submission of a request pursuant to paragraph 1 shall affect the time periods referred to in paragraph 3 of Article 2113 and paragraph 1 of Article 2114, unless the panel decides otherwise.

Article 2112: Suspension and Termination of Procedure

1. The Parties may agree to suspend the work of the panel at any time for a period not exceeding 12 months following the date of such agreement. If the work of the panel has been suspended for more than 12 months, the authority of the panel shall lapse, unless the Parties agree otherwise. If the authority of the panel lapses, and the Parties have not reached an agreement on the settlement of the dispute, nothing in this provision shall prevent a Party from requesting a new proceeding regarding the same matter.

2. The Parties may agree to terminate the procedures before a panel at any time by jointly notifying the chair of the panel on this respect.

Article 2113: Implementation of the Final Report

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which shall be in conformity with the determinations and recommendations, if any, of the panel, unless the Parties agree otherwise.

2. Wherever possible, the resolution shall be removal of any measure not conforming to this Agreement or removal of the nullification or impairment in the sense of subparagraph 1(c) of Article 2102.

3. If the Parties are unable to agree on a resolution within 30 days of presentation of the final report, or such other period as the Parties may agree, the Party complained against shall, if so requested by the complaining Party, enter into negotiations with a view to agreeing to compensation. Such compensation shall be provided until the Parties agree on a resolution to the dispute.

Article 2114: Non-Implementation – Suspension of Benefits

1. If no agreement on compensation has been reached pursuant to paragraph 3 of Article 2113 within 20 days after the date of the complaining Party's request, or if 30 days have passed following the presentation of the final report where compensation is not requested pursuant to paragraph 3 of Article 2113, or the Parties have agreed on the resolution of the dispute or on a compensation, and the complaining Party considers that the other Party has failed to observe the terms of the agreement, the complaining Party may suspend the application to the other Party of benefits of equivalent effect, following notice to the other Party and subject to paragraph 3. The notice shall specify the level of benefits that the complaining Party proposes to suspend.

2. In considering which benefits to suspend pursuant to paragraph 1:

(a) the complaining Party should first seek to suspend benefits or other obligations in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of subparagraph 1(c) of Article 2102; and

(b) the complaining Party that considers it is not practicable or effective to suspend benefits or other obligations in the same sector or sectors may suspend benefits in other sectors.

3. The suspension of benefits shall be temporary and be applied by the complaining Party only until the measure found to be inconsistent with the obligations of this Agreement or otherwise nullifying or impairing benefits in the sense of subparagraph 1(c) of Article 2102 has been brought into conformity with this Agreement, including as a result of the panel process described in Article 2115, or until such time as the Parties have otherwise reached agreement on a resolution of the dispute.

Article 2115: Review of Compliance and Suspension of Benefits

1. A Party may, by written notice to the other Party, request that a panel established under Article 2106 be reconvened to make a determination with respect to:

(a) whether the level of benefits suspended by a Party pursuant to paragraph 1 of Article 2114 is manifestly excessive; or

(b) any disagreement as to the existence or consistency with this Agreement of measures taken to comply with the determinations or recommendations of the previously established panel.[1]

2. In the written notification, a Party shall identify the specific measures or matters at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. The panel shall be reconvened upon receipt by the other Party of the written notice of the request. In the event that any original panelist is unable to serve on the panel the provisions of Article 2108 shall apply *mutatis mutandis*.

4. The provisions of Articles 2109 and 2110 apply *mutatis mutandis* to procedures adopted and reports issued by a panel reconvened under this Article, with the exception that the panel shall present an initial report within 60 days of being reconvened where the request concerns paragraph 1(a) only, and otherwise within 90 days.

5. A panel reconvened under this Article may include in its reports a recommendation, where appropriate, that any suspension of benefits be terminated or that the amount of benefits suspended be modified.

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[1] In interpreting the terms "the existence or consistency with" and "measures taken to comply", a compliance panel established under this paragraph shall take into account relevant jurisprudence under the WTO *Understanding on Rules and Procedures for the Settlement of Disputes*.

Article 2116: Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that either Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Party. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, each Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 2117: Private Rights

No Party may provide for a right of action under its domestic law against another Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article 2118: Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958.

CHAPTER TWENTY-TWO

EXCEPTIONS

Article 2201: General Exceptions

1. For the purposes of Chapters Two to Seven and Fifteen (National Treatment and Market Access for Goods, Rules of Origin, Customs Procedures and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Emergency Action and Trade Remedies and Electronic Commerce), except to the extent that a provision of these chapters applies to services or investment, GATT 1994 Article XX or any equivalent provision of a successor agreement to which all Parties are party, is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in GATT 1994 Article XX (b) include environmental measures necessary to protect human, animal or plant life or health. The Parties further understand that GATT 1994 Article XX (g) applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapters Nine, Twelve and Fifteen (Cross-Border Trade in Services, Telecommunications, Temporary Entry of Business Persons and Electronic Commerce), and of Chapters Two to Seven (National Treatment and Market Access for Goods, Rules of Origin, Customs Procedures and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, and Emergency Action and Trade Remedies) to the extent that a provision of these chapters applies to services, GATS XIV (a), (b) and (c) or any equivalent provision of a successor agreement to which all Parties are party, is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in GATS Article XIV (b) include environmental measures necessary to protect human, animal or plant life or health.

3. For the purposes of Chapter Eight (Investment), subject to the requirement that such measures are not applied in a manner that constitute arbitrary or unjustifiable discrimination between investment or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary:

(a) to protect human, animal or plant life or health, which the Parties understand to include environmental measures necessary to protect human, animal or plant life and health;

(b) to ensure compliance with laws and regulations that are not inconsistent with this Agreement; or

(c) for the conservation of living or non-living exhaustible natural resources.

4. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures relating to nationals of the other Party aimed at preserving public order[1], subject to the requirement that such measures are not applied in a manner that constitutes arbitrary or unjustifiable discrimination. Without prejudice to the foregoing, the Parties understand that the rights and obligations under this Agreement, in particular the rights of investors under Chapter Eight (Investment), remain applicable to such measures.

Article 2202: National Security

Nothing in this Agreement shall be construed:

(a) to require either Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

[1] As in Article XIV (a) of the GATS, this exception may be invoked only where genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

b) to prevent either Party from taking any actions that it considers necessary for the protection of its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent either Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 2203: Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are consistent with paragraphs 2 through 4 and are:

(a) consistent with paragraph 5 to the extent that they are imposed on transfers other than cross-border trade in financial services; or

(b) consistent with paragraphs 6 and 7 to the extent they are imposed on cross-border trade in financial services.

General Rules

2. As soon as practicable after a Party imposes a measure under this Article, the Party shall:

(a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF;

(b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties; and

(c) adopt or maintain economic policies consistent with such consultations.

3. A measure adopted or maintained under this Article shall:

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

(b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;

(c) be temporary and be phased out progressively as the balance of payments situation improves;

(d) be consistent with subparagraph 2(c) and with the Articles of Agreement of the IMF; and

(e) be applied on a national treatment or most-favoured-nation treatment basis, whichever is better.

4. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic program, provided that a Party may not impose a measure for the purpose of protecting a specific industry or sector unless the measure is consistent with subparagraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF.

Restrictions on Transfers Other than Cross-Border Trade in Financial Services

5. Restrictions imposed on transfers[2], other than on cross-border trade in financial services:

(a) where imposed on payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the IMF;

(b) where imposed on international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the IMF and be imposed only in conjunction with measures imposed on current international transactions under subparagraph 2(a);

(c) where imposed on transfers covered by Article 810 (Investment – Transfers) and transfers related to trade in goods, may not substantially impede transfers from being made in a freely usable currency at a market rate of exchange; and

(d) may not take the form of tariff surcharges, quotas, licenses or similar measures.

Restrictions on Cross-Border Trade in Financial Services

6. A Party imposing a restriction on cross-border trade in financial services:

(a) may not impose more than one measure for each different type of transfer related to cross border trade in financial services, unless consistent with subparagraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF, and

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[2]. These transfers include payments related to trade in goods and services and investments**.**

(b) shall promptly notify and consult with the other Party to assess the balance of payments situation of the Party and the measures it has adopted, taking into account among other elements:

(i) the nature and extent of the balance of payments difficulties of the Party,

(ii) the external economic and trading environment of the Party, and

(iii) alternative corrective measures that may be available.

7. The Parties entering into consultations pursuant to paragraph 6(b) shall:

(a) consider if measures adopted under this Article comply with paragraph 3, in particular paragraph 3(c); and

(b) accept all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance of payments, and shall base their conclusions on the assessment by the IMF of the balance of payments situation of the Party adopting the measures.

Article 2204: Taxation

1. Except as set out in this Article and paragraph 2 of Annex 1101.5, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention[3]. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Where similar provisions with respect to a taxation measure exist under this Agreement and under a tax convention, the procedural provisions of the tax convention alone shall be used, by the competent authorities identified in the tax convention, to resolve any issue related to such provisions arising under this Agreement.

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[3] For purposes of this article, tax convention shall be understood as a convention or other international arrangement on taxation to avoid double taxation.

4. Notwithstanding paragraphs 2 and 3:

a) Article 202 (National Treatment and Market Access for Goods - National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

b) Article 210 (National Treatment and Market Access for Goods - Export Taxes) shall apply to taxation measures.

5. Subject to paragraphs 2 and 3:

a) Article 902 (Cross-Border Trade in Services - National Treatment) and Article 1102 (Financial Services - National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and

b) Articles 803 and 804 (Investment - National Treatment and Most-Favoured Nation Treatment), Articles 902 and 903(Cross-Border Trade in Services - National Treatment and Most-Favoured Nation Treatment), and Articles 1102 and 1103 (Financial Services - National Treatment and Most-Favoured Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances and gifts.

c) Subparagraphs (a) and (b) shall not:

i) impose any most-favoured nation obligation with respect to an advantage accorded by a Party pursuant to any tax convention,

ii) apply to a non-conforming provision of any existing taxation measure,

iii) apply to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure,

iv) apply to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles,

v) apply to any new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, any measure that is taken by a Party in order to ensure compliance with the Party's taxation system or to prevent the avoidance or evasion of taxes) and that does not arbitrarily discriminate between persons, goods or services of the Parties, and

vi) impose on a Party any obligation with respect to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

6. Subject to paragraphs 2 and 3, and without prejudice to the rights and obligations of the Parties under paragraph 4, Article 807 (Investment - Performance Requirements) shall apply to taxation measures.

7. Articles 811 and 822 (Investment - Expropriation and Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation. However,

a) no investor may invoke Article 811 (Investment - Expropriation) as the basis for a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation;

b) an investor that seeks to invoke Article 811 (Investment - Expropriation) with respect to a taxation measure must first refer to the designated authorities of the Parties at the time that it gives its notice of intent under subparagraph 1(c) of Article 822 (Investment - Submission of a Claim to Arbitration) the issue of whether that taxation measure is not an expropriation; and

c) the designated authorities of the Parties shall agree to consider the issue. If the designated authorities fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 822 (Submission of a Claim to Arbitration).

8. In order to give effect to paragraphs 1 to 3:

(a) Where in a dispute between Parties, an issue arises as to whether a measure of a Party is a taxation measure, either Party may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind any panel established under Article 2106 (Dispute Settlement - Establishment of a Panel) for the dispute. Where the designated authorities have been referred the issue and have not decided the issue within six months of the referral, the panel shall decide the issue;

(b) Where in connection with a claim by an investor of a Party, an issue arises as to whether a measure is a taxation measure, the Party that has received notice of intention to submit a claim or against which an investor of a Party has submitted a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind any Tribunal formed pursuant to Section B of Chapter Eight (Investment - Settlement of Disputes Between an Investor and the Host Party) with jurisdiction over the claim. A Tribunal seized of a claim in which the issue arises may not proceed pending receipt of the decision of the designated authorities. Where the designated authorities have been referred the issue and have not decided the issue within six months of the referral, the Tribunal shall decide the issue;

(c) Where in a dispute between Parties, an issue arises as to whether a tax convention prevails over this Agreement, a Party to the dispute may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, no procedures concerning that measure may be initiated under Article 2106 (Dispute Settlement - Establishment of a Panel). No procedures concerning the measure may be initiated during the period that the issue is under consideration by the designated authorities. Where the designated authorities have been referred the issue and have not decided the issue within six months of the referral, the panel shall decide the issue; and

(d) Where prior to the submission of a claim by an investor of a Party, an issue arises as to whether a tax convention prevails over this Agreement, the Party that has received notice of intention to submit a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, no claim concerning that measure may be submitted under Article 822 (Investment - Submission of a Claim to Arbitration). No claim concerning the measure may be submitted during the period that the issue is under consideration by the designated authorities. An investor of a Party that fails to identify a taxation measure in its notice of intention to submit a claim may not submit a claim concerning that measure under Article 822 (Investment - Submission of a Claim to Arbitration). Where the designated authorities have been referred the issue and have not decided the issue within six months of the referral, the Tribunal shall decide the issue.

9. Where an investor invokes Article 811 (Investment - Expropriation) as the basis for a claim under Article 819 (Investment - Claim by an Investor of a Party on its Own Behalf) or 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise), any determination under paragraph 7 of whether a measure is an expropriation shall be made concurrently with any decision by the designated authorities under subparagraph 8(b) of the issue whether the measure is a taxation measure.

10. The designated authorities seized of an issue under paragraphs 7 or 8 may agree to modify the time period allowed for their consideration of the issue.

11. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would be contrary to the Party's law protecting information concerning the taxation affairs of a taxpayer.

Article 2205: Disclosure of Information

1. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement, or would be contrary to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the financial affairs and accounts of individual customers of financial institutions.

2. Nothing in this Agreement shall be construed to require, during the course of any dispute settlement procedure under this Agreement, a Party to furnish or allow access to information protected under its competition laws, or a competition authority of a Party to furnish or allow access to any other information that is privileged or otherwise protected from disclosure.

Article 2206: Cultural Industries

Nothing in this Agreement shall be construed to apply to measures adopted or maintained by either Party with respect to cultural industries except as specifically provided in Article 203 (National Treatment and Market Access for Goods - Tariff Elimination).

Article 2207: World Trade Organization Waivers

To the extent that there are overlapping rights and obligations in this Agreement and the WTO Agreement, the Parties agree that any measures adopted by a Party in conformity with a waiver decision adopted by the WTO pursuant to Article IX:3 of the WTO Agreement shall be deemed to be also in conformity with the present Agreement, except as otherwise agreed by the Parties. Such conforming measures of either Party may not give rise to legal actions by an investor of one Party against the other under Section B of Chapter Eight (Investment - Settlement of Disputes Between an Investor and the Host Party).

Article 2208: Definitions

For purposes of this Chapter:

competition authority means:

(a) for Canada, the Commissioner of Competition or any successor, and,

(b) for Colombia, the Superintendencia de Industria y Comercio, the Superintendencia Financiera, the Superintendencia de Servicios Públicos Domiciliarios, the Comisión Nacional de Televisión, the Aeronaútica Civil, or any successor agencies, when they address matters relating to the administration or enforcement of their competition laws.

cultural industries means persons engaged in any of the following activities:

(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

(b) the production, distribution, sale or exhibition of film or video recordings;

(c) the production, distribution, sale or exhibition of audio or video music recordings;

(d) the publication, distribution or sale of music in print or machine readable form; or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services;

(f) production and presentation of performing arts;

(g) production and exhibition of visual arts; or

(h) design, production, distribution and sale of handicrafts.

designated authority means:

(a) in the case of Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance, or any successor authority;

(b) in the case of Colombia, the Viceministerio Técnico del Ministerio de Hacienda y Crédito Público or any successor authority.

information protected under its competition laws means

(a) for Canada, information within the scope of section 29 of the Competition Act, R.S. 1985, c.34, or any successor provision; and

(b) for Colombia, information protected in accordance with numeral 3 of Article 4 and Article 13 of Ley 155 de 1959, or any successor provisions.

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and **taxation measures** do not include:

(a) a “customs duty” as defined in Article 222 (National Treatment and Market Access for Goods - Definitions);

(b) the measures listed in exceptions (b) and (c) to that definition.

CHAPTER TWENTY-THREE

FINAL PROVISIONS

Article 2301: Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement constitute integral parts of this Agreement.

Article 2302: Amendments

1. Any amendment of this Agreement shall be done in writing.

2. When so agreed, such an amendment shall enter into force and constitute an integral part of this Agreement following an exchange of written notifications by the Parties certifying the completion of their respective necessary legal procedures and on such date or dates as may be agreed between the Parties.

Article 2303: Reservations

This Agreement shall not be subject to unilateral reservations.

Article 2304: Entry into Force

Each Party shall notify the other Party in writing of the completion of its domestic procedures required for the entry into force of this Agreement. This Agreement shall enter into force 60 days from the date of the second of these notifications.

Article 2305: Termination

This Agreement shall remain in force unless terminated by either Party on six months' written notice to the other Party.

Article 2306: Accession

Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Parties, and following approval in accordance with the legal requirements of each Party and acceding country.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at , this day of 2008, in the English, Spanish and French languages, each version being equally authentic.

_____	_____
FOR CANADA	**FOR THE REPUBLIC OF COLOMBIA**