EUROPEAN
COMMISSION

Strasbourg, 5.7.2016
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ANNEX 1

ANNEX

to the

Proposal for a Council Decision

on the signing on behalf of the European Union of the Comprehensive Economic and Trade Agreement between Canada of the one part, and the European Union and its Member States, of the other part

COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA)
BETWEEN CANADA, OF THE ONE PART,
AND THE EUROPEAN UNION AND ITS MEMBER STATES,

,

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE REPUBLIC OF CROATIA,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

OF THE OTHER PART,

hereafter jointly referred to as the "Parties",

resolve to:

FURTHER strengthen their close economic relationship and build upon their respective rights and obligations under the *Marrakesh Agreement Establishing the World Trade Organization*, done on 15 April 1994, and other multilateral and bilateral instruments of cooperation;

CREATE an expanded and secure market for their goods and services through the reduction or elimination of barriers to trade and investment;

ESTABLISH clear, transparent, predictable and mutually-advantageous rules to govern their trade and investment;

AND,

REAFFIRMING their strong attachment to democracy and to fundamental rights as laid down in *The Universal Declaration of Human Rights*, done at Paris on 10 December 1948, and sharing the view that the proliferation of weapons of mass destruction poses a major threat to international security;

RECOGNISING the importance of international security, democracy, human rights and the rule of law for the development of international trade and economic cooperation;

RECOGNISING that the provisions of this Agreement preserve the right of the Parties to regulate within their territories and the Parties' flexibility to achieve legitimate policy objectives, such as public health, safety, environment, public morals and the promotion and protection of cultural diversity;

AFFIRMING their commitments as parties to the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, done at Paris on 20 October 2005, and recognising that states have the right to preserve, develop and implement their cultural policies, to support their cultural industries for the purpose of strengthening the diversity of cultural expressions, and to preserve their cultural identity, including through the use of regulatory measures and financial support;

RECOGNISING that the provisions of this Agreement protect investments and investors with respect to their investments, and are intended to stimulate mutually-beneficial business activity, without undermining the right of the Parties to regulate in the public interest within their territories;

REAFFIRMING their commitment to promote sustainable development and the development of international trade in such a way as to contribute to sustainable development in its economic, social and environmental dimensions;

ENCOURAGING enterprises operating within their territory or subject to their jurisdiction to respect internationally recognised guidelines and principles of corporate social responsibility, including the OECD Guidelines for Multinational Enterprises, and to pursue best practices of responsible business conduct;

IMPLEMENTING this Agreement in a manner consistent with the enforcement of their respective labour and environmental laws and that enhances their levels of labour and environmental protection, and building upon their international commitments on labour and environmental matters;

RECOGNISING the strong link between innovation and trade, and the importance of innovation to future economic growth, and affirming their commitment to encourage the expansion of cooperation in the area of innovation, as well as the related areas of research and development and science and technology, and to promote the involvement of relevant public and private sector entities;

HAVE AGREED AS FOLLOWS:

CHAPTER ONE

GENERAL DEFINITIONS AND INITIAL PROVISIONS

SECTION A

General definitions

ARTICLE 1.1

Definitions of general application

For the purposes of this Agreement and unless otherwise specified:

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;

Agreement on Agriculture means the *Agreement on Agriculture*, contained in Annex 1A to the WTO Agreement;

agricultural good means a product listed in Annex 1 to the Agreement on Agriculture;

Anti-dumping Agreement means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

CETA contact points means the contact points established under Article 26.5 (CETA contact points);

CETA Joint Committee means the CETA Joint Committee established under Article 26.1 (The CETA Joint Committee);

CPC means the provisional Central Product Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N° 77, *CPC prov*, 1991;

cultural industries means persons engaged in:

(a) the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine-readable form, except when printing or typesetting any of the foregoing is the only activity;

(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) radio-communications 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;

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

(a) a charge equivalent to an internal tax imposed consistently with Article 2.3 (National treatment);

(b) a measure applied in accordance with the provisions of Articles VI or XIX of the GATT 1994, the Anti-dumping Agreement, the SCM Agreement, the Safeguards Agreement, or Article 22 of the DSU; or

(c) a fee or other charge imposed consistently with Article VIII of the GATT 1994;

Customs Valuation Agreement means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

days means calendar days, including weekends and holidays;

DSU means the Understanding on Rules and Procedures Governing the Settlement of Disputes, contained in Annex 2 to the WTO Agreement;

enterprise means an entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a 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 *General Agreement on Trade in Services*, contained in Annex 1B to the WTO Agreement;

GATT 1994 means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

goods of a Party means domestic products as these are understood in the GATT 1994 or such goods as the Parties may decide, 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 a four-digit number or the first four digits of a number used in the nomenclature of the HS;

measure includes a law, regulation, rule, procedure, decision, administrative action, requirement, practice or any other form of measure by a Party;

national means a natural person who is a citizen as defined in Article 1.2, or is a permanent resident of a Party;

originating means qualifying under the rules of origin set out in the Protocol on Rules of Origin and Origin Procedures;

Parties means, on the one hand, the European Union or its Member States or the European Union and its Member States within their respective areas of competence as derived from the Treaty on European Union and the Treaty on the Functionning of the European Union (hereinafter referred to as the 'EU Party'), and on the other hand, Canada;

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 duty rate under this Agreement to an originating good pursuant to the tariff elimination schedule;

Safeguards Agreement means the *Agreement on Safeguards*, contained in Annex 1A to the WTO Agreement;

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

SCM Agreement means the *Agreement on Subsidies and Countervailing Measures*, contained in Annex 1A to the WTO Agreement;

service supplier means a person that supplies or seeks to supply a service;

SPS Agreement means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, contained in Annex 1A to the WTO Agreement;

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

subheading means a six-digit number or the first six digits of a number used in the nomenclature of the HS;

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

tariff elimination schedule means Annex 2-A (Tariff elimination);

TBT Agreement means the *Agreement on Technical Barriers to Trade*, contained in Annex 1A to the WTO Agreement;

territory means the territory where this Agreement applies as set out under Article 1.3;

third country means a country or territory outside the geographic scope of application of this Agreement;

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement;

Vienna Convention on the Law of Treaties means the *Vienna Convention on the Law of Treaties*, done at Vienna on 23 May 1969;

WTO means the World Trade Organization; and

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

ARTICLE 1.2

Party-specific definitions

For the purposes of this Agreement, unless otherwise specified:

citizen means:

(a) for Canada, a natural person who is a citizen of Canada under Canadian legislation;

(b) for the EU Party, a natural person holding the nationality of a Member State; and

central government means:

(a) for Canada, the Government of Canada; and

(b) for the EU Party, the European Union or the national governments of its Member States;

ARTICLE 1.3

Geographical scope of application

Unless otherwise specified, this Agreement applies:

(a) for Canada, to:

(i) the land territory, air space, internal waters, and territorial sea of Canada;

(ii) 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*, done at Montego Bay on 10 December 1982 ("UNCLOS"); and,

(iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;

(b) for the European Union, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties. As regards the provisions concerning the tariff treatment of goods, this Agreement shall also apply to the areas of the European Union customs territory not covered by the first sentence of this subparagraph.

SECTION B

Initial provisions

ARTICLE 1.4

Establishment of a free trade area

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

ARTICLE 1.5

Relation to the WTO Agreement and other agreements

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

ARTICLE 1.6

Reference to other agreements

When this Agreement refers to or incorporates by reference other agreements or legal instruments in whole or in part, those references include:

(a) related annexes, protocols, footnotes, interpretative notes and explanatory notes; and

(b) successor agreements to which the Parties are party or amendments that are binding on the Parties, except where the reference affirms existing rights.

ARTICLE 1.7

Reference to laws

When this Agreement refers to laws, either generally or by reference to a specific statute, regulation or directive, the reference is to the laws, as they may be amended, unless otherwise indicated.

ARTICLE 1.8

Extent of obligations

1. Each Party is fully responsible for the observance of all provisions of this Agreement.

2. Each Party shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance at all levels of government.

ARTICLE 1.9

Rights and obligations relating to water

1. The Parties recognise that water in its natural state, including water in lakes, rivers, reservoirs, aquifers and water basins, is not a good or a product. Therefore, only Chapters Twenty-Two (Trade and Sustainable Development) and Twenty-Four (Trade and Environment) apply to such water.

2. Each Party has the right to protect and preserve its natural water resources. Nothing in this Agreement obliges a Party to permit the commercial use of water for any purpose, including its withdrawal, extraction or diversion for export in bulk.

3. If a Party permits the commercial use of a specific water source, it shall do so in a manner consistent with this Agreement.

ARTICLE 1.10

Persons exercising delegated governmental authority

Unless otherwise specified in this Agreement, each Party shall ensure that a person that has been delegated regulatory, administrative or other governmental authority by a Party, at any level of government, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.

CHAPTER TWO

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.1

Objective

The Parties shall progressively liberalise trade in goods in accordance with the provisions of this Agreement over a transitional period starting from the entry into force of this Agreement.

ARTICLE 2.2

Scope

This Chapter applies to trade in goods of a Party, as defined in Chapter 1 (General Definitions and Initial Provisions), except as otherwise provided in this Agreement.

ARTICLE 2.3

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. To this end Article III of the GATT 1994 is incorporated into and made part of this Agreement.

2. Paragraph 1 means, with respect to a government in Canada other than at the federal level, or a government of or in a Member State of the European Union, treatment no less favourable than that accorded by that government to like, directly competitive or substitutable goods of Canada or the Member State, respectively.

3. This Article does not apply to a measure, including a measure's continuation, prompt renewal or amendment, in respect of Canadian excise duties on absolute alcohol, as listed under tariff item 2207.10.90 in Canada's Schedule of Concessions (Schedule V) annexed to the *Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994*, done on 15 April 1994 (the "Marrakesh Protocol"), used in manufacturing under provisions of the *Excise Act, 2001*, S.C. 2002, c. 22.

ARTICLE 2.4

Reduction and elimination of customs duties on imports

1. Each Party shall reduce or eliminate customs duties on goods originating in either Party in accordance with the tariff elimination schedules in Annex 2-A. For the purposes of this Chapter, "originating" means originating in either Party under the rules of origin set out in the Protocol on rules of origin and origin procedures.

2. For each good, the base rate of customs duties to which the successive reductions under paragraph 1 are to be applied shall be that specified in Annex 2-A.

3. For goods that are subject to tariff preferences as listed in a Party's tariff elimination schedule in Annex 2-A, each Party shall apply to originating goods of the other Party the lesser of the customs duties resulting from a comparison between the rate calculated in accordance with that Party's Schedule and its applied Most-Favoured-Nation ("MFN") rate.

4. On the request of a Party, the Parties may consult to consider accelerating and broadening the scope of the elimination of customs duties on imports between the Parties. A decision of the CETA Joint Committee on the acceleration or elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to the Parties' Schedules in Annex 2-A for that good when approved by each Party in accordance with its applicable legal procedures.

ARTICLE 2.5

Restriction on duty drawback, duty deferral and duty suspension programs

1. Subject to paragraphs 2 and 3, a Party shall not refund, defer or suspend a customs duty paid or payable on a non-originating good imported into its territory on the express condition that the good, or an identical, equivalent or similar substitute, is used as a material in the production of another good that is subsequently exported to the territory of the other Party under preferential tariff treatment pursuant to this Agreement.

2. Paragraph 1 does not apply to a Party's regime of tariff reduction, suspension or remission, either permanent or temporary, if the reduction, suspension or remission is not expressly conditioned on the exportation of a good.

3. Paragraph 1 does not apply until three years after the date of entry into force of this Agreement.

ARTICLE 2.6

Duties, taxes or other fees and charges on exports

A Party may not adopt or maintain any duties, taxes or other fees and charges imposed on, or in connection with, the export of a good to the other Party, or any internal taxes or fees and charges on a good exported to the other Party, that is in excess of those that would be imposed on those goods when destined for internal sale.

ARTICLE 2.7

Standstill

1. Upon the entry into force of this Agreement a Party may not increase a customs duty existing at entry into force, or adopt a new customs duty, on a good originating in the Parties.

2. Notwithstanding paragraph 1, a Party may:

(a) modify a tariff outside this Agreement on a good for which no tariff preference is claimed under this Agreement;

(b) increase a customs duty to the level established in its Schedule in Annex 2-A following a unilateral reduction; or

(c) maintain or increase a customs duty as authorised by this Agreement or any agreement under the WTO Agreement.

3. Notwithstanding paragraphs 1 and 2, only Canada may apply a special safeguard pursuant to Article 5 of the WTO Agreement on Agriculture. A special safeguard may only be applied with respect to goods classified in items with the notation "SSG" in Canada's Schedule included in Annex 2-A. The use of this special safeguard is limited to imports not subject to tariff preference and, in the case of imports subject to a tariff rate quota, to imports over the access commitment.

ARTICLE 2.8

Temporary suspension of preferential tariff treatment

1. A Party may temporarily suspend, in accordance with paragraphs 2 through 5, the preferential tariff treatment under this Agreement with respect to a good exported or produced by a person of the other Party if the Party:

(a) as a result of an investigation based on objective, compelling and verifiable information, makes a finding that the person of the other Party has committed systematic breaches of customs legislation in order to obtain preferential tariff treatment under this Agreement; or

(b) makes a finding that the other Party systematically and unjustifiably refuses to cooperate with respect to the investigation of breaches of customs legislation under Article 6.13.4 (Cooperation), and the Party requesting cooperation, based on objective, compelling and verifiable information, has reasonable grounds to conclude that the person of the other Party has committed systematic breaches of customs legislation in order to obtain preferential tariff treatment under this Agreement.

2. A Party that has made a finding referred to in paragraph 1 shall:

(a) notify the customs authority of the other Party and provide the information and evidence upon which the finding was based;

(b) engage in consultations with the authorities of the other Party with a view to achieving a mutually acceptable resolution that addresses the concerns that resulted in the finding; and

(c) provide written notice to that person of the other Party that includes the information that is the basis of the finding.

3. If the authorities have not achieved a mutually acceptable resolution after 30 days, the Party that has made the finding shall refer the issue to the Joint Customs Cooperation Committee.

4. If the Joint Customs Cooperation Committee has not resolved the issue after 60 days, the Party that has made the finding may temporarily suspend the preferential tariff treatment under this Agreement with respect to that good of that person of the other Party. The temporary suspension does not apply to a good that is already in transit between the Parties on the day that the temporary suspension comes into effect.

5. The Party applying the temporary suspension under paragraph 1 shall only apply it for a period commensurate with the impact on the financial interests of that Party resulting from the situation responsible for the finding made pursuant to paragraph 1, to a maximum of 90 days. If the Party has reasonable grounds based on objective, compelling and verifiable information that the conditions that gave rise to the initial suspension have not changed after the expiry of the 90 day period, that Party may renew the suspension for a further period of no longer than 90 days. The original suspension and any renewed suspensions are subject to periodic consultations within the Joint Customs Cooperation Committee.

ARTICLE 2.9

Fees and other charges

1. In accordance with Article VIII of GATT 1994, a Party shall not adopt or maintain a fee or charge on or in connection with importation or exportation of a good of a Party that is not commensurate with the cost of services rendered or that represents an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. For greater certainty, paragraph 1 does not prevent a Party from imposing a customs duty or a charge set out in paragraphs (a) through (c) of the definition of customs duty under Article 1.1 (Definitions of general application).

ARTICLE 2.10

Goods re-entered after repair or alteration

1. For the purposes of this Article, repair or alteration means any processing operation undertaken on goods to remedy operating defects or material damage and entailing the re-establishment of goods to their original function or to ensure their compliance with technical requirements for their use, without which the goods could no longer be used in the normal way for the purposes for which they were intended. Repair or alteration of goods includes restoration and maintenance but does not include an operation or process that:

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

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

(c) is used to substantially change the function of a good.

2. Except as provided in footnote 1, a Party shall not 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.[1, 2]

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

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

ARTICLE 2.11

Import and export restrictions

1. Except as otherwise provided in this Agreement, a Party shall not adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994. To this end Article XI of the GATT 1994 is incorporated into and made a part of this Agreement.

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1 For the following goods of HS Chapter 89, regardless of their origin, that re-enter the territory of Canada from the territory of the European Union, and are registered under the *Canada Shipping Act, 2001*, Canada may apply to the value of repair or alteration of such goods, the rate of customs duty for such goods in accordance with its Schedule included in Annex 2-A (Tariff Elimination): 8901.10.10, 8901.10.90, 8901.30.00, 8901.90.10, 8901.90.91, 8901.90.99, 8904.00.00, 8905.20.19, 8905.20.20, 8905.90.19, 8905.90.90, 8906.90.19, 8906.90.91, 8906.90.99.

2 The European Union will implement this paragraph through the outward processing procedure in Regulation (EU) No 952/2013 in a manner consistent with this paragraph.

3 The European Union will implement this paragraph through the inward processing procedure in Regulation (EU) No 952/2013 in a manner consistent with this paragraph.

2. If a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a third country of a good, that Party may:

(a) limit or prohibit the importation from the territory of the other Party of a good of that third country; or

(b) limit or prohibit the exportation of a good to that third country through the territory of the other Party.

3. If a Party adopts or maintains a prohibition or restriction on the importation of a good from a third country, the Parties, at the request of the other Party, shall enter into discussions with a view to avoiding undue interference with or distortion of pricing, marketing or distribution arrangements in the other Party.

4. This Article does not apply to a measure, including that measure's continuation, prompt renewal or amendment, in respect of the following:

(a) the export of logs of all species. If a Party ceases to require export permits for logs destined for a third country, that Party will permanently cease requiring export permits for logs destined for the other Party;

(b) for a period of three years following the entry into force of this Agreement, the export of unprocessed fish pursuant to Newfoundland and Labrador's applicable legislation;

(c) Canadian excise duties on absolute alcohol, as listed under tariff item 2207.10.90 in Canada's Schedule of Concessions annexed to the Marrakesh Protocol (Schedule V), used in manufacturing under the provisions of the Excise Act, 2001, S.C. 2002, c. 22; and

(d) The importation of used vehicles into Canada that do not conform to Canada's safety and environmental requirements.

ARTICLE 2.12

Other provisions related to trade in goods

Each Party shall endeavour to ensure that a good of the other Party that has been imported into and lawfully sold or offered for sale in any place in the territory of the importing Party may also be sold or offered for sale throughout the territory of the importing Party.

ARTICLE 2.13

Committee on trade in goods

1. The functions of the Committee on Trade in Goods established under Article 26.2.1 (a) (Specialised committees) 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) recommending to the CETA Joint Committee a modification of or an addition to any provision of this Agreement related to the Harmonized System; and

(c) promptly addressing issues related to movement of goods through the Parties' ports of entry.

2. The Committee on Trade in Goods may present to the CETA Joint Committee draft decisions on the acceleration or elimination of a customs duty on a good.

3. The Committee on Agriculture established under Article 26.2.1 (a) (Specialised committees) shall:

(a) meet within 90 days of a request by a Party;

(b) provide a forum for the Parties to discuss issues related to agricultural goods covered by this Agreement; and

(c) refer to the Committee on Trade in Goods any unresolved issue under subparagraph (b).

4. The Parties note the cooperation and exchange of information on agriculture issues under the annual Canada-European Union Agriculture Dialogue, as established in letters exchanged on 14 July 2008. As appropriate, the Agriculture Dialogue may be used for the purpose of paragraph 3.

CHAPTER THREE

TRADE REMEDIES

SECTION A

Anti-dumping and countervailing measures

ARTICLE 3.1

General provisions concerning anti-dumping and countervailing measures

1. The Parties reaffirm their rights and obligations under Article VI of GATT 1994, the Anti-dumping Agreement and the SCM Agreement.

2. The Protocol on rules of origin and origin procedures shall not apply to antidumping and countervailing measures.

ARTICLE 3.2

Transparency

1. Each Party shall apply anti-dumping and countervailing measures in accordance with the relevant WTO requirements and pursuant to a fair and transparent process.

2. A Party shall ensure, after an imposition of provisional measures and, in any case, before a final determination is made, full and meaningful disclosure of all essential facts under consideration which form the basis for the decision whether to apply final measures. This is without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement.

3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party in an anti-dumping or countervailing investigation[4] shall be granted a full opportunity to defend its interests.

ARTICLE 3.3

Consideration of public interest and lesser duty

1. Each Party's authorities shall consider information provided in accordance with the Party's law as to whether imposing an anti-dumping or countervailing duty would not be in the public interest.

[4] For the purpose of this Article, **interested parties** are defined as per Article 6.11 of the Anti-Dumping Agreement and Article 12.9 of the SCM Agreement.

2. After considering the information referred to in paragraph 1, the Party's authorities may consider whether the amount of the anti-dumping or countervailing duty to be imposed shall be the full margin of dumping or amount of subsidy or a lesser amount, in accordance with the Party's law.

SECTION B

Global safeguard measures

ARTICLE 3.4

General provisions concerning global safeguard measures

1. The Parties reaffirm their rights and obligations concerning global safeguard measures under Article XIX of GATT 1994 and the Safeguards Agreement.

2. The Protocol on rules of origin and origin procedures shall not apply to global safeguard measures.

ARTICLE 3.5

Transparency

1. At the request of the exporting Party, the Party initiating a safeguard investigation or intending to adopt provisional or definitive global safeguard measures shall immediately provide:

(a) the information referred to in Article 12.2 of the Safeguards Agreement, in the format prescribed by the WTO Committee on Safeguards;

(b) the public version of the complaint filed by the domestic industry, where relevant; and

(c) a public report setting forth the findings and reasoned conclusions on all pertinent issues of fact and law considered in the safeguard investigation. The public report shall include an analysis that attributes injury to the factors causing it and set out the method used in defining the global safeguard measures.

2. When information is provided under this Article, the importing Party shall offer to hold consultations with the exporting Party in order to review the information provided.

ARTICLE 3.6

Imposition of definitive measures

1. A Party adopting global safeguard measures shall endeavour to impose them in a way that least affects bilateral trade.

2. The importing Party shall offer to hold consultations with the exporting Party in order to review the matter referred to in paragraph 1. The importing Party shall not adopt measures until 30 days have elapsed since the date the offer to hold consultations was made.

SECTION C

General provisions

ARTICLE 3.7

Exclusion from dispute settlement

This Chapter is not subject to Chapter Twenty-Nine (Dispute Settlement).

CHAPTER FOUR

TECHNICAL BARRIERS TO TRADE

ARTICLE 4.1

Scope and definitions

1. This Chapter applies to the preparation, adoption, and application of technical regulations, standards, and conformity assessment procedures that may affect trade in goods between the Parties.

2. This Chapter does not apply to:

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

(b) a sanitary or phytosanitary measure as defined in Annex A of the SPS Agreement.

3. Except where this Agreement, including the incorporated provisions of the TBT Agreement pursuant to Article 4.2, defines or gives a meaning to a term, the general terms for standardisation and conformity assessment procedures shall normally have the meaning given to them by the definition adopted within the United Nations system and by international standardising bodies taking into account their context and in the light of the object and purpose of this Chapter.

4. References in this Chapter to technical regulations, standards, and conformity assessment procedures include amendments thereto, and additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

5. Article 1.8.2 (Extent of obligations) does not apply to Articles 3, 4, 7, 8 and 9 of the TBT Agreement, as incorporated into this Agreement.

ARTICLE 4.2

Incorporation of the TBT Agreement

1. The following provisions of the TBT Agreement are hereby incorporated into and made part of this Agreement:

(a) Article 2 (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies);

(b) Article 3 (Preparation, Adoption and Application of Technical Regulations by Local Government Bodies and Non-Governmental Bodies);

(c) Article 4 (Preparation, Adoption and Application of Standards);

(d) Article 5 (Procedures for Assessment of Conformity by Central Government Bodies);

(e) Article 6 (Recognition of Conformity Assessment by Central Government Bodies), without limiting a Party's rights or obligations under the Protocol on the Mutual Acceptance of the Results of Conformity Assessment, and the Protocol on the Mutual Recognition of the Compliance and Enforcement Programme Regarding Good Manufacturing Practices for Pharmaceutical Products;

(f) Article 7 (Procedures for Assessment of Conformity by Local Government Bodies);

(g) Article 8 (Procedures for Assessment of Conformity by Non-Governmental Bodies);

(h) Article 9 (International and Regional Systems);

(i) Annex 1 (Terms and their Definitions for the Purpose of this Agreement); and

(j) Annex 3 (Code of Good Practice for the Preparation, Adoption and Application of Standards).

2. The term "Members" in the incorporated provisions shall have the same meaning in this Agreement as it has in the TBT Agreement.

3. With respect to Articles 3, 4, 7, 8 and 9 of the TBT Agreement, Chapter Twenty-Nine (Dispute Settlement) can be invoked in cases where a Party considers that the other Party has not achieved satisfactory results under these Articles and its trade interests are significantly affected. In this respect, such results shall be equivalent to those as if the body in question were a Party.

ARTICLE 4.3

Cooperation

The Parties shall strengthen their cooperation in the areas of technical regulations, standards, metrology, conformity assessment procedures, market surveillance or monitoring and enforcement activities in order to facilitate trade between the Parties, as set out in Chapter Twenty-One (Regulatory Cooperation). This may include promoting and encouraging cooperation between the Parties' respective public or private organisations responsible for metrology, standardisation, testing, certification and accreditation, market surveillance or monitoring and enforcement activities; and, in particular, encouraging their accreditation and conformity assessment bodies to participate in cooperation arrangements that promote the acceptance of conformity assessment results.

ARTICLE 4.4

Technical regulations

1. The Parties undertake to cooperate to the extent possible, to ensure that their technical regulations are compatible with one another. To this end, if a Party expresses an interest in developing a technical regulation equivalent or similar in scope to one that exists in or is being prepared by the other Party, that other Party shall, on request, provide to the Party, to the extent practicable, the relevant information, studies and data upon which it has relied in the preparation of its technical regulation, whether adopted or being developed. The Parties recognise that it may be necessary to clarify and agree on the scope of a specific request, and that confidential information may be withheld.

2. A Party that has prepared a technical regulation that it considers to be equivalent to a technical regulation of the other Party having compatible objective and product scope may request that the other Party recognise the technical regulation as equivalent. The Party shall make the request in writing and set out detailed reasons why the technical regulation should be considered equivalent, including reasons with respect to product scope. The Party that does not agree that the technical regulation is equivalent shall provide to the other Party, upon request, the reasons for its decision.

ARTICLE 4.5

Conformity assessment

The Parties shall observe the Protocol on the mutual acceptance of the results of conformity assessment, and the Protocol on the mutual recognition of the compliance and enforcement programme regarding good manufacturing practices for pharmaceutical products.

ARTICLE 4.6

Transparency

1. Each Party shall ensure that transparency procedures regarding the development of technical regulations and conformity assessment procedures allow interested persons of the 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 regarding the development of technical regulations or 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. The Parties shall promote closer cooperation between the standardisation bodies located within their respective territories with a view to facilitating, among other things, the exchange of information about their respective activities, as well as the harmonisation of standards based on mutual interest and reciprocity, according to modalities to be agreed by the standardisation bodies concerned.

3. Each Party shall endeavour to allow a period of at least 60 days following its transmission to the WTO Central Registry of Notifications of proposed technical regulations and conformity assessment procedures for the other Party to provide written comments, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. A Party shall give positive consideration to a reasonable request to extend the comment period.

4. If a Party receives comments on its proposed technical regulation or conformity assessment procedure from the other Party, it shall reply in writing to those comments before the technical regulation or conformity assessment procedure is adopted.

5. 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 adopted technical regulation or conformity assessment procedure.

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

7. 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 the delay would be ineffective in fulfilling the legitimate objectives pursued.

8. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are publicly available on official websites.

9. If a Party detains at a port of entry a good imported from the territory of the other Party on the grounds that the good has failed to comply with a technical regulation, it shall, without undue delay, notify the importer of the reasons for the detention of the good.

ARTICLE 4.7

Management of the Chapter

1. The Parties shall cooperate on issues covered by this Chapter. The Parties agree that the Committee on Trade in Goods, established under Article 26.2.1(a) shall:

(a) manage the implementation of this Chapter;

(b) promptly address an issue that a Party raises related to the development, adoption or application of standards, technical regulations or conformity assessment procedures;

(c) on a Party's request, facilitate discussion of the assessment of risk or hazard conducted by the other Party;

(d) encourage cooperation between the standardisation bodies and conformity assessment bodies of the Parties;

(e) exchange information on standards, technical regulations, or conformity assessment procedures including those of third parties or international bodies where there is a mutual interest in doing so;

(f) review this Chapter in the light of developments before the WTO Committee on Technical Barriers to Trade or under the TBT Agreement, and, if necessary, develop recommendations to amend this Chapter for consideration by the CETA Joint Committee;

(g) take other steps that the Parties consider will assist them to implement this Chapter and the TBT Agreement and to facilitate trade between the Parties; and

(h) report to the CETA Joint Committee on the implementation of this Chapter, as appropriate.

2. If the Parties are unable to resolve a matter covered under this Chapter through the Committee on Trade in Goods, upon request of a Party, the CETA Joint Committee may establish an *ad hoc* technical working group to identify solutions to facilitate trade. If a Party does not agree with a request from the other Party to establish a technical working group, it shall, on request, explain the reasons for its decision. The Parties shall lead the technical working group.

3. When a Party has requested information, the other Party shall provide the information, pursuant to the provisions of this Chapter, in print or electronically within a reasonable period of time. The Party shall endeavour to respond to each request for information within 60 days.

CHAPTER FIVE

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 5.1

Definitions

1. For the purposes of this Chapter, the following definitions apply:

(a) the definitions in Annex A of the SPS Agreement;

(b) the definitions adopted under the auspices of the Codex Alimentarius Commission (the "Codex");

(c) the definitions adopted under the auspices of the World Organisation for Animal Health (the "OIE");

(d) the definitions adopted under the auspices of the *International Plant Protection Convention* (the "IPPC");

(e) protected zone for a specified regulated harmful organism means an officially defined geographical area in the European Union in which that organism is not established in spite of favourable conditions for its establishment and its presence in other parts of the European Union; and

(f) a competent authority of a Party means an authority listed in Annex 5-A.

2. Further to paragraph 1, the definitions under the SPS Agreement prevail to the extent that there is an inconsistency between the definitions adopted under the auspices of the Codex, the OIE, the IPPC and the definitions under the SPS Agreement.

ARTICLE 5.2

Objectives

The objectives of this Chapter are to:

(a) protect human, animal and plant life or health while facilitating trade;

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

(c) further the implementation of the SPS Agreement.

ARTICLE 5.3

Scope

This Chapter applies to SPS measures that may, directly or indirectly, affect trade between the Parties.

ARTICLE 5.4

Rights and obligations

The Parties affirm their rights and obligations under the SPS Agreement.

ARTICLE 5.5

Adaptation to regional conditions

1. With respect to an animal, animal product and animal by-product:

(a) the Parties recognise the concept of zoning and they have decided to apply this concept to the diseases listed in Annex 5-B;

(b) if the Parties decide on principles and guidelines to recognise regional conditions, they shall include them in Annex 5-C;

(c) for the purpose of subparagraph (a), the importing Party shall base its sanitary measure applicable to the exporting Party whose territory is affected by a disease listed in Annex 5-B on the zoning decision made by the exporting Party, provided that the importing Party is satisfied that the exporting Party's zoning decision is in accordance with the principles and guidelines that the Parties set out in Annex 5-C, and is based on relevant international standards, guidelines, and recommendations. The importing Party may apply any additional measure to achieve its appropriate level of sanitary protection;

(d) if a Party considers that it has a special status with respect to a disease not listed in Annex 5-B, it may request recognition of that status. The importing Party may request additional guarantees for imports of live animals, animal products, and animal by-products appropriate to the agreed status recognised by the importing Party, including the special conditions identified in Annex 5-E; and

(e) the Parties recognise the concept of compartmentalisation and agree to cooperate on this matter.

2. With respect to a plant and plant product:

(a) when the importing Party establishes or maintains its phytosanitary measure, it shall take into account, among other things, the pest status of an area, such as a pest-free area, pest-free place of production, pest-free production site, an area of low pest prevalence and a protected zone that the exporting Party has established; and

(b) if the Parties decide on principles and guidelines to recognise regional conditions, they shall include them in Annex 5-C.

ARTICLE 5.6

Equivalence

1. The importing Party shall accept the SPS measure of the exporting Party as equivalent to its own if the exporting Party objectively demonstrates to the importing Party that its measure achieves the importing Party's appropriate level of SPS protection.

2. Annex 5-D sets out principles and guidelines to determine, recognise, and maintain equivalence.

3. Annex 5-E sets out:

(a) the area for which the importing Party recognises that an SPS measure of the exporting Party is equivalent to its own; and

(b) the area for which the importing Party recognises that the fulfilment of the specified special condition, combined with the exporting Party's SPS measure, achieves the importing Party's appropriate level of SPS protection.

4. For the purposes of this Chapter, Article 1.7 (Reference to laws) applies subject to this Article, Annex 5-D and the General Notes under Annex 5-E.

ARTICLE 5.7

Trade conditions

1. The importing Party shall make available its general SPS import requirements for all commodities. If the Parties jointly identify a commodity as a priority, the importing Party shall establish specific SPS import requirements for that commodity, unless the Parties decide otherwise. In identifying which commodities are priorities, the Parties shall cooperate to ensure the efficient management of their available resources. The specific import requirements should be applicable to the total territory of the exporting Party.

2. Pursuant to paragraph 1, the importing Party shall undertake, without undue delay, the necessary process to establish specific SPS import requirements for the commodity that is identified as a priority. Once these specific import requirements are established, the importing Party shall take the necessary steps, without undue delay, to allow trade on the basis of these import requirements.

3. For the purpose of establishing the specific SPS import requirements, the exporting Party shall, at the request of the importing Party:

(a) provide all relevant information required by the importing Party; and

(b) give reasonable access to the importing Party to inspect, test, audit and perform other relevant procedures.

4. If the importing Party maintains a list of authorised establishments or facilities for the import of a commodity, it shall approve an establishment or facility situated in the territory of the exporting Party without prior inspection of that establishment or facility if:

(a) the exporting Party has requested such an approval for the establishment or facility, accompanied by the appropriate guarantees; and

(b) the conditions and procedures set out in Annex 5-F are fulfilled.

5. Further to paragraph 4, the importing Party shall make its lists of authorised establishments or facilities publicly available.

6. A Party shall normally accept a consignment of a regulated commodity without pre-clearance of the commodity on a consignment basis, unless the Parties decide otherwise.

7. The importing Party may require that the relevant competent authority of the exporting Party objectively demonstrate, to the satisfaction of the importing Party, that the import requirements may be fulfilled or are fulfilled.

8. The Parties should follow the procedure set out in Annex 5-G on the specific import requirements for plant health.

ARTICLE 5.8

Audit and verification

1. For the purpose of maintaining confidence in the implementation of this Chapter, a Party may carry out an audit or verification, or both, of all or part of the control programme of the competent authority of the other Party. The Party shall bear its own costs associated with the audit or verification.

2. If the Parties decide on principles and guidelines to conduct an audit or verification, they shall include them in Annex 5-H. If a Party conducts an audit or verification, it shall do so in accordance with any principles and guidelines in Annex 5-H.

ARTICLE 5.9

Export certification

1. When an official health certificate is required to import a consignment of live animals or animal products, and if the importing Party has accepted the SPS measure of the exporting Party as equivalent to its own with respect to such animals or animal products, the Parties shall use the model health attestation prescribed in Annex 5-I for such certificate, unless the Parties decide otherwise. The Parties may also use a model attestation for other products if they so decide.

2. Annex 5-I sets out principles and guidelines for export certification, including electronic certification, withdrawal or replacement of certificates, language regimes and model attestations.

ARTICLE 5.10

Import checks and fees

1. Annex 5-J sets out principles and guidelines for import checks and fees, including the frequency rate for import checks.

2. If import checks reveal non-compliance with the relevant import requirements, the action taken by the importing Party must be based on an assessment of the risk involved and not be more trade-restrictive than required to achieve the Party's appropriate level of sanitary or phytosanitary protection.

3. Whenever possible, the importing Party shall notify the importer of a non-compliant consignment, or its representative, of the reason for non-compliance, and provide them with an opportunity for a review of the decision. The importing Party shall consider any relevant information submitted to assist in the review.

4. A Party may collect fees for the costs incurred to conduct frontier checks, which should not exceed the recovery of the costs.

ARTICLE 5.11

Notification and information exchange

1. A Party shall notify the other Party without undue delay of a:

(a) significant change to pest or disease status, such as the presence and evolution of a disease listed in Annex 5-B;

(b) finding of epidemiological importance with respect to an animal disease, which is not listed in Annex 5-B, or which is a new disease; and

(c) significant food safety issue related to a product traded between the Parties.

2. The Parties endeavour to exchange information on other relevant issues including:

(a) a change to a Party's SPS measure;

(b) any significant change to the structure or organisation of a Party's competent authority;

(c) on request, the results of a Party's official control and a report that concerns the results of the control carried out;

(d) the results of an import check provided for in Article 5.10 in case of a rejected or a non-compliant consignment; and

(e) on request, a risk analysis or scientific opinion that a Party has produced and that is relevant to this Chapter.

3. Unless the Joint Management Committee decides otherwise, when the information referred to in paragraph 1 or 2 has been made available via notification to the WTO's Central Registry of Notifications or to the relevant international standard-setting body, in accordance with its relevant rules, the requirements in paragraphs 1 and 2, as they apply to that information, are fulfilled.

ARTICLE 5.12

Technical consultations

If a Party has a significant concern with respect to food safety, plant health, or animal health, or an SPS measure that the other Party has proposed or implemented, that Party may request technical consultations with the other Party. The Party that is the subject of the request should respond to the request without undue delay. Each Party shall endeavour to provide the information necessary to avoid a disruption to trade and, as the case may be, to reach a mutually acceptable solution.

ARTICLE 5.13

Emergency SPS measures

1. A Party shall notify the other Party of an emergency SPS measure within 24 hours of its decision to implement the measure. If a Party requests technical consultations to address the emergency SPS measure, the technical consultations must be held within 10 days of the notification of the emergency SPS measure. The Parties shall consider any information provided through the technical consultations.

2. The importing Party shall consider the information that was provided in a timely manner by the exporting Party when it makes its decision with respect to a consignment that, at the time of adoption of the emergency SPS measure, is being transported between the Parties.

ARTICLE 5.14

Joint Management Committee for Sanitary and Phytosanitary Measures

1. The Joint Management Committee for Sanitary and Phytosanitary Measures (the "Joint Management Committee"), established under Article 26.2.1(d), comprises regulatory and trade representatives of each Party responsible for SPS measures.

2. The functions of the Joint Management Committee include:

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

(b) to provide direction for the identification, prioritisation, management and resolution of issues;

(c) to address any request by a Party to modify an import check;

(d) at least once a year, to review the annexes to this Chapter, notably in the light of progress made under the consultations provided for under this Agreement. Following its review, the Joint Management Committee may decide to amend the annexes to this Chapter. The Parties may approve the Joint Management Committee's decision, in accordance with their respective procedures necessary for the entry into force of the amendment. The decision enters into force on a date agreed by the Parties;

(e) to monitor the implementation of a decision referred to in subparagraph (d), above, as well as the operation of measures referred to under subparagraph (d) above;

(f) to provide a regular forum to exchange information that relates to each Party's regulatory system, including the scientific and risk assessment basis for an SPS measure; and

(g) to prepare and maintain a document that details the state of discussions between the Parties on their work on recognition of the equivalence of specific SPS measures.

3. The Joint Management Committee may, among other things:

(a) identify opportunities for greater bilateral engagement, including enhanced relationships, which may include an exchange of officials;

(b) discuss at an early stage, a change to, or a proposed change to, an SPS measure being considered;

(c) facilitate improved understanding between the Parties on the implementation of the SPS Agreement, and promote cooperation between the Parties on SPS issues under discussion in multilateral fora, including the WTO Committee on Sanitary and Phytosanitary Measures and international standard-setting bodies, as appropriate; or

(d) identify and discuss, at an early stage, initiatives that have an SPS component, and that would benefit from cooperation.

4. The Joint Management Committee may establish working groups comprising expert-level representatives of the Parties, to address specific SPS issues.

5. A Party may refer any SPS issue to the Joint Management Committee. The Joint Management Committee should consider the issue as expeditiously as possible.

6. If the Joint Management Committee is unable to resolve an issue expeditiously, it shall, at the request of a Party, report promptly to the CETA Joint Committee.

7. Unless the Parties decide otherwise, the Joint Management Committee shall meet and establish its work programme no later than 180 days following the entry into force of this Agreement, and its rules of procedure no later than one year after the entry into force of this Agreement.

8. Following its initial meeting, the Joint Management Committee shall meet as required, normally on an annual basis. The Joint Management Committee may decide to meet by videoconference or teleconference, and it may also address issues out of session by correspondence.

9. The Joint Management Committee shall report annually on its activities and work programme to the CETA Joint Committee.

10. Upon entry into force of this Agreement, each Party shall designate and inform the other Party, in writing, of a contact point to coordinate the Joint Management Committee's agenda and to facilitate communication on SPS matters.

CHAPTER SIX

CUSTOMS AND TRADE FACILITATION

ARTICLE 6.1

Objectives and principles

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

2. The Parties shall, to the extent possible, cooperate and exchange information, including information on best practices, to promote the application of and compliance with the trade facilitation measures in this Agreement.

3. Measures to facilitate trade shall not hinder mechanisms to protect a person through effective enforcement of and compliance with a Party's law.

4. Import, export and transit requirements and procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve a legitimate objective.

5. Existing international trade and customs instruments and standards shall be the basis for import, export and transit requirements and procedures, except if these instruments and standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objective pursued.

ARTICLE 6.2

Transparency

1. Each Party shall publish or otherwise make available, including through electronic means, its legislation, regulations, judicial decisions and administrative policies relating to requirements for the import or export of goods.

2. Each Party shall endeavour to make public, including on the internet, proposed regulations and administrative policies relating to customs matters and to provide interested persons an opportunity to comment prior to their adoption.

3. 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.

ARTICLE 6.3

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 and reduce costs for importers and exporters.

2. Each Party shall ensure that these simplified procedures:

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

(b) allow goods, and to the extent possible controlled or regulated goods, to be released at the first point of arrival;

(c) endeavour to allow for the expeditious release of goods in need of emergency clearance;

(d) allow an importer or its agent to remove goods from customs' control prior to the final determination and payment of customs duties, taxes, and fees. Before releasing the goods, a Party may require that an importer provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument; and

(e) provide for, in accordance with its law, simplified documentation requirements for the entry of low-value goods as determined by each Party.

3. Each Party, in its simplified procedures, may require the submission of more extensive information through post-entry accounting and verifications, as appropriate.

4. Each Party shall allow for the expedited release of goods and, to the extent possible and if applicable, shall:

(a) provide for advance electronic submission and processing of information before physical arrival of goods to enable their release upon arrival, if no risk has been identified or if no random checks are to be performed; and

(b) provide for clearance of certain goods with a minimum of documentation.

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

6. Each Party shall ensure, to the extent possible, that its import and export requirements for 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.

ARTICLE 6.4

Customs valuation

1. The Customs Valuation Agreement governs customs valuation applied to reciprocal trade between the Parties.

2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

ARTICLE 6.5

Classification of goods

The classification of goods in trade between the Parties under this Agreement is set out in each Party's respective tariff nomenclature in conformity with the Harmonized System.

ARTICLE 6.6

Fees and charges

Each Party shall publish or otherwise make available information on fees and charges imposed by a customs administration of that Party, including through electronic means. This information includes the applicable fees and charges, the specific reason for the fee or charge, the responsible authority, and when and how payment is to be made. A Party shall not impose new or amended fees and charges until it publishes or otherwise makes available this information.

ARTICLE 6.7

Risk management

1. Each Party shall base its examination, release and post-entry verification procedures on risk assessment principles, rather than requiring each shipment offered for entry to be examined in a comprehensive manner for compliance with import requirements.

2. Each Party shall adopt and apply its import, export and transit requirements and procedures for goods on the basis of risk management principles and focus compliance measures on transactions that merit attention.

3. Paragraphs 1 and 2 do not preclude a Party from conducting quality control and compliance reviews that can require more extensive examinations.

ARTICLE 6.8

Automation

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

2. Each Party shall:

(a) endeavour to make available by electronic means customs forms that are required for the import or export of goods;

(b) allow, subject to its law, those customs forms to be submitted in electronic format; and

(c) if possible, through its customs administration, provide for the electronic exchange of information with its trading community.

3. Each Party shall endeavour to:

(a) develop or maintain fully interconnected single window systems to facilitate a single, electronic submission of the information required by customs and non-customs legislation for cross-border movements of goods; and

(b) develop a set of data elements and processes in accordance with the World Customs Organization ("WCO") Data Model and related WCO recommendations and guidelines.

4. The Parties shall endeavour to cooperate on the development of interoperable electronic systems, including taking account of the work at the WCO, in order to facilitate trade between the Parties.

ARTICLE 6.9

Advance rulings

1. Each Party shall issue, upon written request, advance rulings on tariff classification in accordance with its law.

2. Subject to confidentiality requirements, each Party shall publish, for example on the internet, information on advance rulings on tariff classification that is relevant to understand and apply tariff classification rules.

3. To facilitate trade, the Parties shall include in their bilateral dialogue regular updates on changes in their respective laws and implementation measures regarding matters referred to in paragraphs 1 and 2.

ARTICLE 6.10

Review and appeal

1. Each Party shall ensure that an administrative action or official decision taken in respect of the import of goods is reviewable promptly by judicial, arbitral, or administrative tribunals or through administrative procedures.

2. The tribunal or official acting pursuant to those administrative procedures shall be independent of the official or office issuing the decision and shall have the competence to maintain, modify or reverse the determination in accordance with the Party's law.

3. Before requiring a person to seek redress at a more formal or judicial level, each Party shall provide for an administrative level of appeal or review that is independent of the official or the office responsible for the original action or decision.

4. Each Party shall grant substantially the same right of review and appeal of determinations of advance rulings by its customs administration that it provides to importers in its territory to a person that has received an advance ruling pursuant to Article 6.9.

ARTICLE 6.11

Penalties

Each Party shall ensure that its customs law provides that penalties imposed for breaches to it be proportionate and non-discriminatory and that the application of these penalties does not result in unwarranted delays.

ARTICLE 6.12

Confidentiality

1. Each Party shall, in accordance with its law, treat as strictly confidential all information obtained under this Chapter that is by its nature confidential or that is provided on a confidential basis, and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

2. If the Party receiving or obtaining the information referred to in paragraph 1 is required by its law to disclose the information, that Party shall notify the Party or person who provided that information.

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

4. A Party may allow information collected under this Chapter to be used in administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs-related laws implementing this Chapter. A Party shall notify the Party or person that provided the information in advance of such use.

ARTICLE 6.13

Cooperation

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

2. The Parties shall regularly review relevant international initiatives on trade facilitation, including 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.

3. The Parties shall cooperate in accordance with the Agreement between Canada and the *European Community on Customs Cooperation and Mutual Assistance in Customs Matters*, done at Ottawa on 4 December 1997 (the "Canada-EU Customs Cooperation Agreement").

4. The Parties shall provide each other with mutual assistance in customs matters in accordance with the Canada-EU Customs Cooperation Agreement, including matters relating to a suspected breach of a Party's customs legislation, as defined in that agreement, and to the implementation of this Agreement.

ARTICLE 6.14

Joint Customs Cooperation Committee

1. The Joint Customs Cooperation Committee, which is granted authority to act under the auspices of the CETA Joint Committee as a specialised committee pursuant to Article 26.2.1 (c) (Specialised committees), shall ensure the proper functioning of this Chapter and the Protocol on Rules of Origin and Origin Procedures, as well as Article 20.43 (Scope of border measures) and Article 2.8 (Temporary suspension of preferential tariff treatment). The Joint Customs Cooperation Committee shall examine issues arising from their application in accordance with the objectives of this Agreement.

2. For matters covered by this Agreement, the Joint Customs Cooperation Committee shall comprise representatives of the customs, trade, or other competent authorities as each Party deems appropriate.

3. Each Party shall ensure that its representatives in Joint Customs Cooperation Committee meetings have an expertise that corresponds to the agenda items. The Joint Customs Cooperation Committee may meet in a specific configuration of expertise to deal with rules of origin or origin procedures matters either as the Joint Customs Cooperation Committee-Rules of Origin or the Joint Customs Cooperation Committee-Origin Procedures.

4. The Joint Customs Cooperation Committee may formulate resolutions, recommendations, or opinions and present draft decisions to the CETA Joint Committee that it considers necessary for the attainment of the common objectives and sound functioning of the mechanisms established in this Chapter and the Protocol on Rules of Origin and Origin Procedures, as well as Article 20.43 (Scope of border measures) and Article 2.8 (Temporary suspension of preferential tariff treatment).

CHAPTER SEVEN

SUBSIDIES

ARTICLE 7.1

Definition of a subsidy

1. For the purposes of this Agreement, a **subsidy** means a measure related to trade in goods, which fulfils the conditions set out in Article 1.1 of the SCM Agreement.

2. A subsidy is subject to this Chapter only if it is specific within the meaning of Article 2 of the SCM Agreement.

ARTICLE 7.2

Transparency

1. Every two years, each Party shall notify the other Party of the following with respect to any subsidy granted or maintained within its territory:

(a) the legal basis of the subsidy;

(b) the form of the subsidy; and

(c) the amount of the subsidy or the amount budgeted for the subsidy.

2. Notifications provided to the WTO under Article 25.1 of the SCM Agreement are deemed to meet the requirement set out in paragraph 1.

3. At the request of the other Party, a Party shall promptly provide information and respond to questions pertaining to particular instances of government support related to trade in services provided within its territory.

ARTICLE 7.3

Consultations on subsidies and government support
in sectors other than agriculture and fisheries

1. If a Party considers that a subsidy, or a particular instance of government support related to trade in services, granted by the other Party is adversely affecting, or may adversely affect its interests, it may express its concerns to the other Party and request consultations on the matter. The responding Party shall accord full and sympathetic consideration to that request.

2. During consultations, a Party may seek additional information on a subsidy or particular instance of government support related to trade in services provided by the other Party, including its policy objective, its amount, and any measures taken to limit the potential distortive effect on trade.

3. On the basis of the consultations, the responding Party shall endeavour to eliminate or minimise any adverse effects of the subsidy, or the particular instance of government support related to trade in services, on the requesting Party's interests.

4. This Article does not apply to subsidies related to agricultural goods and fisheries products, and is without prejudice to Articles 7.4 and 7.5.

ARTICLE 7.4

Consultations on subsidies related to agricultural goods and fisheries products

1. The Parties share the objective of working jointly to reach an agreement:

(a) to further enhance multilateral disciplines and rules on agricultural trade in the WTO; and

(b) to help develop a global, multilateral resolution to fisheries subsidies.

2. If a Party considers that a subsidy, or the provision of government support, granted by the other Party, is adversely affecting, or may adversely affect, its interests with respect to agricultural goods or fisheries products, it may express its concerns to the other Party and request consultations on the matter.

3. The responding Party shall accord full and sympathetic consideration to that request and will use its best endeavours to eliminate or minimise the adverse effects of the subsidy, or the provision of government support, on the requesting Party's interests with regard to agricultural goods and fisheries products.

ARTICLE 7.5

Agriculture export subsidies

1. For the purposes of this Article:

(a) **export subsidy** means an export subsidy as defined in Article 1(e) of the Agreement on Agriculture; and

(b) **full elimination** of a tariff means, where tariff quotas exist, the elimination of either the in-quota or over-quota tariff.

2. A Party shall not adopt or maintain an export subsidy on an agricultural good that is exported, or incorporated in a product that is exported, to the territory of the other Party after the other Party has fully eliminated the tariff, immediately or after the transitional period, on that agricultural good in accordance with Annex 2-A (Tariff Elimination), including its Tariff Schedules.

ARTICLE 7.6

Confidentiality

When providing information under this Chapter, a Party is not required to disclose confidential information.

ARTICLE 7.7

Exclusion of subsidies and government support
for audio-visual services and cultural industries

Nothing in this Agreement applies to subsidies or government support with respect to audio-visual services for the European Union and to cultural industries for Canada.

ARTICLE 7.8

Relationship with the WTO Agreement

The Parties reaffirm their rights and obligations under Article VI of GATT 1994, the SCM Agreement and the Agreement on Agriculture.

ARTICLE 7.9

Dispute settlement

Articles 7.3 and 7.4 of this Chapter are not subject to the dispute settlement provisions of this Agreement.

CHAPTER EIGHT

INVESTMENT

SECTION A

Definitions and scope

ARTICLE 8.1

Definitions

For the purposes of this Chapter:

activities carried out in the exercise of governmental authority means activities carried out neither on a commercial basis nor in competition with one or more economic operators;

aircraft repair and maintenance services means activities undertaken on an aircraft or a part of an aircraft while it is withdrawn from service and do not include so-called line maintenance;

airport operation services means the operation or management, on a fee or contract basis, of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems. For greater certainty, airport operation services do not include the ownership of, or investment in, airports or airport lands, or any of the functions carried out by a board of directors. Airport operation services do not include air navigation services;

attachment means the seizure of property of a disputing party to secure or ensure the satisfaction of an award;

computer reservation system services means the supply of a service 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;

confidential or protected information means:

(a) confidential business information; or

(b) information which is protected against disclosure to the public;

(i) in the case of information of the respondent, under the law of the respondent;

(ii) in the case of other information, under a law or rules that the Tribunal determines to be applicable to the disclosure of such information;

covered investment means, with respect to a Party, an investment:

(a) in its territory;

(b) made in accordance with the applicable law at the time the investment is made;

(c) directly or indirectly owned or controlled by an investor of the other Party; and

(d) existing on the date of entry into force of this Agreement, or made or acquired thereafter;

disputing party means the investor that initiates proceedings pursuant to Section F or the respondent. For the purposes of Section F and without prejudice to Article 8.14, an investor does not include a Party;

disputing parties means both the investor and the respondent;

enjoin means an order to prohibit or restrain an action;

enterprise means an enterprise as defined in Article 1.1 (Definitions of general application) and a branch or representative office of an enterprise;

ground handling services means the supply of a service on a fee or contract basis for: ground administration and supervision, including load control and communications; passenger handling; baggage handling; cargo and mail handling; ramp handling and aircraft services; fuel and oil handling; aircraft line maintenance, flight operations and crew administration; surface transport; or catering services. Ground handling services do not include security services or the operation or management of centralised airport infrastructure, such as baggage handling systems, de-icing facilities, fuel distribution systems, or intra-airport transport systems;

ICSID means the International Centre for Settlement of Investment Disputes;

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; and, if such rights are provided by a Party's law, utility model rights. The CETA Joint Committee may, by decision, add other categories of intellectual property to this definition;

investment means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, which includes a certain duration and other characteristics such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stocks and other forms of equity participation in an enterprise;

(c) bonds, debentures and other debt instruments of an enterprise;

(d) a loan to an enterprise;

(e) any other kind of interest in an enterprise;

(f) an interest arising from:

(i) a concession conferred pursuant to the law of a Party or under a contract, including to search for, cultivate, extract or exploit natural resources,

(ii) a turnkey, construction, production or revenue-sharing contract; or

(iii) other similar contracts;

(g) intellectual property rights;

(h) other moveable property, tangible or intangible, or immovable property and related rights;

(i) claims to money or claims to performance under a contract.

For greater certainty, **claims to money** does not include:

(i) claims to money that arise solely from commercial contracts for the sale of goods or services by a natural person or enterprise in the territory of a Party to a natural person or enterprise in the territory of the other Party.

(ii) the domestic financing of such contracts; or

(iii) any order, judgment, or arbitral award related to sub-subparagraph (i) or (ii).

Returns that are invested shall be treated as investments. Any alteration of the form in which assets are invested or reinvested does not affect their qualification as investment;

investor means a Party, a natural person or an enterprise of a Party, other than a branch or a representative office, that seeks to make, is making or has made an investment in the territory of the other Party;

For the purposes of this definition, an **enterprise of a Party** is:

(a) an enterprise that is constituted or organised under the laws of that Party and has substantial business activities in the territory of that Party; or

(b) an enterprise that is constituted or organised under the laws of that Party and is directly or indirectly owned or controlled by a natural person of that Party or by an enterprise mentioned under paragraph (a);

locally established enterprise means a juridical person that is constituted or organised under the laws of the respondent and that an investor of the other Party owns or controls directly or indirectly;

natural person means:

(a) in the case of Canada, a natural person who is a citizen or permanent resident of Canada; and

(b) in the case of the EU Party, a natural person having the nationality of one of the Member States of the European Union according to their respective laws, and, for Latvia, also a natural person permanently residing in the Republic of Latvia who is not a citizen of the Republic of Latvia or any other state but who is entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.

A natural person who is a citizen of Canada and has the nationality of one of the Member States of the European Union is deemed to be exclusively a natural person of the Party of his or her dominant and effective nationality.

A natural person who has the nationality of one of the Member States of the European Union or is a citizen of Canada, and is also a permanent resident of the other Party, is deemed to be exclusively a natural person of the Party of his or her nationality or citizenship, as applicable;

New York Convention means the United Nations *Convention on the Recognition and Enforcement of Foreign Arbitral Awards,* done at New York on 10 June 1958;

non-disputing Party means Canada, if the European Union or a Member State of the European Union is the respondent, or the European Union, if Canada is the respondent;

respondent means Canada or, in the case of the European Union, either the Member State of the European Union or the European Union pursuant to Article 8.21;

returns means all amounts yielded by an investment or reinvestment, including profits, royalties and interest or other fees and payments in kind;

selling and marketing of air transport services means 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, but does not include the pricing of air transport services or the applicable conditions;

third party funding means any funding provided by a natural or legal person who is not a disputing party but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings either through a donation or grant, or in return for remuneration dependent on the outcome of the dispute.

Tribunal means the tribunal established under Article 8.27;

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law; and

UNCITRAL Transparency Rules means the *UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration*;

ARTICLE 8.2

Scope

1. This Chapter applies to a measure adopted or maintained by a Party in its territory[5] relating to:

(a) an investor of the other Party;

(b) a covered investment; and

(c) with respect to Article 8.5, any investments in its territory.

[5] For greater certainty, the obligations of this Chapter apply to the Exclusive Economic Zones and Continental Shelves, as provided in the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982:
(a) of Canada as referred to in Article 1.3(a) (Geographical scope of application); and
(b) to which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied as referred to in Article 1.3(b) (Geographical scope of application).

2. With respect to the establishment or acquisition of a covered investment[6], Sections B and C do not apply to a measure relating to:

(a) air services, or related services in support of air services and other services supplied by means of air transport[7], other than:

(i) aircraft repair and maintenance services;

(ii) the selling and marketing of air transport services;

(iii) computer reservation system (CRS) services;

(iv) ground handling services;

(v) airport operation services; or

(b) activities carried out in the exercise of governmental authority.

3. For the EU Party, Sections B and C do not apply to a measure with respect to audio-visual services. For Canada, Sections B and C do not apply to a measure with respect to cultural industries.

[6] For greater certainty, a Party may maintain measures with respect to the establishment or acquisition of a covered investment and continue to apply such measures to the covered investment after it has been established or acquired.

[7] These services include services when an aircraft is being used to carry out specialised activities in sectors including agriculture, construction, photography, surveying, mapping, forestry, observation and patrol, or advertising, if the specialised activity is provided by the person that is responsible for the operation of the aircraft.

4. Claims may be submitted by an investor under this Chapter only in accordance with Article 8.18, and in compliance with the procedures set out in Section F. Claims in respect of an obligation set out in Section B are excluded from the scope of Section F. Claims under Section C with respect to the establishment or acquisition of a covered investment are excluded from the scope of Section F. Section D applies only to a covered investment and to investors in respect of their covered investment.

5. This Chapter does not affect the rights and obligations of the Parties under the *Agreement on Air Transport between Canada and the European Community and its Member States*, done at Brussels on 17 December 2009 and Ottawa on 18 December 2009.

ARTICLE 8.3

Relation to other chapters

1. This Chapter does not apply to measures adopted or maintained by a Party to the extent that the measures apply to investors or to their investments covered by Chapter Thirteen (Financial Services).

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 for supplying a service in its territory does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to the supply of that cross-border 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.

SECTION B

Establishment of investments

ARTICLE 8.4

Market access

1. A Party shall not adopt or maintain with respect to market access through establishment by an investor of the other Party, on the basis of its entire territory or on the basis of the territory of a national, provincial, territorial, regional or local level of government, a measure that:

(a) imposes limitations on:

(i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive suppliers or the requirement of an economic needs test;

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

(iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[8]

(iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or

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

(b) restricts or requires specific types of legal entity or joint venture through which an enterprise may carry out an economic activity.

2. For greater certainty, the following are consistent with paragraph 1:

(a) a measure concerning zoning and planning regulations affecting the development or use of land, or another analogous measure;

[8] Sub-subparagraphs 1(a) (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural good.

(b) a measure requiring the separation of the ownership of infrastructure from the ownership of the goods or services provided through that infrastructure to ensure fair competition, for example in the fields of energy, transportation and telecommunications;

(c) a measure restricting the concentration of ownership to ensure fair competition;

(d) a measure seeking to ensure the conservation and protection of natural resources and the environment, including a limitation on the availability, number and scope of concessions granted, and the imposition of a moratorium or ban;

(e) a measure limiting the number of authorisations granted because of technical or physical constraints, for example telecommunications spectrum and frequencies; or

(f) a measure requiring that a certain percentage of the shareholders, owners, partners, or directors of an enterprise be qualified or practice a certain profession such as lawyers or accountants.

ARTICLE 8.5

Performance requirements

1. A Party shall not impose, or enforce the following requirements, or enforce a commitment or undertaking, in connection with the establishment, acquisition, expansion, conduct, operation, and management of any investments in its territory to:

(a) export a given level or percentage of a good or service;

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

(c) purchase, use or accord a preference to a good produced or service provided in its territory, or to purchase a good or service from natural persons or enterprises in its territory;

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

(e) restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings;

(f) transfer technology, a production process or other proprietary knowledge to a natural person or enterprise in its territory; or

(g) supply exclusively from the territory of the Party a good produced or a service provided by the investment to a specific regional or world market.

2. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct or operation of any investments in its territory, 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 a good produced in its territory, or to purchase a good from a producer in its territory;

(c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment; or

(d) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings.

3. Paragraph 2 does not prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.

4. Subparagraph 1(f) does not apply if the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a violation of competition laws.

5. The provisions of:

(a) subparagraphs 1(a), (b) and (c), and 2(a) and (b), do not apply to qualification requirements for a good or service with respect to participation in export promotion and foreign aid programs;

(b) this Article does not apply to procurement by a Party of a good or service purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article 19.2 (Scope and coverage).

6. For greater certainty, subparagraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of a good necessary to qualify for preferential tariffs or preferential quotas.

7. This Article is without prejudice to World Trade Organization commitments of a Party.

SECTION C

Non-discriminatory treatment

ARTICLE 8.6

National treatment

1. Each Party shall accord to an investor of the other Party and to a covered investment, treatment no less favourable than the treatment it accords, in like situations to its own investors and to their investments with respect to the establishment, acquisition, expansion, conduct, operation, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.

2. The treatment accorded by a Party under paragraph 1 means, with respect to a government in Canada other than at the federal level, or, with respect to a government of or in a Member State of the European Union, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to investors of that Party in its territory and to investments of such investors.

ARTICLE 8.7

Most-favoured-nation treatment

1. Each Party shall accord to an investor of the other Party and to a covered investment, treatment no less favourable than the treatment it accords in like situations, to investors of a third country and to their investments with respect to the establishment, acquisition, expansion, conduct, operation, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.

2. For greater certainty, the treatment accorded by a Party under paragraph 1 means, with respect to a government in Canada other than at the federal level, or, with respect to a government of or in a Member State of the European Union, treatment accorded, in like situations, by that government to investors in its territory, and to investments of such investors, of a third country.

3 Paragraph 1 does not apply to treatment accorded by a Party providing for recognition, including through an arrangement or agreement with a third country that recognises the accreditation of testing and analysis services and service suppliers, the accreditation of repair and maintenance services and service suppliers, as well as the certification of the qualifications of or the results of or work done by those accredited services and service suppliers.

4. For greater certainty, the "treatment" referred to in paragraphs 1 and 2 does not include procedures for the resolution of investment disputes between investors and states provided for in other international investment treaties and other trade agreements. Substantive obligations in other international investment treaties and other trade agreements do not in themselves constitute "treatment", and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party pursuant to those obligations.

ARTICLE 8.8

Senior management and boards of directors

A Party shall not require that an enterprise of that Party, that is also a covered investment, appoint to senior management or board of director positions, natural persons of any particular nationality.

SECTION D

Investment protection

ARTICLE 8.9

Investment and regulatory measures

1. For the purpose of this Chapter, the Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.

2. For greater certainty, the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under this Section.

3. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy:

(a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy; or

(b) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy,

does not constitute a breach of the provisions of this Section.

4. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy[9] or requesting its reimbursement where such measure is necessary in order to comply with international obligations between the Parties or has been ordered by a competent court, administrative tribunal or other competent authority[10], or requiring that Party to compensate the investor therefor.

[9] In the case of the European Union, "subsidy" includes "state aid" as defined in its law.

[10] In the case of the European Union, "competent authority" is the European Commission, in accordance with Article 108 of the Treaty on the Functioning of the European Union.

ARTICLE 8.10

Treatment of investors and of covered investments

1. Each Party shall accord in its territory to covered investments of the other Party and to investors with respect to their covered investments fair and equitable treatment and full protection and security in accordance with paragraphs 2 through 7.

2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or series of measures constitutes:

(a) denial of justice in criminal, civil or administrative proceedings;

(b) fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;

(c) manifest arbitrariness;

(d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief;

(e) abusive treatment of investors, such as coercion, duress and harassment; or

(f) a breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 3 of this Article.

3. The Parties shall regularly, or upon request of a Party, review the content of the obligation to provide fair and equitable treatment. The Committee on Services and Investment, established under Article 26.2.1(b) (Specialised committees), may develop recommendations in this regard and submit them to the CETA Joint Committee for decision.

4. When applying the above fair and equitable treatment obligation, the Tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.

5. For greater certainty, "full protection and security" refers to the Party's obligations relating to the physical security of investors and covered investments.

6. For greater certainty, a breach of another provision of this Agreement, or of a separate international agreement does not establish a breach of this Article.

7. For greater certainty, the fact that a measure breaches domestic law does not, in and of itself, establish a breach of this Article. In order to ascertain whether the measure breaches this Article, the Tribunal must consider whether a Party has acted inconsistently with the obligations in paragraph 1.

ARTICLE 8.11

Compensation for losses

Notwithstanding Article 8.15.5(b), each Party shall accord to investors of the other Party, whose covered investments suffer losses owing to armed conflict, civil strife, a state of emergency or natural disaster in its territory, treatment no less favourable than that it accords to its own investors or to the investors of a third country, whichever is more favourable to the investor concerned, as regards restitution, indemnification, compensation or other settlement.

ARTICLE 8.12

Expropriation

1. A Party shall not nationalise or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalisation or expropriation ("expropriation"), except:

(a) for a public purpose;

(b) under due process of law;

(c) in a non-discriminatory manner; and

(d) on payment of prompt, adequate and effective compensation.

For greater certainty, this paragraph shall be interpreted in accordance with Annex 8-A.

2. The compensation referred to in paragraph 1 shall amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became known, whichever is earlier. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. The compensation shall also include interest at a normal commercial rate from the date of expropriation until the date of payment and shall, in order to be effective for the investor, be paid and made transferable, without delay, to the country designated by the investor and in the currency of the country of which the investor is a national or in any freely convertible currency accepted by the investor.

4. The affected investor shall have the right, under the law of the expropriating Party, to a prompt review of its claim 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 does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, to the extent that such issuance is consistent with the TRIPS Agreement.

6. For greater certainty, the revocation, limitation or creation of intellectual property rights, to the extent that these measures are consistent with the TRIPS Agreement and Chapter Twenty (Intellectual Property), do not constitute expropriation. Moreover, a determination that these measures are inconsistent with the TRIPS Agreement or Chapter Twenty (Intellectual Property) does not establish an expropriation.

ARTICLE 8.13

Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made without restriction or delay in a freely convertible currency and at the market rate of exchange applicable on the date of transfer. Such transfers include:

(a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, or other forms of returns or amounts derived from the covered investment;

(c) proceeds from the sale or liquidation of the whole or a part 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 8.11 and 8.12;

(f) earnings and other remuneration of foreign personnel working in connection with an investment; and

(g) payments of damages pursuant to an award issued under Section F.

2. A Party shall not require its investors to transfer, or penalise 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.

3. Nothing in this Article shall be construed to prevent a Party from applying in an equitable and non-discriminatory manner and not in a way that would constitute a disguised restriction on transfers, its laws relating to:

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

(b) issuing, trading or dealing in securities;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; and

(e) the satisfaction of judgments in adjudicatory proceedings.

ARTICLE 8.14

Subrogation

If a Party, or an agency of a Party, makes a payment under an indemnity, guarantee or contract of insurance that it has entered into in respect of an investment made by one of its investors in the territory of the other Party, the other Party shall recognise that the Party or its agency shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. These rights may be exercised by the Party or an agency of the Party, or by the investor if the Party or an agency of the Party thereof so authorises.

SECTION E

Reservations and exceptions

ARTICLE 8.15

Reservations and exceptions

1. Articles 8.4 through 8.8 do not apply to:

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

(i) the European Union, as set out in its Schedule to Annex I;

(ii) a national government, as set out by that Party in its Schedule to Annex I;

(iii) a provincial, territorial, or regional government, as set out by that Party in its Schedule to Annex I; or

(iv) a local government;

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

(c) an amendment to a 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 8.4 through 8.8.

2. Articles 8.4 through 8.8 do not apply to a measure that a Party adopts or maintains with respect to a sector, subsector or activity, as set out in its Schedule to Annex II.

3. Without prejudice to Articles 8.10 and 8.12, a Party shall not adopt a measure or series of measures after the date of entry into force of this Agreement and covered by its Schedule to Annex II, that require, directly or indirectly an investor of the other Party, by reason of nationality, to sell or otherwise dispose of an investment existing at the time the measure or series of measures become effective.

4. In respect of intellectual property rights, a Party may derogate from Articles 8.5.1(f), 8.6, and 8.7 if permitted by the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for both Parties, and waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.

5. Articles 8.4, 8.6, 8.7 and 8.8 do not apply to:

(a) procurement by a Party of a good or service purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article 19.2 (Scope and coverage); or

(b) subsidies, or government support relating to trade in services, provided by a Party.

ARTICLE 8.16

Denial of benefits

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if:

(a) an investor of a third country owns or controls the enterprise; and

(b) the denying Party adopts or maintains a measure with respect to the third country that:

(i) relates to the maintenance of international peace and security; and

(ii) prohibits transactions with the enterprise or would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

ARTICLE 8.17

Formal requirements

Notwithstanding Articles 8.6 and 8.7, 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, provided that those requests are reasonable and not unduly burdensome. The Party shall protect confidential or protected information from any disclosure that would prejudice the competitive position of the investor or the covered investment. This paragraph does not prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.

SECTION F

Resolution of investment disputes between investors and states

ARTICLE 8.18

Scope

1. Without prejudice to the rights and obligations of the Parties under Chapter Twenty-Nine (Dispute Settlement), an investor of a Party may submit to the Tribunal constituted under this Section a claim that the other Party has breached an obligation under:

(a) Section C, with respect to the expansion, conduct, operation, management, maintenance, use, enjoyment and sale or disposal of its covered investment, or

(b) Section D,

where the investor claims to have suffered loss or damage as a result of the alleged breach.

2. Claims under subparagraph 1(a) with respect to the expansion of a covered investment may be submitted only to the extent the measure relates to the existing business operations of a covered investment and the investor has, as a result, incurred loss or damage with respect to the covered investment.

3. For greater certainty, an investor may not submit a claim under this Section if the investment has been made through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.

4. A claim with respect to restructuring of debt issued by a Party may only be submitted under this Section in accordance with Annex 8-B.

5. The Tribunal constituted under this Section shall not decide claims that fall outside of the scope of this Article.

ARTICLE 8.19

Consultations

1. A dispute should as far as possible be settled amicably. Such a settlement may be agreed at any time, including after the claim has been submitted pursuant to Article 8.23. Unless the disputing parties agree to a longer period, consultations shall be held within 60 days of the submission of the request for consultations pursuant to paragraph 4.

2. Unless the disputing parties agree otherwise, the place of consultation shall be:

(a) Ottawa, if the measures challenged are measures of Canada;

(b) Brussels, if the measures challenged include a measure of the European Union; or

(c) the capital of the Member State of the European Union, if the measures challenged are exclusively measures of that Member State.

3. The disputing parties may hold the consultations through videoconference or other means where appropriate, such as in the case where the investor is a small or medium-sized enterprise.

4. The investor shall submit to the other Party a request for consultations setting out:

(a) the name and address of the investor and, if such request is submitted on behalf of a locally established enterprise, the name, address and place of incorporation of the locally established enterprise;

(b) if there is more than one investor, the name and address of each investor and, if there is more than one locally established enterprise, the name, address and place of incorporation of each locally established enterprise;

(c) the provisions of this Agreement alleged to have been breached;

(d) the legal and the factual basis for the claim, including the measures at issue; and

(e) the relief sought and the estimated amount of damages claimed.

The request for consultations shall contain evidence establishing that the investor is an investor of the other Party and that it owns or controls the investment including, if applicable, that it owns or controls the locally established enterprise on whose behalf the request is submitted.

5. The requirements of the request for consultations set out in paragraph 4 shall be met with sufficient specificity to allow the respondent to effectively engage in consultations and to prepare its defence.

6. A request for consultations must be submitted within:

(a) three years after the date on which the investor or, as applicable, the locally established enterprise, first acquired or should have first acquired, knowledge of the alleged breach and knowledge that the investor or, as applicable, the locally established enterprise, has incurred loss or damage thereby; or

(b) two years after an investor or, as applicable, the locally established enterprise, ceases to pursue claims or proceedings before a tribunal or court under the law of a Party, or when such proceedings have otherwise ended and, in any event, no later than 10 years after the date on which the investor or, as applicable, the locally established enterprise, first acquired or should have first acquired knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby.

7. A request for consultations concerning an alleged breach by the European Union or a Member State of the European Union shall be sent to the European Union.

8. In the event that the investor has not submitted a claim pursuant to Article 8.23 within 18 months of submitting the request for consultations, the investor is deemed to have withdrawn its request for consultations and, if applicable, its notice requesting a determination of the respondent, and shall not submit a claim under this Section with respect to the same measures. This period may be extended by agreement of the disputing parties.

ARTICLE 8.20

Mediation

1. The disputing parties may at any time agree to have recourse to mediation.

2. Recourse to mediation is without prejudice to the legal position or rights of either disputing party under this Chapter and is governed by the rules agreed to by the disputing parties including, if available, the rules for mediation adopted by the Committee on Services and Investment pursuant to Article 8.44.3(c).

3. The mediator is appointed by agreement of the disputing parties. The disputing parties may also request that the Secretary General of ICSID appoint the mediator.

4. The disputing parties shall endeavour to reach a resolution of the dispute within 60 days from the appointment of the mediator.

5. If the disputing parties agree to have recourse to mediation, Articles 8.19.6 and 8.19.8 shall not apply from the date on which the disputing parties agreed to have recourse to mediation to the date on which either disputing party decides to terminate the mediation. A decision by a disputing party to terminate the mediation shall be transmitted by way of a letter to the mediator and the other disputing party.

ARTICLE 8.21

Determination of the respondent for disputes with the European Union or its Member States

1. If the dispute cannot be settled within 90 days of the submission of the request for consultations, the request concerns an alleged breach of this Agreement by the European Union or a Member State of the European Union and the investor intends to submit a claim pursuant to Article 8.23, the investor shall deliver to the European Union a notice requesting a determination of the respondent.

2. The notice under paragraph 1 shall identify the measures in respect of which the investor intends to submit a claim.

3. The European Union shall, after having made a determination, inform the investor as to whether the European Union or a Member State of the European Union shall be the respondent.

4. In the event that the investor has not been informed of the determination within 50 days of delivering its notice requesting such determination:

(a) if the measures identified in the notice are exclusively measures of a Member State of the European Union, the Member State shall be the respondent;

(b) if the measures identified in the notice include measures of the European Union, the European Union shall be the respondent.

5. The investor may submit a claim pursuant to Article 8.23 on the basis of the determination made pursuant to paragraph 3, and, if no such determination has been communicated to the investor, on the basis of the application of paragraph 4.

6. If the European Union or a Member State of the European Union is the respondent, pursuant to paragraph 3 or 4, neither the European Union, nor the Member State of the European Union may assert the inadmissibility of the claim, lack of jurisdiction of the Tribunal or otherwise object to the claim or award on the ground that the respondent was not properly determined pursuant to paragraph 3 or identified on the basis of the application of paragraph 4.

7. The Tribunal shall be bound by the determination made pursuant to paragraph 3 and, if no such determination has been communicated to the investor, the application of paragraph 4.

ARTICLE 8.22

Procedural and other requirements for the submission of a claim to the Tribunal

1. An investor may only submit a claim pursuant to Article 8.23 if the investor:

(a) delivers to the respondent, with the submission of a claim, its consent to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Section;

(b) allows at least 180 days to elapse from the submission of the request for consultations and, if applicable, at least 90 days to elapse from the submission of the notice requesting a determination of the respondent;

(c) has fulfilled the requirements of the notice requesting a determination of the respondent;

(d) has fulfilled the requirements related to the request for consultations;

(e) does not identify a measure in its claim that was not identified in its request for consultations;

(f) withdraws or discontinues any existing proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim; and

(g) waives its right to initiate any claim or proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim.

2. If the claim submitted pursuant to Article 8.23 is for loss or damage to a locally established enterprise or to an interest in a locally established enterprise that the investor owns or controls directly or indirectly, the requirements in subparagraphs 1(f) and (g) apply both to the investor and the locally established enterprise.

3. The requirements of subparagraphs 1(f) and (g) and paragraph 2 do not apply in respect of a locally established enterprise if the respondent or the investor's host state has deprived the investor of control of the locally established enterprise, or has otherwise prevented the locally established enterprise from fulfilling those requirements.

4. Upon request of the respondent, the Tribunal shall decline jurisdiction if the investor or, as applicable, the locally established enterprise fails to fulfil any of the requirements of paragraphs 1 and 2.

5. The waiver provided pursuant to subparagraph 1(g) or paragraph 2 as applicable shall cease to apply:

(a) if the Tribunal rejects the claim on the basis of a failure to meet the requirements of paragraph 1 or 2 or on any other procedural or jurisdictional grounds;

(b) if the Tribunal dismisses the claim pursuant to Article 8.32 or Article 8.33; or

(c) if the investor withdraws its claim, in conformity with the applicable rules under Article 8.23.2, within 12 months of the constitution of the division of the Tribunal.

ARTICLE 8.23

Submission of a claim to the Tribunal

1. If a dispute has not been resolved through consultations, a claim may be submitted under this Section by:

(a) an investor of a Party on its own behalf; or

(b) an investor of a Party, on behalf of a locally established enterprise which it owns or controls directly or indirectly.

2. A claim may be submitted under the following rules:

(a) the ICSID Convention and Rules of Procedure for Arbitration Proceedings;

(b) the ICSID Additional Facility Rules if the conditions for proceedings pursuant to paragraph (a) do not apply;

(c) the UNCITRAL Arbitration Rules; or

(d) any other rules on agreement of the disputing parties.

3. In the event that the investor proposes rules pursuant to subparagraph 2(d), the respondent shall reply to the investor's proposal within 20 days of receipt. If the disputing parties have not agreed on such rules within 30 days of receipt, the investor may submit a claim under the rules provided for in subparagraph 2(a), (b) or (c).

4. For greater certainty, a claim submitted under subparagraph 1(b) shall satisfy the requirements of Article 25(1) of the ICSID Convention.

5. The investor may, when submitting its claim, propose that a sole Member of the Tribunal should hear the claim. The respondent shall give sympathetic consideration to that request, in particular if the investor is a small or medium-sized enterprise or the compensation or damages claimed are relatively low.

6. The rules applicable under paragraph 2 are those that are in effect on the date that the claim or claims are submitted to the Tribunal under this Section, subject to the specific rules set out in this Section and supplemented by rules adopted pursuant to Article 8.44.3(b).

7. A claim is submitted for dispute settlement under this Section when:

(a) the request under Article 36(1) of the ICSID Convention is received by the Secretary-General of ICSID;

(b) the request under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretariat of ICSID;

(c) the notice under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent; or

(d) the request or notice initiating proceedings is received by the respondent in accordance with the rules agreed upon pursuant to subparagraph 2(d).

8. Each Party shall notify the other Party of the place of delivery of notices and other documents by the investors pursuant to this Section. Each Party shall ensure this information is made publicly available.

ARTICLE 8.24

Proceedings under another international agreement

Where a claim is brought pursuant to this Section and another international agreement and:

(a) there is a potential for overlapping compensation; or

(b) the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Section,

the Tribunal shall, as soon as possible after hearing the disputing parties, stay its proceedings or otherwise ensure that proceedings brought pursuant to another international agreement are taken into account in its decision, order or award.

ARTICLE 8.25

Consent to the settlement of the dispute by the Tribunal

1. The respondent consents to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Section.

2. The consent under paragraph 1 and the submission of a claim to the Tribunal under this Section shall satisfy the requirements of:

(a) Article 25 of the ICSID Convention and Chapter II of Schedule C of the ICSID Additional Facility Rules regarding written consent of the disputing parties; and,

(b) Article II of the New York Convention for an agreement in writing.

ARTICLE 8.26

Third party funding

1. Where there is third party funding, the disputing party benefiting from it shall disclose to the other disputing party and to the Tribunal the name and address of the third party funder.

2. The disclosure shall be made at the time of the submission of a claim, or, if the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.

ARTICLE 8.27

Constitution of the Tribunal

1. The Tribunal established under this Section shall decide claims submitted pursuant to Article 8.23.

2. The CETA Joint Committee shall, upon the entry into force of this Agreement, appoint fifteen Members of the Tribunal. Five of the Members of the Tribunal shall be nationals of a Member State of the European Union, five shall be nationals of Canada[11] and five shall be nationals of third countries.

[11] Either Party may instead propose to appoint up to five Members of the Tribunal of any nationality. In this case, such Members of the Tribunal shall be considered to be nationals of the Party that proposed his or her appointment for the purposes of this Article.

3. The CETA Joint Committee may decide to increase or to decrease the number of the Members of the Tribunal by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.

4. The Members of the Tribunal shall possess the qualifications required in their respective countries for appointment to judicial office, or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise in particular, in international investment law, in international trade law and the resolution of disputes arising under international investment or international trade agreements.

5. The Members of the Tribunal appointed pursuant to this Section shall be appointed for a five-year term, renewable once. However, the terms of seven of the 15 persons appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to six years. Vacancies shall be filled as they arise. A person appointed to replace a Member of the Tribunal whose term of office has not expired shall hold office for the remainder of the predecessor's term. In principle, a Member of the Tribunal serving on a division of the Tribunal when his or her term expires may continue to serve on the division until a final award is issued.

6. The Tribunal shall hear cases in divisions consisting of three Members of the Tribunal, of whom one shall be a national of a Member State of the European Union, one a national of Canada and one a national of a third country. The division shall be chaired by the Member of the Tribunal who is a national of a third country.

7. Within 90 days of the submission of a claim pursuant to Article 8.23, the President of the Tribunal shall appoint the Members of the Tribunal composing the division of the Tribunal hearing the case on a rotation basis, ensuring that the composition of the divisions is random and unpredictable, while giving equal opportunity to all Members of the Tribunal to serve.

8. The President and Vice-President of the Tribunal shall be responsible for organisational issues and shall be appointed for a two-year term and shall be drawn by lot from among the Members of the Tribunal who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the Chair of the CETA Joint Committee. The Vice-President shall replace the President when the President is unavailable.

9. Notwithstanding paragraph 6, the disputing parties may agree that a case be heard by a sole Member of the Tribunal to be appointed at random from the third country nationals. The respondent shall give sympathetic consideration to a request from the claimant to have the case heard by a sole Member of the Tribunal, in particular where the claimant is a small or medium-sized enterprise or the compensation or damages claimed are relatively low. Such a request shall be made before the constitution of the division of the Tribunal.

10. The Tribunal may draw up its own working procedures.

11. The Members of the Tribunal shall ensure that they are available and able to perform the functions set out under this Section.

12. In order to ensure their availability, the Members of the Tribunal shall be paid a monthly retainer fee to be determined by the CETA Joint Committee.

13. The fees referred to in paragraph 12 shall be paid equally by both Parties into an account managed by the ICSID Secretariat. In the event that one Party fails to pay the retainer fee the other Party may elect to pay. Any such arrears by a Party shall remain payable, with appropriate interest.

14. Unless the CETA Joint Committee adopts a decision pursuant to paragraph 15, the amount of the fees and expenses of the Members of the Tribunal on a division constituted to hear a claim, other than the fees referred to in paragraph 12, shall be those determined pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with Article 8.39.5.

15. The CETA Joint Committee may, by decision, transform the retainer fee and other fees and expenses into a regular salary, and decide applicable modalities and conditions.

16. The ICSID Secretariat shall act as Secretariat for the Tribunal and provide it with appropriate support.

17. If the CETA Joint Committee has not made the appointments pursuant to paragraph 2 within 90 days from the date that a claim is submitted for dispute settlement, the Secretary General of ICSID shall, at the request of either disputing party appoint a division consisting of three Members of the Tribunal, unless the disputing parties have agreed that the case is to be heard by a sole Member of the Tribunal. The Secretary General of ICSID shall make the appointment by random selection from the existing nominations. The Secretary-General of ICSID may not appoint as chair a national of either Canada or a Member State of the European Union unless the disputing parties agree otherwise.

ARTICLE 8.28

Appellate Tribunal

1. An Appellate Tribunal is hereby established to review awards rendered under this Section.

2. The Appellate Tribunal may uphold, modify or reverse the Tribunal's award based on:

(a) errors in the application or interpretation of applicable law;

(b) manifest errors in the appreciation of the facts, including the appreciation of relevant domestic law;

(c) the grounds set out in Article 52(1) (a) through (e) of the ICSID Convention, in so far as they are not covered by paragraphs (a) and (b).

3. The Members of the Appellate Tribunal shall be appointed by a decision of the CETA Joint Committee at the same time as the decision referred to in paragraph 7.

4. The Members of the Appellate Tribunal shall meet the requirements of Article 8.27.4 and comply with Article 8.30.

5. The division of the Appellate Tribunal constituted to hear the appeal shall consist of three randomly appointed Members of the Appellate Tribunal.

6. Articles 8.36 and 8.38 shall apply to the proceedings before the Appellate Tribunal.

7. The CETA Joint Committee shall promptly adopt a decision setting out the following administrative and organisational matters regarding the functioning of the Appellate Tribunal:

(a) administrative support;

(b) procedures for the initiation and the conduct of appeals, and procedures for referring issues back to the Tribunal for adjustment of the award, as appropriate;

(c) procedures for filling a vacancy on the Appellate Tribunal and on a division of the Appellate Tribunal constituted to hear a case;

(d) remuneration of the Members of the Appellate Tribunal;

(e) provisions related to the costs of appeals;

(f) the number of Members of the Appellate Tribunal; and

(g) any other elements it determines to be necessary for the effective functioning of the Appellate Tribunal.

8. The Committee on Services and Investment shall periodically review the functioning of the Appellate Tribunal and may make recommendations to the CETA Joint Committee. The CETA Joint Committee may revise the decision referred to in paragraph 7, if necessary.

9. Upon adoption of the decision referred to in paragraph 7:

(a) a disputing party may appeal an award rendered pursuant to this Section to the Appellate Tribunal within 90 days after its issuance;

(b) a disputing party shall not seek to review, set aside, annul, revise or initiate any other similar procedure as regards an award under this Section;

(c) an award rendered pursuant to Article 8.39 shall not be considered final and no action for enforcement of an award may be brought until either:

(i) 90 days from the issuance of the award by the Tribunal has elapsed and no appeal has been initiated;

(ii) an initiated appeal has been rejected or withdrawn; or

(iii) 90 days have elapsed from an award by the Appellate Tribunal and the Appellate Tribunal has not referred the matter back to the Tribunal;

(d) a final award by the Appellate Tribunal shall be considered as a final award for the purposes of Article 8.41; and

(e) Article 8.41.3 shall not apply.

ARTICLE 8.29

Establishment of a multilateral investment tribunal and appellate mechanism

The Parties shall pursue with other trading partners the establishment of a multilateral investment tribunal and appellate mechanism for the resolution of investment disputes. Upon establishment of such a multilateral mechanism, the CETA Joint Committee shall adopt a decision providing that investment disputes under this Section will be decided pursuant to the multilateral mechanism and make appropriate transitional arrangements.

ARTICLE 8.30

Ethics

1. The Members of the Tribunal shall be independent. They shall not be affiliated with any government.[12] They shall not take instructions from any organisation, or government with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. They shall comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration or any supplemental rules adopted pursuant to Article 8.44.2. In addition, upon appointment, they shall refrain from acting as counsel or as party-appointed expert or witness in any pending or new investment dispute under this or any other international agreement.

2. If a disputing party considers that a Member of the Tribunal has a conflict of interest, it may invite the President of the International Court of Justice to issue a decision on the challenge to the appointment of such Member. Any notice of challenge shall be sent to the President of the International Court of Justice within 15 days of the date on which the composition of the division of the Tribunal has been communicated to the disputing party, or within 15 days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.

12 For greater certainty, the fact that a person receives remuneration from a government does not in itself make that person ineligible.

3. If, within 15 days from the date of the notice of challenge, the challenged Member of the Tribunal has elected not to resign from the division, the President of the International Court of Justice may, after receiving submissions from the disputing parties and after providing the Member of the Tribunal an opportunity to submit any observations, issue a decision on the challenge. The President of the International Court of Justice shall endeavour to issue the decision and to notify the disputing parties and the other Members of the division within 45 days of receipt of the notice of challenge. A vacancy resulting from the disqualification or resignation of a Member of the Tribunal shall be filled promptly.

4. Upon a reasoned recommendation from the President of the Tribunal, or on their joint initiative, the Parties, by decision of the CETA Joint Committee, may remove a Member from the Tribunal where his or her behaviour is inconsistent with the obligations set out in paragraph 1 and incompatible with his or her continued membership of the Tribunal.

ARTICLE 8.31

Applicable law and interpretation

1. When rendering its decision, the Tribunal established under this Section shall apply this Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other rules and principles of international law applicable between the Parties.

2. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of a Party. For greater certainty, in determining the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.

3. Where serious concerns arise as regards matters of interpretation that may affect investment, the Committee on Services and Investment may, pursuant to Article 8.44.3(a), recommend to the CETA Joint Committee the adoption of interpretations of this Agreement. An interpretation adopted by the CETA Joint Committee shall be binding on the Tribunal established under this Section. The CETA Joint Committee may decide that an interpretation shall have binding effect from a specific date.

ARTICLE 8.32

Claims manifestly without legal merit

1. The respondent may, no later than 30 days after the constitution of the division of the Tribunal, and in any event before its first session, file an objection that a claim is manifestly without legal merit.

2. An objection shall not be submitted under paragraph 1 if the respondent has filed an objection pursuant to Article 8.33.

3. The respondent shall specify as precisely as possible the basis for the objection.

4. On receipt of an objection pursuant to this Article, the Tribunal shall suspend the proceedings on the merits and establish a schedule for considering such an objection consistent with its schedule for considering any other preliminary question.

5. The Tribunal, after giving the disputing parties an opportunity to present their observations, shall at its first session or promptly thereafter, issue a decision or award stating the grounds therefor. In doing so, the Tribunal shall assume the alleged facts to be true.

6. This Article shall be without prejudice to the Tribunal's authority to address other objections as a preliminary question or to the right of the respondent to object, in the course of the proceeding, that a claim lacks legal merit.

ARTICLE 8.33

Claims unfounded as a matter of law

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at an appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted pursuant to Article 8.23 is not a claim for which an award in favour of the claimant may be made under this Section, even if the facts alleged were assumed to be true.

2. An objection under paragraph 1 shall be submitted to the Tribunal no later than the date the Tribunal fixes for the respondent to submit its counter-memorial.

3. If an objection has been submitted pursuant to Article 8.32, the Tribunal may, taking into account the circumstances of that objection, decline to address, under the procedures set out in this Article, an objection submitted pursuant to paragraph 1.

4. On receipt of an objection under paragraph 1, and, if appropriate, after rendering a decision pursuant to paragraph 3, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection stating the grounds therefor.

ARTICLE 8.34

Interim measures of protection

The 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. The Tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 8.23. For the purposes of this Article, an order includes a recommendation.

ARTICLE 8.35

Discontinuance

If, following the submission of a claim under this Section, the investor fails to take any steps in the proceeding during 180 consecutive days or such period as the disputing parties may agree, the investor is deemed to have withdrawn its claim and to have discontinued the proceeding. The Tribunal shall, at the request of the respondent, and after notice to the disputing parties, in an order take note of the discontinuance. After the order has been rendered the authority of the Tribunal shall lapse.

ARTICLE 8.36

Transparency of proceedings

1. The UNCITRAL Transparency Rules, as modified by this Chapter, shall apply in connection with proceedings under this Section.

2. The request for consultations, the notice requesting a determination of the respondent, the notice of determination of the respondent, the agreement to mediate, the notice of intent to challenge a Member of the Tribunal, the decision on challenge to a Member of the Tribunal and the request for consolidation shall be included in the list of documents to be made available to the public under Article 3(1) of the UNCITRAL Transparency Rules.

3. Exhibits shall be included in the list of documents to be made available to the public under Article 3(2) of the UNCITRAL Transparency Rules.

4. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, prior to the constitution of the Tribunal, Canada or the European Union as the case may be shall make publicly available in a timely manner relevant documents pursuant to paragraph 2, subject to the redaction of confidential or protected information. Such documents may be made publicly available by communication to the repository.

5. Hearings shall be open to the public. The Tribunal shall determine, in consultation with the disputing parties, the appropriate logistical arrangements to facilitate public access to such hearings. If the Tribunal determines that there is a need to protect confidential or protected information, it shall make the appropriate arrangements to hold in private that part of the hearing requiring such protection.

6. Nothing in this Chapter requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should apply those laws in a manner sensitive to protecting from disclosure information that has been designated as confidential or protected information.

ARTICLE 8.37

Information sharing

1. A disputing party may disclose to other persons in connection with the proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings under this Section. However, the disputing party shall ensure that those persons protect the confidential or protected information contained in those documents.

2. This Agreement does not prevent a respondent from disclosing to officials of, as applicable, the European Union, Member States of the European Union and sub-national governments, such unredacted documents as it considers necessary in the course of proceedings under this Section. However, the respondent shall ensure that those officials protect the confidential or protected information contained in those documents.

ARTICLE 8.38

Non-disputing Party

1. The respondent shall, within 30 days after receipt or promptly after any dispute concerning confidential or protected information has been resolved, deliver to the non-disputing Party:

(a) a request for consultations, a notice requesting a determination of the respondent, a notice of determination of the respondent, a claim submitted pursuant to Article 8.23, a request for consolidation, and any other documents that are appended to such documents;

(b) on request:

(i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;

(ii) written submissions made to the Tribunal pursuant to Article 4 of the UNCITRAL Transparency Rules;

(iii) minutes or transcripts of hearings of the Tribunal, if available; and

(iv) orders, awards and decisions of the Tribunal; and

(c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been tendered to the Tribunal, unless the requested evidence is publicly available.

2. The Tribunal shall accept or, after consultation with the disputing parties, may invite, oral or written submissions from the non-disputing Party regarding the interpretation of this Agreement. The non-disputing Party may attend a hearing held under this Section.

3. The Tribunal shall not draw any inference from the absence of a submission pursuant to paragraph 2.

4. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on a submission by the non-disputing Party to this Agreement.

ARTICLE 8.39

Final award

1. If the Tribunal makes a final award against the respondent, the Tribunal may only award, separately or in combination:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages representing the fair market value of the property at the time immediately before the expropriation, or impending expropriation became known, whichever is earlier, and any applicable interest in lieu of restitution, determined in a manner consistent with Article 8.12.

2. Subject to paragraphs 1 and 5, if a claim is made under Article 8.23.1(b):

(a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the locally established enterprise;

(b) an award of restitution of property shall provide that restitution be made to the locally established enterprise;

(c) an award of costs in favour of the investor shall provide that it is to be made to the investor; and

(d) the award shall provide that it is made without prejudice to a right that a person, other than a person which has provided a waiver pursuant to Article 8.22, may have in monetary damages or property awarded under a Party's law.

3. Monetary damages shall not be greater than the loss suffered by the investor or, as applicable, the locally established enterprise, reduced by any prior damages or compensation already provided. For the calculation of monetary damages, the Tribunal shall also reduce the damages to take into account any restitution of property or repeal or modification of the measure.

4. The Tribunal shall not award punitive damages.

5. The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the claim. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the claim. If only parts of the claims have been successful the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

6. The CETA Joint Committee shall consider supplemental rules aimed at reducing the financial burden on claimants who are natural persons or small and medium-sized enterprises. Such supplemental rules may, in particular, take into account the financial resources of such claimants and the amount of compensation sought.

7. The Tribunal and the disputing parties shall make every effort to ensure the dispute settlement process is carried out in a timely manner. The Tribunal shall issue its final award within 24 months of the date the claim is submitted pursuant to Article 8.23. If the Tribunal requires additional time to issue its final award, it shall provide the disputing parties the reasons for the delay.

ARTICLE 8.40

Indemnification or other compensation

A respondent shall not assert, and the Tribunal shall not accept a defence, counterclaim, right of setoff, or similar assertion, that an investor or, as applicable, a locally established enterprise, has received or will receive indemnification or other compensation pursuant to an insurance or guarantee contract in respect of all or part of the compensation sought in a dispute initiated pursuant to this Section.

ARTICLE 8.41

Enforcement of awards

1. An award issued pursuant to this Section shall be binding between the disputing parties and in respect of that particular case.

2. Subject to paragraph 3, a disputing party shall recognise and comply with an award without delay.

3. A disputing party shall not seek enforcement of a final award until:

(a) in the case of a final award issued 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) enforcement of the award has been stayed and revision or annulment proceedings have been completed;

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or any other rules applicable pursuant to Article 8. 23.2(d):

(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) enforcement of the award has been stayed and a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Execution of the award shall be governed by the laws concerning the execution of judgments or awards in force where the execution is sought.

5. A final award issued pursuant to this Section is an arbitral award that is deemed to relate to claims arising out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

6. For greater certainty, if a claim has been submitted pursuant to Article 8.23.2(a), a final award issued pursuant to this Section shall qualify as an award under Section 6 of the ICSID Convention.

ARTICLE 8.42

Role of the Parties

1. A Party shall not bring an international claim, in respect of a claim submitted pursuant to Article 8.23, unless the other Party has failed to abide by and comply with the award rendered in that dispute.

2. Paragraph 1 shall not exclude the possibility of dispute settlement under Chapter Twenty-Nine (Dispute Settlement) in respect of a measure of general application even if that measure is alleged to have breached this Agreement as regards a specific investment in respect of which a claim has been submitted pursuant to Article 8.23 and is without prejudice to Article 8.38.

3. Paragraph 1 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

ARTICLE 8.43

Consolidation

1. When two or more claims that have been submitted separately pursuant to Article 8.23 have a question of law or fact in common and arise out of the same events or circumstances, a disputing party or the disputing parties, jointly, may seek the establishment of a separate division of the Tribunal pursuant to this Article and request that such division issue a consolidation order ("request for consolidation").

2. The disputing party seeking a consolidation order shall first deliver a notice to the disputing parties it seeks to be covered by this order.

3. If the disputing parties notified pursuant to paragraph 2 have reached an agreement on the consolidation order to be sought, they may make a joint request for the establishment of a separate division of the Tribunal and a consolidation order pursuant to this Article. If the disputing parties notified pursuant to paragraph 2 have not reached agreement on the consolidation order to be sought within 30 days of the notice, a disputing party may make a request for the establishment of a separate division of the Tribunal and a consolidation order pursuant to this Article.

4. The request shall be delivered, in writing, to the President of the Tribunal and to all the disputing parties sought to be covered by the order, and shall specify:

(a) the names and addresses of the disputing parties sought to be covered by the order;

(b) the claims, or parts thereof, sought to be covered by the order; and

(c) the grounds for the order sought.

5. A request for consolidation involving more than one respondent shall require the agreement of all such respondents.

6. The rules applicable to the proceedings under this Article are determined as follows:

(a) if all of the claims for which a consolidation order is sought have been submitted to dispute settlement under the same rules pursuant to Article 8.23, these rules shall apply;

(b) if the claims for which a consolidation order is sought have not been submitted to dispute settlement under the same rules:

(i) the investors may collectively agree on the rules pursuant to Article 8.23.2; or

(ii) if the investors cannot agree on the applicable rules within 30 days of the President of the Tribunal receiving the request for consolidation, the UNCITRAL Arbitration Rules shall apply.

7. The President of the Tribunal shall, after receipt of a consolidation request and in accordance with the requirements of Article 8.27.7 constitute a new division ("consolidating division") of the Tribunal which shall have jurisdiction over some or all of the claims, in whole or in part, which are the subject of the joint consolidation request.

8. If, after hearing the disputing parties, a consolidating division is satisfied that claims submitted pursuant to Article 8.23 have a question of law or fact in common and arise out of the same events or circumstances, and consolidation would best serve the interests of fair and efficient resolution of the claims including the interest of consistency of awards, the consolidating division of the Tribunal may, by order, assume jurisdiction over some or all of the claims, in whole or in part.

9. If a consolidating division of the Tribunal has assumed jurisdiction pursuant to paragraph 8, an investor that has submitted a claim pursuant to Article 8.23 and whose claim has not been consolidated may make a written request to the Tribunal that it be included in such order provided that the request complies with the requirements set out in paragraph 4. The consolidating division of the Tribunal shall grant such order where it is satisfied that the conditions of paragraph 8 are met and that granting such a request would not unduly burden or unfairly prejudice the disputing parties or unduly disrupt the proceedings. Before consolidating division of the Tribunal issues that order, it shall consult with the disputing parties.

10. On application of a disputing party, a consolidating division of the Tribunal established under this Article, pending its decision under paragraph 8, may order that the proceedings of the division of the Tribunal appointed under Article 8.27.7 be stayed unless the latter Tribunal has already adjourned its proceedings.

11. The division of the Tribunal appointed under Article 8.27.7 shall cede jurisdiction in relation to the claims, or parts thereof, over which a consolidating division of the Tribunal established under this Article has assumed jurisdiction.

12. The award of a consolidating division of the Tribunal established under this Article in relation to those claims, or parts thereof, over which it has assumed jurisdiction is binding on the division of the Tribunal appointed under Article 8.27.7 as regards those claims, or parts thereof.

13. An investor may withdraw a claim under this Section that is subject to consolidation and such claim shall not be resubmitted pursuant to Article 8.23. If it does so no later than 15 days after receipt of the notice of consolidation, its earlier submission of the claim shall not prevent the investor's recourse to dispute settlement other than under this Section.

14. At the request of an investor, a consolidating division of the Tribunal may take such measures as it sees fit in order to preserve the confidential or protected information of that investor in relation to other investors. Those measures may include the submission of redacted versions of documents containing confidential or protected information to the other investors or arrangements to hold parts of the hearing in private.

ARTICLE 8.44

Committee on Services and Investment

1. The Committee on Services and Investment shall provide a forum for the Parties to consult on issues related to this Chapter, including:

(a) difficulties which may arise in the implementation of this Chapter;

(b) possible improvements of this Chapter, in particular in the light of experience and developments in other international *fora* and under the Parties' other agreements.

2. The Committee on Services and Investment shall, on agreement of the Parties, and after completion of their respective internal requirements and procedures, adopt a code of conduct for the Members of the Tribunal to be applied in disputes arising out of this Chapter, which may replace or supplement the rules in application, and may address topics including:

(a) disclosure obligations;

(b) the independence and impartiality of the Members of the Tribunal; and

(c) confidentiality.

The Parties shall make best efforts to ensure that the code of conduct is adopted no later than the first day of the provisional application or entry into force of this Agreement, as the case may be, and in any event no later than two years after such date.

3. The Committee Services and Investment may, on agreement of the Parties, and after completion of their respective internal requirements and procedures:

(a) recommend to the CETA Joint Committee the adoption of interpretations of this Agreement pursuant to Article 8.31.3;

(b) adopt and amend rules supplementing the applicable dispute settlement rules, and amend the applicable rules on transparency. These rules and amendments are binding on the Tribunal established under this Section;

(c) adopt rules for mediation for use by disputing parties as referred to in Article 8.20;

(d) recommend to the CETA Joint Committee the adoption of any further elements of the fair and equitable treatment obligation pursuant to Article 8.10.3; and

(e) make recommendations to the CETA Joint Committee on the functioning of the Appellate Tribunal pursuant to Article 8.28.8.

ARTICLE 8.45

Exclusion

The dispute settlement provisions of this Section and of Chapter Twenty-Nine (Dispute Settlement) do not apply to the matters referred to in Annex 8-C.

CHAPTER NINE

CROSS-BORDER TRADE IN SERVICES

ARTICLE 9.1

Definitions

For the purposes of this Chapter:

aircraft repair and maintenance services means activities undertaken on an aircraft or a part of an aircraft while it is withdrawn from service and do not include so-called line maintenance;

airport operation services means the operation or management, on a fee or contract basis, of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems. For greater certainty, airport operation services do not include the ownership of, or investment in, airports or airport lands, or any of the functions carried out by a board of directors. Airport operation services do not include air navigation services;

computer reservation system services means the supply of a service 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 a Party into the territory of the other Party; or

(b) in the territory of a Party to the service consumer of the other Party,

but does not include the supply of a service in the territory of a Party by a person of the other Party;

ground handling services means the supply of a service on a fee or contract basis for: ground administration and supervision, including load control and communications; passenger handling; baggage handling; cargo and mail handling; ramp handling and aircraft services; fuel and oil handling; aircraft line maintenance, flight operations and crew administration; surface transport; or catering services. Ground handling services do not include security services or the operation or management of centralised airport infrastructure, such as baggage handling systems, de-icing facilities, fuel distribution systems, or intra-airport transport systems;

selling and marketing of air transport services means 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, but do not include the pricing of air transport services or the applicable conditions; and

services supplied in the exercise of governmental authority means any service that is not supplied on a commercial basis, or in competition with one or more service suppliers.

ARTICLE 9.2

Scope

1. This Chapter applies to a measure adopted or maintained by a Party affecting cross-border trade in services by a service supplier of the other Party, including a measure affecting:

(a) the production, distribution, marketing, sale, and delivery of a service;

(b) the purchase of, use of, or payment for, a service; and,

(c) the access to and use of, in connection with the supply of a service, services which are required to be offered to the public generally.

2. This Chapter does not apply to a measure affecting:

(a) services supplied in the exercise of governmental authority;

(b) for the European Union, audio-visual services;

(c) for Canada, cultural industries;

(d) financial services as defined in Article 13.1 (Definitions);

(e) air services, related services in support of air services and other services supplied by means of air transport[13], other than:

(i) aircraft repair and maintenance services;

(ii) the selling and marketing of air transport services;

(iii) computer reservation system (CRS) services;

(iv) ground handling services;

(v) airport operation services;

(f) procurement by a Party of a good or service purchased for governmental purposes, and not with of a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article 19.2.2 (Scope and coverage); or

(g) a subsidy, or other government support relating to cross-border trade in services, provided by a Party.

3. This Chapter does not affect the rights and obligations of the Parties under the *Agreement on Air Transport between Canada and the European Community and its Member States*, done at Brussels on 17 December 2009 and Ottawa on 18 December 2009.

[13] These services include services when an aircraft is being used to carry out specialised activities in sectors including agriculture, construction, photography, surveying, mapping, forestry, observation and patrol, or advertising, if the specialised activity is provided by the person that is responsible for the operation of the aircraft.

4. This Chapter does not impose an obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employment on a permanent basis in its territory, or confer any right on that national with respect to that access or employment.

ARTICLE 9.3

National treatment

1. Each Party shall accord to service suppliers and services of the other Party treatment no less favourable than that it accords, in like situations, to its own service suppliers and services.

2. For greater certainty, the treatment accorded by a Party pursuant to paragraph 1 means, with respect to a government in Canada other than at the federal level, or, with respect to a government of or in a Member State of the European Union, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to its own service suppliers and services.

ARTICLE 9.4

Formal requirements

Article 9.3 does not prevent a Party from adopting or maintaining a measure that prescribes formal requirements in connection with the supply of a service, provided that such requirements are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination. These measures include requirements:

(a) to obtain a licence, registration, certification, or authorisation in order to supply a service or as a membership requirement of a particular profession, such as requiring membership in a professional organisation or participation in collective compensation funds for members of professional organisations;

(b) for a service supplier to have a local agent for service or maintain a local address;

(c) to speak a national language or hold a driver's licence; or

(d) that a service supplier:

(i) post a bond or other form of financial security;

(ii) establish or contribute to a trust account;

(iii) maintain a particular type and amount of insurance;

(iv) provide other similar guarantees; or

(v) provide access to records.

ARTICLE 9.5

Most-favoured-nation treatment

1. Each Party shall accord to service suppliers and services of the other Party treatment no less favourable than that it accords, in like situations, to service suppliers and services of a third country.

2. For greater certainty, the treatment accorded by a Party pursuant to paragraph 1 means, with respect to a government in Canada other than at the federal level, or, with respect to a government of or in a Member State of the European Union, the treatment accorded, in like situations, by that government in its territory to services or service suppliers of a third country.

3. Paragraph 1 does not apply to treatment accorded by a Party under an existing or future measure providing for recognition, including through an arrangement or agreement with a third country that recognises the accreditation of testing and analysis services and service suppliers, the accreditation of repair and maintenance services and service suppliers, as well as the certification of the qualifications of, or the results of, or work done by, those accredited services and service suppliers.

ARTICLE 9.6

Market access

A Party shall not adopt or maintain, on the basis of its entire territory or on the basis of the territory of a national, provincial, territorial, regional or local level of government, a measure that imposes limitations on:

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

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

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

ARTICLE 9.7

Reservations

1. Articles 9.3, 9.5 and 9.6 do not apply to:

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

(i) the European Union, as set out in its Schedule to Annex I;

(ii) a national government, as set out by that Party in its Schedule to Annex I;

(iii) a provincial, territorial, or regional government, as set out by that Party in its Schedule to Annex I; or

(iv) a local government.

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

(c) an amendment to a 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 9.3, 9.5, and 9.6.

2. Articles 9.3, 9.5, and 9.6 do not apply to a measure that a Party adopts or maintains with respect to a sector, subsector or activity, as set out in its Schedule to Annex II.

ARTICLE 9.8

Denial of benefits

A Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of that Party and to services of that service supplier if:

(a) a service supplier of a third country owns or controls the enterprise; and

(b) the denying Party adopts or maintains a measure with respect to the third country that:

(i) relates to maintenance of international peace and security; and

(ii) prohibits transactions with the enterprise or would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

CHAPTER TEN

TEMPORARY ENTRY AND STAY OF NATURAL PERSONS FOR BUSINESS PURPOSES

ARTICLE 10.1

Definitions

For the purposes of this Chapter:

contractual services suppliers means natural persons employed by an enterprise of one Party that has no establishment in the territory of the other Party and that has concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply a service to a consumer of the other Party that requires the presence on a temporary basis of its employees in the territory of the other Party in order to fulfil the contract to supply a service;

enterprise means an "enterprise" as defined in Article 8.1 (Definitions);

independent professionals means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of the other Party and who have concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply a service to a consumer of the other Party that requires the presence of the natural person on a temporary basis in the territory of the other Party in order to fulfil the contract to supply a service;

key personnel means business visitors for investment purposes, investors, or intra-corporate transferees:

(a) **business visitors for investment purposes** means natural persons working in a managerial or specialist position who are responsible for setting up an enterprise but who do not engage in direct transactions with the general public and do not receive remuneration from a source located within the territory of the host Party;

(b) **investors** means natural persons who establish, develop, or administer the operation of an investment in a capacity that is supervisory or executive, and to which those persons or the enterprise employing those persons has committed, or is in the process of committing, a substantial amount of capital; and

(c) **intra-corporate transferees** means natural persons who have been employed by an enterprise of a Party or have been partners in an enterprise of a Party for at least one year and who are temporarily transferred to an enterprise (that may be a subsidiary, branch, or head company of the enterprise of a Party) in the territory of the other Party. This natural person must belong to one of the following categories:

(i) **senior personnel** means natural persons working in a senior position within an enterprise who:

(A) primarily direct the management of the enterprise or direct the enterprise, or a department or sub-division of the enterprise; and

(B) exercise wide latitude in decision making, which may include having the authority to personally recruit and dismiss or to take other personnel actions (such as promotion or leave authorisations), and

(I) receive only general supervision or direction principally from higher level executives, the board of directors, or stockholders of the business or their equivalent; or

(II) supervise and control the work of other supervisory, professional or managerial employees and exercise discretionary authority over day-to-day operations; or

(ii) **specialists** means natural persons working in an enterprise who possess:

(A) uncommon knowledge of the enterprise's products or services and its application in international markets; or

(B) an advanced level of expertise or knowledge of the enterprise's processes and procedures such as its production, research equipment, techniques, or management.

In assessing such expertise or knowledge, the Parties will consider abilities that are unusual and different from those generally found in a particular industry and that cannot be easily transferred to another natural person in the short-term. Those abilities would have been obtained through specific academic qualifications or extensive experience with the enterprise; or

(iii) **graduate trainees** means natural persons who:

(A) possess a university degree; and

(B) are temporarily transferred to an enterprise in the territory of the other Party for career development purposes, or to obtain training in business techniques or methods; and

natural persons for business purposes means key personnel, contractual services suppliers, independent professionals, or short-term business visitors who are citizens of a Party.

ARTICLE 10.2

Objectives and scope

1. This Chapter reflects the preferential trading relationship between the Parties as well as the mutual objective to facilitate trade in services and investment by allowing temporary entry and stay to natural persons for business purposes and by ensuring transparency in the process.

2. This Chapter applies to measures adopted or maintained by a Party concerning the temporary entry and stay into its territory of key personnel, contractual services suppliers, independent professionals and short-term business visitors. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence, or employment on a permanent basis.

3. Nothing in this Chapter shall 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 nullify or impair the benefits accruing to any Party under the terms of this Chapter. The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits under this Chapter.

4. To the extent that commitments are not taken in this Chapter, all other requirements of the laws of the Parties regarding entry and stay continue to apply, including those concerning period of stay.

5. Notwithstanding the provisions of this Chapter, all requirements of the Parties' laws regarding employment and social security measures shall continue to apply, including regulations concerning minimum wages as well as collective wage agreements.

6. This Chapter does not apply to cases where the intent or effect of the temporary entry and stay is to interfere with or otherwise affect the outcome of a labour or management dispute or negotiation, or the employment of natural persons who are involved in such dispute or negotiation.

ARTICLE 10.3

General obligations

1. Each Party shall allow temporary entry to natural persons for business purposes of the other Party who otherwise comply with the Party's immigration measures applicable to temporary entry, in accordance with this Chapter.

2. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 10.2.1, and, in particular, shall apply those measures so as to avoid unduly impairing or delaying trade in goods or services or the conduct of investment activities under this Agreement.

3. Each Party shall ensure that any fees for processing applications for temporary entry are reasonable and commensurate with the costs incurred.

ARTICLE 10.4

Provision of information

1. Further to Chapter Twenty-Seven (Transparency), and recognising the importance to the Parties of transparency of temporary entry information, each Party shall, no later than 180 days after the date of entry into force of this Agreement, make available to the other Party explanatory material regarding the requirements for temporary entry under this Chapter that enables business persons of the other Party to be acquainted with those requirements.

2. If a Party collects and maintains data relating to temporary entry by category of business persons under this Chapter, the Party shall make this data available to the other Party on request, in accordance with its law related to privacy and data protection.

ARTICLE 10.5

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 the European Union:

Director-General
Directorate General for Trade
European Commission

(c) in the case of the Member States of the European Union, the contact points listed in Annex10-A or their respective successors.

2. The contact points for Canada and the European Union, and as appropriate the contact points for Member States of the European Union, shall exchange information pursuant to Article 10.4 and shall meet as required to consider matters pertaining to this Chapter, such as:

(a) the implementation and administration of this Chapter, including the practice of the Parties in allowing temporary entry;

(b) the development and adoption of common criteria as well as interpretations for the implementation of this Chapter;

(c) the development of measures to further facilitate temporary entry of business persons; and

(d) recommendations to the CETA Joint Committee concerning this Chapter.

ARTICLE 10.6

Obligations in other chapters

1. This Agreement does not impose an obligation on a Party regarding its immigration measures, except as specifically identified in this Chapter and in Chapter Twenty-Seven (Transparency).

2. Without prejudice to any decision to allow temporary entry to natural persons of the other Party within the terms of this Chapter, including the length of stay permissible pursuant to such an allowance:

(a) Articles 9.3 (National treatment) and 9.6 (Market access), subject to Articles 9.4 (Formal requirements) and 9.2 (Scope) but not Article 9.2.2(d), are incorporated into and made part of this Chapter and apply to the treatment of natural persons for business purposes present in the territory of the other Party under the categories of:

(i) key personnel; and

(ii) contractual services suppliers, and independent professionals for all sectors listed in Annex 10-E; and

(b) Article 9.5 (Most-favoured-nation treatment), subject to Articles 9.4 (Formal requirements) and 9.2 (Scope) but not Article 9.2.2(d), is incorporated into and made part of this Chapter and applies to the treatment of natural persons for business purposes present in the territory of the other Party under the categories of:

(i) key personnel, contractual services suppliers, and independent professionals; and

(ii) short-term business visitors, as set out in Article 10.9.

3. For greater certainty, paragraph 2 applies to the treatment of natural persons for business purposes present in the territory of the other Party and falling within the relevant categories and who are supplying financial services, as defined in Article 13.1 (Definitions) of Chapter Thirteen (Financial Services). Paragraph 2 does not apply to measures relating to the granting of temporary entry to natural persons of a Party or of a third country.

4. If a Party has set out a reservation in its Schedule to Annex I, II or III, the reservation also constitutes a reservation to paragraph 2, to the extent that the measure set out in or permitted by the reservation affects the treatment of natural persons for business purposes present in the territory of the other Party.

ARTICLE 10.7

Key personnel

1. Each Party shall allow the temporary entry and stay of key personnel of the other Party subject to the reservations and exceptions listed in Annex 10-B.

2. Each Party shall not adopt or maintain limitations on the total number of key personnel of the other Party allowed temporary entry, in the form of a numerical restriction or an economic needs test.

3. Each Party shall allow the temporary entry of business visitors for investment purposes without requiring a work permit or other prior approval procedure of similar intent.

4. Each Party shall allow the temporary employment in its territory of intra-corporate transferees and investors of the other Party.

5. The permissible length of stay of key personnel is as follows:

(a) intra-corporate transferees (specialists and senior personnel): the lesser of three years or the length of the contract, with a possible extension of up to 18 months at the discretion of the Party granting the temporary entry and stay[14];

(b) intra-corporate transferees (graduate trainees): the lesser of one year or the length of the contract;

[14] The length of stay permitted under this Chapter may not be taken into consideration in the context of an application for citizenship in a Member State of the European Union.

(c) investors: one year, with possible extensions at the discretion of the Party granting the temporary entry and stay;

(d) business visitors for investment purposes: 90 days within any six month period[15].

ARTICLE 10.8

Contractual services suppliers and independent professionals

1. In accordance with Annex 10-E, each Party shall allow the temporary entry and stay of contractual services suppliers of the other Party, subject to the following conditions:

(a) the natural persons must be engaged in the supply of a service on a temporary basis as employees of an enterprise which has obtained a service contract for a period not exceeding 12 months. If the service contract is longer than 12 months, the commitments in this Chapter only apply for the initial 12 months of the contract;

(b) the natural persons entering the territory of the other Party must be offering those services as employees of the enterprise supplying the services for at least the year immediately preceding the date of submission of an application for entry into the territory of the other Party and must possess, at the date of the submission, at least three years of professional experience[16] in the sector of activity that is the subject of the contract;

15 This is without prejudice to the rights granted to Canada under bilateral visa waivers by Member States of the European Union

16 The professional experience must have been obtained after having reached the age of majority.

(c) the natural persons entering the territory of the other Party must possess,

(i) a university degree or a qualification demonstrating knowledge of an equivalent level;[17] and

(ii) professional qualifications, if this is required to practice an activity pursuant to the laws or requirements of the Party where the service is supplied;

(d) the natural persons must not receive remuneration for the provision of services other than the remuneration paid by the enterprise employing the contractual services suppliers during their stay in the territory of the other Party;

(e) the temporary entry and stay accorded under this Article relate only to the supply of a service which is the subject of the contract. Entitlement to utilise the professional title of the Party where the service is provided may be granted, as required, by the relevant authority as defined in Article 11.1 (Definitions), through a Mutual Recognition Agreement ("MRA") or otherwise; and

(f) the service contract must comply with the laws and other legal requirements of the Party where the contract is executed.[18]

[17] If the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether it is equivalent to a university degree required in its territory. The Parties shall apply Annex 10-C, subject to the reservations in Annex 10-E, for the purposes of assessing such equivalence.

[18] For greater certainty, the natural person must be engaged by the enterprise for the fulfilment of the services contract pursuant to which temporary entry is sought.

2. In accordance with Annex 10-E, each Party shall allow the temporary entry and stay of independent professionals of the other Party, subject to the following conditions:

(a) the natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract for a period not exceeding 12 months. If the service contract is longer than 12 months, the commitments in this Chapter shall only apply for the initial 12 months of the contract;

(b) the natural persons entering the territory of the other Party must possess, at the date of submission of an application for entry into the other Party, at least six years professional experience in the sector of activity which is the subject of the contract;

(c) the natural persons entering the territory of the other Party must possess,

(i) a university degree or a qualification demonstrating knowledge of an equivalent level;[19] and

(ii) professional qualifications, if this is required to practice an activity pursuant to the laws, or requirements of the Party where the service is supplied;

[19] If the degree or qualification was not obtained in the Party where the service is supplied, that Party may evaluate whether it is equivalent to a university degree required in its territory. The Parties shall apply Annex 10-C, subject to the reservations in Annex 10-E, for the purposes of assessing such equivalence.

(d) the temporary entry and stay accorded under the provisions of this Article relate only to the supply of a service which is the subject of the contract. Entitlement to utilise the professional title of the Party where the service is provided may be granted, as required, by the relevant authority as defined in Article 11.1 (Definitions), through an MRA or otherwise; and

(e) the service contract must comply with the laws and other legal requirements of the Party where the contract is executed.

3. Unless otherwise specified in Annex 10-E, a Party shall not adopt or maintain a limitation on the total number of contractual services suppliers and independent professionals of the other Party allowed temporary entry, in the form of numerical restrictions or an economic needs test.

4. The length of stay of contractual services supplier or independent professionals is for a cumulative period of not more than 12 months, with extensions possible at the discretion of the Party, in any 24 month period or for the duration of the contract, whichever is less.

ARTICLE 10.9

Short-term business visitors

1. In accordance with Annex 10-B, a Party shall allow the temporary entry and stay of short-term business visitors of the other Party for the purposes of carrying out the activities listed in Annex 10-D, provided that the short-term business visitors:

(a) are not engaged in selling a good or a service to the general public;

(b) do not on their own behalf receive remuneration from a source located within the Party where the short-term business visitors are staying temporarily; and

(c) are not engaged in the supply of a service in the framework of a contract concluded between an enterprise that has no commercial presence in the territory of the Party where the short-term business visitors are staying temporarily, and a consumer in that territory, except as provided in Annex 10-D.

2. Each Party shall allow temporary entry of short-term business visitors without the requirement of a work permit or other prior approval procedures of similar intent.

3. The maximum length of stay of short-term business visitors is 90 days in any six-month period.[20]

ARTICLE 10.10

Review of commitments

Within five years following the entry into force of this Agreement, the Parties shall consider updating their respective commitments under Articles 10.7 through 10.9.

[20] This is without prejudice to the rights granted under bilateral visa waivers by Member States of the European Union.

CHAPTER ELEVEN

MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

ARTICLE 11.1

Definitions

For the purposes of this Chapter:

jurisdiction means the territory of Canada, and each of its provinces and territories, or the territory of each of the Member States of the European Union, in so far as this Agreement applies in these territories in accordance with Article 1.3 (Geographical scope of application);

negotiating entity means a person or body of a Party entitled or empowered to negotiate an agreement on the mutual recognition of professional qualifications ("MRA");

professional experience means the effective and lawful practice of a service;

professional qualifications means the qualifications attested by evidence of formal qualification and/or professional experience;

relevant authority means an authority or body, designated pursuant to legislative, regulatory or administrative provisions to recognise qualifications and authorise the practice of a profession in a jurisdiction; and

regulated profession means a service, the practice of which, including the use of a title or designation, is subject to the possession of specific qualifications by virtue of legislative, regulatory or administrative provisions.

ARTICLE 11.2

Objectives and scope

1. This Chapter establishes a framework to facilitate a fair, transparent and consistent regime for the mutual recognition of professional qualifications by the Parties and sets out the general conditions for the negotiation of MRAs.

2. This Chapter applies to professions which are regulated in each Party, including in all or some Member States of the European Union and in all or some provinces and territories of Canada.

3. A Party shall not accord recognition in a manner that would constitute a means of discrimination in the application of its criteria for the authorisation, licensing or certification of a service supplier, or that would constitute a disguised restriction on trade in services.

4. An MRA adopted pursuant to this Chapter shall apply throughout the territories of the European Union and Canada.

ARTICLE 11.3

Negotiation of an MRA

1. Each Party shall encourage its relevant authorities or professional bodies, as appropriate, to develop and provide to the Joint Committee on Mutual Recognition of Professional Qualifications ("MRA Committee") established under Article 26.2.1(b) joint recommendations on proposed MRAs.

2. A recommendation shall provide an assessment of the potential value of an MRA, on the basis of criteria such as the existing level of market openness, industry needs, and business opportunities, for example, the number of professionals likely to benefit from the MRA, the existence of other MRAs in the sector, and expected gains in terms of economic and business development. In addition, it shall provide an assessment as to the compatibility of the licensing or qualification regimes of the Parties and the intended approach for the negotiation of an MRA.

3. The MRA Committee shall, within a reasonable period of time, review the recommendation with a view to ensuring its consistency with the requirements of this Chapter. If these requirements are satisfied, the MRA Committee shall establish the necessary steps to negotiate and each Party shall inform its respective relevant authorities of these steps.

4. The negotiating entities shall thereafter pursue the negotiation and submit a draft MRA text to the MRA Committee.

5. The MRA Committee will thereafter review the draft MRA to ensure its consistency with this Agreement.

6. If in the view of the MRA Committee the MRA is consistent with this Agreement, the MRA Committee shall adopt the MRA by means of a decision, which is conditional upon subsequent notification to the MRA Committee by each Party of the fulfilment of its respective internal requirements. The decision becomes binding on the Parties upon that notification to the MRA Committee by each Party.

ARTICLE 11.4

Recognition

1. The recognition of professional qualifications provided by an MRA shall allow the service supplier to practice professional activities in the host jurisdiction, in accordance with the terms and conditions specified in the MRA.

2. If the professional qualifications of a service supplier of a Party are recognised by the other Party pursuant to an MRA, the relevant authorities of the host jurisdiction shall accord to this service supplier treatment no less favourable than that accorded in like situations to a like service supplier whose professional qualifications have been certified or attested in the Party's own jurisdiction.

3. Recognition under an MRA cannot be conditioned upon:

(a) a service supplier meeting a citizenship or any form of residency requirement; or

(b) a service supplier's education, experience or training having been acquired in the Party's own jurisdiction.

ARTICLE 11.5

Joint Committee on Mutual Recognition of Professional Qualifications

The MRA Committee responsible for the implementation of Article 11.3 shall:

(a) be composed of and co-chaired by representatives of Canada and the European Union, which must be different from the relevant authorities or professional bodies referred to in Article 11.3.1. A list of those representatives shall be confirmed through an exchange of letters;

(b) meet within one year after this Agreement enters into force, and thereafter as necessary or as decided;

(c) determine its own rules of procedure;

(d) facilitate the exchange of information regarding laws, regulations, policies and practices concerning standards or criteria for the authorisation, licensing or certification of regulated professions;

(e) make publicly available information regarding the negotiation and implementation of MRAs;

(f) report to the CETA Joint Committee on the progress of the negotiation and implementation of MRAs; and

(g) as appropriate, provide information and complement the guidelines set out in Annex 11-A.

ARTICLE 11.6

Guidelines for the negotiation and conclusion of MRAs

As part of the framework to achieve mutual recognition of qualifications, the Parties set out in Annex 11-A non-binding guidelines with respect to the negotiation and conclusion of MRAs.

ARTICLE 11.7

Contact points

Each Party shall establish one or more contact points for the administration of this Chapter.

CHAPTER TWELVE

DOMESTIC REGULATION

ARTICLE 12.1

Definitions

For the purposes of this Chapter:

authorisation means the granting of permission to a person to supply a service or to pursue any other economic activity;

competent authority means any government of a Party, or non-governmental body in the exercise of powers delegated by any government of a Party, that grants an authorisation;

licensing procedures means administrative or procedural rules, including for the amendment or renewal of a licence, that must be adhered to in order to demonstrate compliance with licensing requirements;

licensing requirements means substantive requirements, other than qualification requirements, that must be complied with in order to obtain, amend or renew an authorisation;

qualification procedures means administrative or procedural rules that must be adhered to in order to demonstrate compliance with qualification requirements; and

qualification requirements means substantive requirements relating to competency that must be complied with in order to obtain, amend or renew an authorisation.

ARTICLE 12.2

Scope

1. This Chapter applies to a measure adopted or maintained by a Party relating to licensing requirements, licensing procedures, qualification requirements, or qualification procedures that affect:

(a) the cross-border supply of services as defined in Article 9.1 (Definitions);

(b) the supply of a service or pursuit of any other economic activity, through commercial presence in the territory of the other Party, including the establishment of such commercial presence; and

(c) the supply of a service through the presence of a natural person of the other Party in the territory of the Party, in accordance with Article 10.6.2 (Obligations in other chapters).

2. This Chapter does not apply to licensing requirements, licensing procedures, qualification requirements, or qualification procedures:

(a) pursuant to an existing non-conforming measure maintained by a Party as set out in its Schedule to Annex I; or

(b) relating to one of the following sectors or activities:

(i) for Canada, cultural industries and, as set out in its Schedule to Annex II, social services, aboriginal affairs, minority affairs, gambling and betting services, and the collection, purification, and distribution of water; and

(ii) for the EU Party, audio-visual services and, as set out in its Schedule to Annex II, health, education, and social services, gambling and betting services,[21] and the collection, purification, and distribution of water.

[21] With the exception of Malta.

ARTICLE 12.3

Licensing and qualification requirements and procedures

1. Each Party shall ensure that licensing requirements, qualification requirements, licensing procedures, or qualification procedures it adopts or maintains are based on criteria that preclude the competent authority from exercising its power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

(a) clear and transparent;

(b) objective; and

(c) established in advance and made publicly accessible.

3. The Parties recognise that the exercise of statutory discretion conferred on a minister with respect to a decision on the granting of an authorisation in the public interest is not inconsistent with subparagraph 2(c), provided that it is exercised consistently with the object of the applicable statute and not in an arbitrary manner, and that its exercise is not otherwise inconsistent with this Agreement.

4. Paragraph 3 does not apply to licensing requirements, or qualification requirements for a professional service.

5. Each Party shall ensure that an authorisation is granted as soon as the competent authority determines that the conditions for the authorisation have been met, and once granted, that the authorisation enters into effect without undue delay, in accordance with the terms and conditions specified therein.

6. Each Party shall maintain or institute judicial, arbitral, or administrative tribunals or procedures that provide for, at the request of an affected investor or service supplier, as defined in Articles 8.1 (Definitions) and 1.1 (Definitions of general application), a prompt review of, and if justified, appropriate remedies for, administrative decisions affecting the supply of a service or the pursuit of any other economic activity. If such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures are applied in a way that provides for an objective and impartial review.

7. Each Party shall ensure that licensing procedures or qualification procedures it adopts or maintains are as simple as possible, and do not unduly complicate or delay the supply of a service, or the pursuit of any other economic activity.

8. An authorisation fee that an applicant may incur in relation to its application for an authorisation shall be reasonable and commensurate with the costs incurred, and shall not in itself restrict the supply of a service or the pursuit of any other economic activity.

9. Authorisation fees do not include payments for auction, the use of natural resources, royalties, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to provide a universal service.

10. Each Party shall ensure that licensing procedures, or qualification procedures used by the competent authority and decisions of the competent authority in the authorisation process are impartial with respect to all applicants. The competent authority should reach its decisions in an independent manner and in particular should not be accountable to any person supplying a service or pursuing any other economic activity for which the authorisation is required.

11. If specific time periods for authorising applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. If possible, applications should be accepted in electronic format under similar conditions of authenticity as paper submissions.

12. Authenticated copies should be accepted, if considered appropriate, in place of original documents.

13. Each Party shall ensure that the processing of an authorisation application, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Party should establish the normal timeframe for the processing of an application.

14. At the request of an applicant, a Party's competent authority shall provide, without undue delay, information concerning the status of the application.

15. If an application is considered incomplete, a Party's competent authority shall, within a reasonable period of time, inform the applicant, identify the additional information required to complete the application, and provide the applicant an opportunity to correct deficiencies.

16. If a Party's competent authority rejects an application, it shall inform the applicant in writing and without undue delay. Upon request of the applicant, the Party's competent authority shall also inform the applicant of the reasons the application was rejected and of the timeframe for an appeal or review against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

CHAPTER THIRTEEN

FINANCIAL SERVICES

ARTICLE 13.1

Definitions

For the purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of that service;

cross-border supply of financial services or **cross-border trade in financial services** means the supply of a financial service:

(a) from the territory of a Party into the territory of the other Party; or

(b) in the territory of a Party by a person of that Party to a person of the other Party;

but does not include the supply of a service in the territory of a Party by an investment in that territory;

financial institution means a supplier that carries out one or more of the operations defined as being financial services in this Article, if the supplier is regulated or supervised in respect of the supply of those services as a financial institution under the law of the Party in whose territory it is located, including a branch in the territory of the Party of that financial service supplier whose head offices are located in the territory of the other Party;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by a person of the other Party;

financial service means a service of a financial nature, including insurance and insurance-related services, banking and other financial services (excluding insurance), and services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

(a) insurance and insurance-related services

(i) direct insurance (including co-insurance):

(A) life; or

(B) non-life;

(ii) reinsurance and retrocession;

(iii) insurance intermediation, such as brokerage and agency; or

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

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

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

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

(iii) financial leasing;

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

(v) guarantees and commitments;

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

(A) money market instruments (including cheques, bills or certificates of deposits);

(B) foreign exchange;

(C) derivative products including futures and options;

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

(E) transferable securities; or

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

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

(viii) money broking;

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

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

(xi) provision and transfer of financial information, and financial data processing and related software; or

(xii) advisory, intermediation and other auxiliary financial services on all the activities listed in sub-subparagraphs (i) through (xi), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy;

financial service supplier means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party but does not include a public entity;

investment means "investment" as defined in Article 8.1 (Definitions), except that for the purposes of this Chapter, 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 in that financial institution only if 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) Chapter Eight (Investment) applies to a loan or debt instrument to the extent that it is not covered in this Chapter; and

(d) a loan granted by or a debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter Eight (Investment) if that loan or debt instrument meets the criteria for investments set out in Article 8.1 (Definitions);

investor means "investor" as defined in Article 8.1 (Definitions);

new financial service means a financial service that is not supplied in the territory of a Party but that is supplied in 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 1.1 (Definitions of general application) and, for greater certainty, does not include a branch of an enterprise of a third country;

public entity means:

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

(b) a private entity that performs functions normally performed by a central bank or monetary authority when exercising those functions; and

self-regulatory organisation means a non-governmental body, including any securities or futures exchange or market, clearing agency, other organisation or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions.

ARTICLE 13.2

Scope

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

(a) financial institutions of the other Party;

(b) an investor of the other Party, and an investment of that investor, in a financial institution in the Party's territory; and

(c) cross-border trade in financial services.

2. For greater certainty, the provisions of Chapter Eight (Investment) apply to:

(a) a measure relating to an investor of a Party, and an investment of that investor, in a financial service supplier that is not a financial institution; and

(b) a measure, other than a measure relating to the supply of financial services, relating to an investor of a Party or an investment of that investor in a financial institution.

3. Articles 8.10 (Treatment of investors and of covered investments), 8.11 (Compensation for losses), 8.12 (Expropriation), 8.13 (Transfers), 8.14 (Subrogation), 8.16 (Denial of benefits), and 8.17 (Formal requirements) are incorporated into and made a part of this Chapter.

4. Section F of Chapter Eight (Resolution of investment disputes between investors and states) is incorporated into and made a part of this Chapter solely for claims that a Party has breached Article 13.3 or 13.4 with respect to the expansion, conduct, operation, management, maintenance, use, enjoyment, and sale or disposal of a financial institution or an investment in a financial institution, or Article 8.10 (Treatment of investors and of covered investments), 8.11 (Compensation for losses), 8.12 (Expropriation), 8.13 (Transfers), or 8.16 (Denial of benefits).

5. This Chapter does not apply to a measure adopted or maintained by a Party relating to:

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

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

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

6. Chapter Twelve (Domestic Regulation) is incorporated into and made a part of this Chapter. For greater certainty, Article 12.3 (Licensing and qualification requirements and procedures) applies to the exercise of statutory discretion by the financial regulatory authorities of the Parties.

7. The provisions of Chapter Twelve (Domestic Regulation) incorporated into this Chapter under paragraph 6 do not apply to licensing requirements, licensing procedures, qualification requirements or qualification procedures:

(a) pursuant to a non-conforming measure maintained by Canada, as set out in its Schedule to Annex III-A;

(b) pursuant to a non-conforming measure maintained by the European Union, as set out in its Schedule to Annex I, to the extent that such measure relates to financial services; and

(c) as set out in Article 12.2.2(b) (Scope), to the extent that such measure relates to financial services.

ARTICLE 13.3

National treatment

1. Article 8.6 (National treatment) is incorporated into and made a part of this Chapter and applies to treatment of financial institutions and investors of the other Party and their investments in financial institutions.

2. The treatment accorded by a Party to its own investors and investments of its own investors under paragraphs 1 and 2 of Article 8.6 (National treatment) means treatment accorded to its own financial institutions and investments of its own investors in financial institutions.

ARTICLE 13.4

Most-favoured-nation treatment

1. Article 8.7 (Most-favoured-nation treatment) is incorporated into and made a part of this Chapter and applies to treatment of financial institutions and investors of the other Party and their investments in financial institutions.

2. The treatment accorded by a Party to investors of a third country and investments of investors of a third country under paragraphs 1 and 2 of Article 8.7 (Most-favoured-nation treatment) means treatment accorded to financial institutions of a third country and investments of investors of a third country in financial institutions.

ARTICLE 13.5

Recognition of prudential measures

1. A Party may recognise a prudential measure of a third country in the application of a measure covered by this Chapter. That recognition may be:

(a) accorded unilaterally;

(b) achieved through harmonisation or other means; or

(c) based upon an agreement or arrangement with the third country.

2. A Party according recognition of a prudential measure 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.

3. If a Party recognises a prudential measure under subparagraph 1(c) and the circumstances described in paragraph 2 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 13.6

Market access

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

(a) imposes limitations on:

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

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

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

(iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding in financial institutions or the total value of individual or aggregate foreign investment in financial institutions; or

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

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

2. Article 8.4.2 (Market access) is incorporated into and made a part of this Article.

3. For greater certainty:

(a) a Party may impose terms, conditions, and procedures for the authorisation of the establishment and expansion of a commercial presence provided that they do not circumvent the Party's obligation under paragraph 1 and are consistent with the other provisions of this Chapter; and

(b) this Article does not prevent a Party from requiring a financial institution to supply certain financial services through separate legal entities if, under the law of the Party, the range of financial services supplied by the financial institution may not be supplied through a single entity.

ARTICLE 13.7

Cross-border supply of financial services

1. Articles 9.3 (National treatment), 9.4 (Formal requirements), and 9.6 (Market access) are incorporated into and made a part of this Chapter and apply to treatment of cross-border financial service suppliers supplying the financial services specified in Annex 13-A.

2. The treatment accorded by a Party to its own service suppliers and services under Article 9.3.2 (National treatment) means treatment accorded to its own financial service suppliers and financial services.

3. The measures that a Party shall not adopt or maintain with respect to service suppliers and services of the other Party under Article 9.6 (Market access) means measures relating to cross-border financial service suppliers of the other Party supplying financial services.

4. Article 9.5 (Most-favoured-nation treatment) is incorporated into and made a part of this Chapter and applies to treatment of cross-border financial service suppliers of the other Party.

5. The treatment accorded by a Party to service suppliers and services of a third country under Article 9.5 (Most-favoured-nation treatment) means treatment accorded to financial service suppliers of a third country and financial services of a third country.

6. Each Party shall permit a person located in its territory, and a national wherever they are located, to purchase a financial service from a cross-border financial service supplier of the other Party located in the territory of that 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 the purposes of this Article, in conformity with paragraph 1.

7. For the financial services specified in Annex 13-A, each Party shall permit a cross-border financial service supplier of the other Party, on request or notification to the relevant regulator, where required, to supply a financial service through any new form of delivery, or to sell a financial product that is not sold in the Party's territory where the first Party permits its own financial service suppliers to supply such a service or to sell such a product under its law in like situations.

ARTICLE 13.8

Senior management and boards of directors

A Party shall not require that a financial institution of the other Party appoint to senior management or board of director positions, natural persons of any particular nationality.

ARTICLE 13.9

Performance requirements

1. The Parties shall negotiate disciplines on performance requirements such as those contained in Article 8.5 (Performance requirements) with respect to investments in financial institutions.

2. If, after three years of entry into force of this Agreement, the Parties have not agreed to such disciplines, upon request of a Party, Article 8.5 (Performance requirements) shall be incorporated into and made a part of this Chapter and shall apply to investments in financial institutions. For this purpose, "investment" in Article 8.5 (Performance requirements) means "investment in a financial institution in its territory".

3. Within 180 days following the successful negotiation by the Parties on the performance requirement disciplines pursuant to paragraph 1, or following a Party's request for incorporation of Article 8.5 (Performance requirements) into this Chapter pursuant to paragraph 2, as the case may be, each Party may amend its Schedule as required. Any amendment must be limited to the listing of reservations for existing measures that do not conform with the performance requirements obligation under this Chapter, for Canada in Section A of its Schedule to Annex III and for the European Union in its Schedule to Annex I. Article 13.10.1 shall apply to such measures with respect to the performance requirement disciplines negotiated pursuant to paragraph 1, or Article 8.5 (Performance requirements) as incorporated into this Chapter pursuant to paragraph 2, as the case may be.

ARTICLE 13.10

Reservations and exceptions

1. Articles 13.3, 13.4, 13.6, and 13.8 do not apply to:

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

(i) the European Union, as set out in its Schedule to Annex I;

(ii) a national government, as set out by Canada in Section A of its Schedule to Annex III or the European Union in its Schedule to Annex I;

(iii) a provincial, territorial, or regional government, as set out by Canada in Section A of its Schedule to Annex III or the European Union in its Schedule to Annex I; or

(iv) a local government;

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

(c) an amendment to a 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 13.3, 13.4, 13.6, or 13.8.

2. Article 13.7 does not apply to:

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

(i) the European Union, as set out in its Schedule to Annex I;

(ii) a national government, as set out by Canada in Section A of its Schedule to Annex III or the European Union in its Schedule to Annex I;

(iii) a provincial, territorial, or regional government, as set out by Canada in Section A of its Schedule to Annex III or the European Union in its Schedule to Annex I; or

(iv) a local government;

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

(c) an amendment to a 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 13.7.

3. Articles 13.3, 13.4, 13.6, 13.7, and 13.8 do not apply to a measure that Canada adopts or maintains with respect to financial services as set out in Section B of its Schedule to Annex III, or to a measure that the European Union adopts or maintains with respect to financial services as set out in its Schedule to Annex II.

4. If a Party has set out a reservation to Articles 8.4 (Market access), 8.5 (Performance requirements), 8.6 (National treatment), 8.7 (Most-favoured-nation treatment), 8.8 (Senior management and boards of directors), 9.3 (National treatment), 9.5 (Most-favoured-nation treatment), or 9.6 (Market access) in its Schedule to Annex I or II, the reservation also constitutes a reservation to Articles 13.3, 13.4, 13.6, 13.7, or 13.8, or to any discipline on performance requirements negotiated pursuant to Article 13.9.1 or incorporated into this Chapter pursuant to Article 13.9.2, 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.

5. A Party shall not adopt a measure or series of measures after the date of entry into force of this Agreement that are covered by Section B of Canada's Schedule to Annex III, or by the Schedule to Annex II of the European Union and that require, directly or indirectly, an investor of the other Party, by reason of nationality, to sell or otherwise dispose of an investment existing at the time the measure or series of measures became effective.

6. In respect of intellectual property rights, a Party may derogate from Articles 13.3 and 13.4, and from any discipline on technology transfer in relation to performance requirements negotiated pursuant to Article 13.9.1 or incorporated into this Chapter pursuant to Article 13.9.2, as the case may be, if the derogation is permitted by the TRIPS Agreement, including waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.

7. Articles 13.3, 13.4, 13.6, 13.7, 13.8, and 13.9 do not apply to:

(a) procurement by a Party of a good or service purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article 19.2 (Scope and coverage); or

(b) subsidies, or government support relating to trade in services, provided by a Party.

ARTICLE 13.11

Effective and transparent regulation

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

2. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Chapter are promptly published or made available in such a manner as to enable an interested person and the other Party to become acquainted with them. To the extent possible, each Party shall:

(a) publish in advance any such measures that it proposes to adopt;

(b) provide an interested person and the other Party a reasonable opportunity to comment on these proposed measures; and

(c) allow reasonable time between the final publication of the measures and the date they become effective.

For the purposes of this Chapter, these requirements replace those set out in Article 27.1 (Publication).

3. Each Party shall maintain or establish appropriate mechanisms to respond within a reasonable period of time to an inquiry from an interested person regarding measures of general application covered by this Chapter.

4. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a cross-border financial service supplier, or a financial institution of the other Party relating to the supply of a financial service within a reasonable period of time that is justified by the complexity of the application and the normal period of time established for the processing of the application. For Canada, such a reasonable time period is 120 days. The regulatory authority shall promptly notify the applicant of the decision. If it is not practicable for a decision to be made within a reasonable period of time, the regulatory authority shall promptly notify the applicant and endeavour to make the decision as soon as possible. For greater certainty, an application is not considered complete until all relevant hearings are held and the regulatory authority has received all necessary information.

ARTICLE 13.12

Self-regulatory organisations

If a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation to supply a financial service in or into the territory of that Party, or grants a privilege or advantage when supplying a financial service through a self-regulatory organisation, then the requiring Party shall ensure that the self-regulatory organisation observes the obligations of this Chapter.

ARTICLE 13.13

Payment and clearing systems

Under terms and conditions that accord national treatment, each Party shall grant a financial service supplier of the other Party established in its territory access to payment and clearing systems operated by a Party, or by an entity exercising governmental authority delegated to it by a Party, and access to official funding and refinancing facilities available in the normal course of ordinary business. This Article does not confer access to a Party's lender of last resort facilities.

ARTICLE 13.14

New financial services

1. Each Party shall permit a financial institution of the other Party to supply any new financial service that the first Party would permit its own financial institutions, in like situations, to supply under its law, on request or notification to the relevant regulator, if required.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. If authorisation is required, a decision shall be made within a reasonable period of time and the authorisation may only be refused for prudential reasons.

3. This Article does not prevent a financial institution of a Party from applying to the other Party to consider authorising the supply of a financial service that is not supplied within either Party's territory. That application is subject to the law of the Party receiving the application and is not subject to the obligations of this Article.

ARTICLE 13.15

Transfer and processing of information

1. Each Party shall permit a financial institution or a cross-border financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing if processing is required in the ordinary course of business of the financial institution or the cross-border financial service supplier.

2. Each Party shall maintain adequate safeguards to protect privacy, in particular with regard to the transfer of personal information. If the transfer of financial information involves personal information, such transfers shall be in accordance with the legislation governing the protection of personal information of the territory of the Party where the transfer has originated.

ARTICLE 13.16

Prudential carve-out

1. This Agreement does not prevent a Party from adopting or maintaining reasonable measures for prudential reasons, including:

(a) the protection of investors, depositors, policy-holders, or persons to whom a financial institution, cross-border financial service supplier, or financial service supplier owes a fiduciary duty;

(b) the maintenance of the safety, soundness, integrity, or financial responsibility of a financial institution, cross-border financial service supplier, or financial service supplier; or

(c) ensuring the integrity and stability of a Party's financial system.

2. 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.

3. Subject to Articles 13.3 and 13.4, a Party may, for prudential reasons, prohibit a particular financial service or activity. Such a prohibition shall not apply to all financial services or to a complete financial services sub-sector, such as banking.

ARTICLE 13.17

Specific exceptions

1. This Agreement does not apply to measures taken by a public entity in pursuit of monetary or exchange rate policies. This paragraph does not affect a Party's obligations under Articles 8.5 (Performance requirements), 8.13 (Transfers), or 13.9.

2. This Agreement does not require a Party to furnish or allow access to information relating to the affairs and accounts of individual consumers, cross-border financial service suppliers, financial institutions, or to any confidential information which, if disclosed, would interfere with specific regulatory, supervisory, or law enforcement matters, or would otherwise be contrary to public interest or prejudice legitimate commercial interests of particular enterprises.

ARTICLE 13.18

Financial Services Committee

1. The Financial Services Committee established under Article 26.2.1(f) (Specialised committees) shall include representatives of authorities in charge of financial services policy with expertise in the field covered by this Chapter. For Canada, the Committee representative is an official from the Department of Finance Canada or its successor.

2. The Financial Services Committee shall decide by mutual consent.

3. The Financial Services Committee shall meet annually, or as it otherwise decides, and shall:

(a) supervise the implementation of this Chapter;

(b) carry out a dialogue on the regulation of the financial services sector with a view to improving mutual knowledge of the Parties' respective regulatory systems and to cooperate in the development of international standards as illustrated by the Understanding on the dialogue on the regulation of the financial services sector contained in Annex 13-C; and

(c) implement Article 13.21.

ARTICLE 13.19

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.

2. Each Party shall ensure that when there are consultations pursuant to paragraph 1 its delegation includes officials with the relevant expertise in the area covered by this Chapter. For Canada this means officials of the Department of Finance Canada or its successor.

ARTICLE 13.20

Dispute settlement

1. Chapter Twenty-Nine (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. If the Parties are unable to agree on the composition of the arbitration panel established for the purposes of a dispute arising under this Chapter, Article 29.7 (Composition of the arbitration panel) applies. However, all references to the list of arbitrators established under Article 29.8 (List of arbitrators) shall be understood to refer to the list of arbitrators established under this Article.

3. The CETA Joint Committee may establish a list of at least 15 individuals, chosen on the basis of objectivity, reliability, and sound judgement, who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals, who are not nationals of either Party, to act as chairpersons. Each sub-list shall include at least five individuals. The CETA Joint Committee may review the list at any time and shall ensure that the list conforms with this Article.

4. The arbitrators included on the list must have expertise or experience in financial services law or regulation or in the practice thereof, which may include the regulation of financial service suppliers. The arbitrators acting as chairpersons must also have experience as counsel, panellist, or arbitrator in dispute settlement proceedings. Arbitrators shall be independent, serve in their individual capacity, and shall not take instructions from any organisation or government. They shall comply with the Code of Conduct in Annex 29-B (Code of conduct).

5. If an arbitration panel finds that a measure is inconsistent with this Agreement and the measure affects:

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

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

ARTICLE 13.21

Investment disputes in financial services

1. Section F of Chapter Eight (Resolution of investment disputes between investors and states) applies, as modified by this Article and Annex 13-B, to:

(a) investment disputes pertaining to measures to which this Chapter applies and in which an investor claims that a Party has breached Article 8.10 (Treatment of investors and of covered investments), 8.11 (Compensation for losses), 8.12 (Expropriation), 8.13 (Transfers), 8.16 (Denial of benefits), 13.3, or 13.4; or

(b) investment disputes commenced pursuant to Section F of Chapter Eight (Resolution of investment disputes between investors and states) in which Article 13.16.1 has been invoked.

2. In the case of an investment dispute under subparagraph 1(a), or if the respondent invokes Article 13.16.1 within 60 days of the submission of a claim to the Tribunal under Article 8.23 (Submission of a claim to the Tribunal), a division of the Tribunal shall be composed, in accordance with Article 8.27.7 (Constitution of the Tribunal) from the list established under Article 13.20.3. If the respondent invokes Article 13.16.1 within 60 days of the submission of a claim, with respect to an investment dispute other than under subparagraph 1(a), the period of time applicable to the composition of a division of the Tribunal under Article 8.27.7 (Constitution of the Tribunal) commences on the date the respondent invokes Article 13.16.1. If the CETA Joint Committee has not made the appointments pursuant to Article 8.27.2 (Constitution of the Tribunal) within the period of time provided in Article 8.27.17 (Constitution of the Tribunal), either disputing party may request that the Secretary-General of the International Centre for Settlement of Investment Disputes ("ICSID") select the Members of the Tribunal from the list established under Article 13.20. If the list has not been established under Article 13.20 on the date the claim is submitted pursuant to Article 8.23 (Submission of a claim to the Tribunal), the Secretary-General of ICSID shall select the Members of the Tribunal from the individuals proposed by one or both of the Parties in accordance with Article 13.20.

3. The respondent may refer the matter in writing to the Financial Services Committee for a decision as to whether and, if so, to what extent the exception under Article 13.16.1 is a valid defence to the claim. This referral shall not be made later than the date the Tribunal fixes for the respondent to submit its counter-memorial. If the respondent refers the matter to the Financial Services Committee under this paragraph the periods of time or proceedings referred to in Section F of Chapter Eight (Resolution of investment disputes between investors and states) are suspended.

4. In a referral under paragraph 3, the Financial Services Committee or the CETA Joint Committee, as the case may be, may make a joint determination as to whether and to what extent Article 13.16.1 is a valid defence to the claim. The Financial Services Committee or the CETA Joint Committee, as the case may be, shall transmit a copy of the joint determination to the investor and the Tribunal, if constituted. If the joint determination concludes that Article 13.16.1 is a valid defence to all parts of the claim in their entirety, the investor is deemed to have withdrawn its claim and the proceedings are discontinued in accordance with Article 8.35 (Discontinuance). If the joint determination concludes that Article 13.16.1 is a valid defence to only parts of the claim, the joint determination is binding on the Tribunal with respect to those parts of the claim. The suspension of the periods of time or proceedings described in paragraph 3 then no longer applies and the investor may proceed with the remaining parts of the claim.

5. If the CETA Joint Committee has not made a joint determination within three months of referral of the matter by the Financial Services Committee, the suspension of the periods of time or proceedings referred to in paragraph 3 no longer applies and the investor may proceed with its claim.

6. At the request of the respondent, the Tribunal shall decide as a preliminary matter whether and to what extent Article 13.16.1 is a valid defence to the claim. Failure of the respondent to make that request is without prejudice to the right of the respondent to assert Article 13.16.1 as a defence in a later phase of the proceedings. The Tribunal shall draw no adverse inference from the fact that the Financial Services Committee or the CETA Joint Committee has not agreed on a joint determination in accordance with Annex13-B.

CHAPTER FOURTEEN

INTERNATIONAL MARITIME TRANSPORT SERVICES

ARTICLE 14.1

Definitions

For the purposes of this Chapter:

customs clearance services or **customs house brokers' services** means the carrying out, on a fee or contract basis, of customs formalities concerning import, export or through transport of cargo, irrespective of whether these services are the main or secondary activity of the service provider;

container station and depot services means the storage, stuffing, stripping or repair of containers and making them available for shipment, whether in port areas or inland;

door-to-door or multimodal transport operation means the transport of cargo under a single transport document, that uses more than one mode of transport and involves an international sea-leg;

feeder services means the pre- and onward transportation by sea of international cargo, including containerised, break bulk and dry or liquid bulk cargo, between ports located in the territory of a Party. For greater certainty, in respect of Canada, feeder services may include transportation between sea and inland waters, where inland waters means those defined in the *Customs Act*, R.S.C. 1985, c.1 (2nd Supp.);

international cargo means cargo transported by sea-going vessels between a port of a Party and a port of the other Party or of a third country, or between a port of one Member State of the European Union and a port of another Member State of the European Union;

international maritime transport services means the transport of passengers or cargo by a sea-going vessel between a port of one Party and a port of the other Party or of a third country, or between a port of one Member State of the European Union and a port of another Member State of the European Union, as well as direct contracting with suppliers of other transport services to ensure door-to-door or multimodal transport operations, but not the supply of such other transport services;

international maritime transport service suppliers means:

(a) an enterprise of a Party, as defined in Article 1.1 (Definitions of general application), and a branch of any such entity; or

(b) an enterprise, as defined in Article 1.1 (Definitions of general application), of a third country owned or controlled by nationals of a Party, if its vessels are registered in accordance with the legislation of that Party and flying the flag of that Party; or

(c) a branch of an enterprise of a third country with substantive business operations in the territory of a Party, that is engaged in the supply of international maritime transport services. For greater certainty, Chapter Eight (Investment) does not apply to such a branch;

maritime agency services means the representation, as an agent, within a given geographic area, of the business interests of one or more shipping lines or shipping companies, for the following purposes:

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

(b) acting on behalf of the companies in organising the call of the vessel or taking control of cargo when required;

maritime auxiliary services means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services, maritime freight forwarding services, and storage and warehousing services;

maritime cargo handling services means the performance, organisation and supervision of:

(a) the loading or discharging of cargo to or from a vessel,

(b) the lashing or unlashing of cargo, and

(c) the reception or delivery and safekeeping of cargo before shipment or after discharge,

by stevedoring or terminal operator companies, but does not include work performed by dock labour, when this workforce is organised independently of stevedoring or terminal operator companies;

maritime freight forwarding services means the organisation and monitoring of shipments on behalf of shippers, through the supply of such services as the arrangement of transport and related services, consolidation and packing of cargo, preparation of documentation and provision of business information;

storage and warehousing services means storage services of frozen or refrigerated goods, bulk storage services of liquids or gases, and other storage or warehousing services.

ARTICLE 14.2

Scope

1. This Chapter applies to a measure adopted or maintained by a Party relating to the supply of international maritime transport services.[22] For greater certainty, such measure is also subject to Chapters Eight (Investment) and Nine (Cross-Border Trade in Services), as applicable.

[22] This Chapter does not apply to fishing vessels as defined under a Party's law.

2. For greater certainty, further to Articles 8.6 (National treatment), 8.7 (Most-favoured-nation treatment), 9.3 (National treatment), and 9.5 (Most-favoured-nation treatment), a Party shall not adopt or maintain a measure in respect of:

(a) a vessel supplying an international maritime transport service and flying the flag of the other Party;[23] or

(b) an international maritime transport service supplier of the other Party,

that accords treatment that is less favourable than that accorded by that Party in like situations to its own vessels or international maritime transport service suppliers or to vessels or international maritime transport service suppliers of a third country with regard to:

(a) access to ports;

(b) the use of infrastructure and services of ports such as towage and pilotage;

(c) the use of maritime auxiliary services as well as the imposition of related fees and charges;

(d) access to customs facilities; or

(e) the assignment of berths and facilities for loading and unloading.[24]

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[23] For the purposes of this Chapter for the European Union, flying the flag of a Party means flying the flag of a Member State of the European Union.

[24] This paragraph does not apply to vessels or international maritime transport service suppliers that are subject to the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, done in Rome on 22 November 2009.

ARTICLE 14.3

Obligations

1. Each Party shall permit the international maritime transport service suppliers of the other Party to re-position owned or leased empty containers that are carried on a non-revenue basis between the ports of that Party.

2. A Party shall permit the international maritime transport service suppliers of the other Party to supply feeder services between the ports of that Party.

3. A Party shall not adopt or maintain a cargo-sharing arrangement with a third country concerning any international maritime transport services, including dry and liquid bulk and liner trades.

4. A Party shall not adopt or maintain a measure that requires all or part of any international cargo to be transported exclusively by vessels registered in that Party or owned or controlled by nationals of that Party.

5. A Party shall not adopt or maintain a measure that prevents international maritime transport service suppliers of the other Party from directly contracting with other transport service suppliers for door-to-door or multimodal transport operations.

ARTICLE 14.4

Reservations

1. Article 14.3 does not apply to:

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

(i) the European Union, as set out in its Schedule to Annex I;

(ii) a national government, as set out by that Party in its Schedule to Annex I;

(iii) a provincial, territorial or regional government, as set out by that Party in its Schedule to Annex I; or

(iv) a local government;

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

(c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 14.3.

2. Article 14.3 does not apply to a measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

CHAPTER FIFTEEN

TELECOMMUNICATIONS

ARTICLE 15.1

Definitions

For the purposes of this Chapter:

contribution link means a link for the transmission of sound or television broadcasting signals to a programme production centre;

cost-oriented means based on cost and may involve different cost methodologies for different facilities or services;

enterprise means an "enterprise" as defined in Article 8.1 (Definitions);

essential facilities means facilities of a public telecommunications transport network or service that:

(a) are exclusively or predominantly supplied 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 the users of another supplier and to access services supplied by another supplier;

intra-corporate communications means telecommunications through which an enterprise communicates within the enterprise or with or among its subsidiaries, branches and, subject to a Party's law, affiliates, but does not include commercial or non-commercial services that are supplied to enterprises that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers. For the purposes of this definition, "subsidiaries", "branches" and, where applicable, "affiliates" are as defined by each Party;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choice;

major supplier means a supplier which 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) control over essential facilities; or

(b) use of its position in the market;

network termination point means the physical point at which a user is provided with access to a public telecommunications transport network;

number portability means the ability of end-users of public telecommunications transport services to retain, at the same location, the same telephone numbers without impairment of quality, reliability or convenience when switching between suppliers of like public telecommunications transport services;

public telecommunications transport network means the public telecommunications infrastructure that permits telecommunications between and among defined network termination points;

public telecommunications transport service means a telecommunications transport service that a Party requires, explicitly or in effect, to be offered to the public generally that involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information. This service may include, among other things, voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, private leased circuit services and mobile and personal communications services and systems;

regulatory authority means the body responsible for the regulation of telecommunications;

telecommunications services means all services consisting of the transmission and reception of signals by any electromagnetic means but does not include the economic activity consisting of the provision of content by means of telecommunications; and

user means an enterprise or natural person using or requesting a publicly available telecommunications service.

ARTICLE 15.2

Scope

1. This Chapter applies to a measure adopted or maintained by a Party relating to telecommunications networks or services, subject to a Party's right to restrict the supply of a service in accordance with its reservations as set out in its Schedule to Annex I or II.

2. This Chapter does not apply to a 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. For greater certainty, this Chapter applies to a contribution link.

3. This Chapter does not:

(a) require a Party to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications networks or services, other than as specifically provided in this Agreement; or

(b) require a Party, or require a Party to compel a service supplier, to establish, construct, acquire, lease, operate or supply telecommunications networks or services not offered to the public generally.

ARTICLE 15.3

Access to and use of public telecommunications transport networks or services

1. A Party shall ensure that enterprises of the other Party are accorded access to and use of public telecommunications transport networks or services on reasonable and non-discriminatory terms and conditions, including with respect to quality, technical standards and specifications.[25] The Parties shall apply this obligation, among other things, as set out in paragraphs 2 through 6.

2. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications transport network or service offered within or across its borders, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that these enterprises are permitted to:

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

(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) use operating protocols of their choice; and

(d) perform switching, signalling, and processing functions.

[25] **non-discriminatory** means treatment no less favourable than that accorded to any other enterprise when using like public telecommunications transport networks or services in like situations.

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-corporate communications of these enterprises, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article 28.3 (General exceptions), and notwithstanding paragraph 3, a Party shall take appropriate measures to protect:

(a) the security and confidentiality of public telecommunications transport services; and

(b) the privacy of users of public telecommunications transport services,

subject to the requirement that these measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

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 or 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 or services; or

(c) ensure that service suppliers of the other Party do not supply services limited by the Party's reservations as set out in its Schedule to Annex I or II.

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

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

(b) a requirement to use specified technical interfaces, including interface protocols, for connection with such networks or services;

(c) requirements, where necessary, for the inter-operability of these services;

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

(e) restrictions on connection of private leased or owned circuits with these networks or services or with circuits leased or owned by another enterprise; and

(f) notification, registration and licensing.

ARTICLE 15.4

Competitive safeguards on major suppliers

1. Each Party shall maintain appropriate measures to prevent suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) 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 supply services.

ARTICLE 15.5

Access to essential facilities

1. Each Party shall ensure that a major supplier in its territory makes available its essential facilities, which may include, among other things, network elements, operational support systems or support structures, to suppliers of telecommunications services of the other Party on reasonable and non-discriminatory terms and conditions and cost-oriented rates.

2. Each Party may determine, in accordance with its laws, those essential facilities required to be made available in its territory.

ARTICLE 15.6

Interconnection

1. Each Party shall ensure that a major supplier in its territory provides interconnection:

(a) at any technically feasible point in the network;

(b) under non-discriminatory terms, conditions, including technical standards and specifications, and rates;

(c) of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or of its subsidiaries or other affiliates;

(e) 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 a supplier need not pay for network components or facilities that it does not require for the services to be supplied; and

(f) 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.

2. A supplier that is authorised to supply telecommunications services has the right to negotiate a new interconnection agreement with other suppliers of public telecommunications transport networks and services. Each Party shall ensure that major suppliers are required to establish a reference interconnection offer or negotiate interconnection agreements with other suppliers of telecommunications networks and services.

3. Each Party shall ensure that suppliers of public telecommunications transport services that acquire information from another such supplier during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier shall be made publicly available.

5. Each Party shall ensure that a major supplier makes publicly available either its interconnection agreements or reference interconnection offer if it is appropriate.

ARTICLE 15.7

Authorisation to supply telecommunications services

Each Party should ensure that the authorisation to supply telecommunications services, wherever possible, is based upon a simple notification procedure.

ARTICLE 15.8

Universal service

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

2. Each Party shall ensure that any measure on universal service that it adopts or maintains is administered in a transparent, objective, non-discriminatory and competitively neutral manner. Each Party shall also ensure that any universal service obligation it imposes is not more burdensome than necessary for the kind of universal service that the Party has defined.

3. All suppliers should be eligible to ensure universal service. If a supplier is to be designated as the supplier of a universal service, a Party shall ensure that the selection is made through an efficient, transparent and non-discriminatory mechanism.

ARTICLE 15.9

Scarce resources

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner.

2. Notwithstanding Articles 8.4 (Market access) and 9.6 (Market access), a Party may adopt or maintain a measure that allocates and assigns spectrum and that manages frequencies. Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that 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.

3. Each Party shall make the current state of allocated frequency bands publicly available but shall not be required to provide detailed identification of frequencies allocated for specific government use.

ARTICLE 15.10

Number portability

Each Party shall ensure that suppliers of public telecommunications transport services in its territory provide number portability on reasonable terms and conditions.

ARTICLE 15.11

Regulatory authority

1. Each Party shall ensure that its regulatory authority is legally distinct and functionally independent from any supplier of telecommunications transport networks, services or equipment, including if a Party retains ownership or control of a supplier of telecommunications transport networks or services.

2. Each Party shall ensure that its regulatory authority's decisions and procedures are impartial with respect to all market participants and are administered in a transparent and timely manner.

3. Each Party shall ensure that its regulatory authority is sufficiently empowered to regulate the sector, including by ensuring that it has the power to:

(a) require suppliers of telecommunications transport networks or services to submit any information the regulatory authority considers necessary for the administration of its responsibilities; and

(b) enforce its decisions relating to the obligations set out in Articles 15.3 through 15.6 through appropriate sanctions that may include financial penalties, corrective orders or the suspension or revocation of licences.

ARTICLE 15.12

Resolution of telecommunication disputes

Recourse to regulatory authorities

1. Further to Articles 27.3 (Administrative proceedings) and 27.4 (Review and appeal), each Party shall ensure that:

(a) enterprises have timely recourse to its regulatory authority to resolve disputes with suppliers of public telecommunications transport networks or services regarding the matters covered in Articles 15.3 through 15.6 and that, under the law of the Party, are within the regulatory authority's jurisdiction. As appropriate, the regulatory authority shall issue a binding decision to resolve the dispute within a reasonable period of time; and

(b) suppliers of telecommunications networks or services of the other Party requesting access to essential facilities or interconnection with a major supplier in the Party's territory have, within a reasonable and publicly specified period of time, recourse to a regulatory authority to resolve disputes regarding the appropriate terms, conditions and rates for interconnection or access with that major supplier.

Appeal and review of regulatory authority determinations or decisions

2. Each Party shall ensure that an enterprise whose interests are adversely affected by a determination or decision of a regulatory authority may obtain review of the determination or decision by an impartial and independent judicial, quasi-judicial or administrative authority, as provided in the law of the Party. The judicial, quasi-judicial or administrative authority shall provide the enterprise with written reasons supporting its determination or decision. Each Party shall ensure that these determinations or decisions, subject to appeal or further review, are implemented by the regulatory authority.

3. An application for judicial review does not constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant judicial authority stays this determination or decision.

ARTICLE 15.13

Transparency

1. Further to Articles 27.1 (Publication) and 27.2 (Provision of information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall make publicly available:

(a) the responsibilities of a regulatory authority in an easily accessible and clear form, in particular where those responsibilities are given to more than one body;

(b) its measures relating to public telecommunications transport networks or services, including:

(i) regulations of its regulatory authority, together with the basis for these regulations;

(ii) tariffs and other terms and conditions of services;

(iii) specifications of technical interfaces;

(iv) conditions for attaching terminal or other equipment to the public telecommunications transport networks;

(v) notification, permit, registration, or licensing requirements, if any; and

(c) information on bodies responsible for preparing, amending and adopting standards-related measures.

ARTICLE 15.14

Forbearance

The Parties recognise the importance of a competitive market to achieve legitimate public policy objectives for telecommunications services. To this end, and to the extent provided in its law, each Party may refrain from applying a regulation to a telecommunications service when, following analysis of the market, it is determined that effective competition is achieved.

ARTICLE 15.15

Relation to other chapters

If there is any inconsistency between this Chapter and another Chapter, this Chapter prevails to the extent of the inconsistency.

CHAPTER SIXTEEN

ELECTRONIC COMMERCE

ARTICLE 16.1

Definitions

For the purposes of this Chapter:

delivery means a computer program, text, video, image, sound recording or other delivery that is digitally encoded; and

electronic commerce means commerce conducted through telecommunications, alone or in conjunction with other information and communication technologies.

ARTICLE 16.2

Objective and scope

1. The Parties recognise that electronic commerce increases economic growth and trade opportunities in many sectors and confirm the applicability of the WTO rules to electronic commerce. They agree to promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under the provisions of this Chapter.

2. This Chapter does not impose an obligation on a Party to allow a delivery transmitted by electronic means except in accordance with the Party's obligations under another provision of this Agreement.

ARTICLE 16.3

Customs duties on electronic deliveries

1. A Party shall not impose a customs duty, fee, or charge on a delivery transmitted by electronic means.

2. For greater certainty, paragraph 1 does not prevent a Party from imposing an internal tax or other internal charge on a delivery transmitted by electronic means, provided that the tax or charge is imposed in a manner consistent with this Agreement.

ARTICLE 16.4

Trust and confidence in electronic commerce

Each Party should adopt or maintain laws, regulations or administrative measures for the protection of personal information of users engaged in electronic commerce and, when doing so, shall take into due consideration international standards of data protection of relevant international organisations of which both Parties are a member.

ARTICLE 16.5

General provisions

Considering the potential of electronic commerce as a social and economic development tool, the Parties recognise 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;

(b) interoperability, innovation and competition in facilitating electronic commerce; and

(c) facilitating the use of electronic commerce by small and medium sized enterprises.

ARTICLE 16.6

Dialogue on electronic commerce

1. Recognising the global nature of electronic commerce, the Parties agree to maintain a dialogue on issues raised by electronic commerce, which will address, among other things:

(a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;

(b) the liability of intermediary service suppliers with respect to the transmission, or the storage of information;

(c) the treatment of unsolicited electronic commercial communications; and

(d) the protection of personal information and the protection of consumers and businesses from fraudulent and deceptive commercial practices in the sphere of electronic commerce.

2. The dialogue in paragraph 1 may take the form of exchange of information on the Parties' respective laws, regulations, and other measures on these issues, as well as sharing experiences on the implementation of such laws, regulations and other measures.

3. Recognising the global nature of electronic commerce, the Parties affirm the importance of actively participating in multilateral *fora* to promote the development of electronic commerce.

ARTICLE 16.7

Relation to other chapters

In the event of an inconsistency between this Chapter and another chapter of this Agreement, the other chapter prevails to the extent of the inconsistency.

CHAPTER SEVENTEEN

COMPETITION POLICY

ARTICLE 17.1

Definitions

For the purposes of this Chapter:

anti-competitive business conduct means anti-competitive agreements, concerted practices or arrangements by competitors, anti-competitive practices by an enterprise that is dominant in a market, and mergers with substantial anti-competitive effects; and,

service of general economic interest means, for the European Union, a service that cannot be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity, and access to the service, consistent with the public interest, by an undertaking operating under normal market conditions. The operation of a service of general economic interest must be entrusted to one or more undertakings by the state by way of a public service assignment that defines the obligations of the undertakings in question and of the state.

ARTICLE 17.2

Competition policy

1. The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business conduct has the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.

2. The Parties shall take appropriate measures to proscribe anti-competitive business conduct, recognising that such measures will enhance the fulfilment of the objectives of this Agreement.

3. The Parties shall cooperate on matters relating to the proscription of anti-competitive business conduct in the free trade area in accordance with the *Agreement between the European Communities and the Government of Canada Regarding the Application of their Competition Laws*, done at Bonn on 17 June 1999.

4. The measures referred to in paragraph 2 shall be consistent with the principles of transparency, non-discrimination, and procedural fairness. Exclusions from the application of competition law shall be transparent. A Party shall make available to the other Party public information concerning such exclusions provided under its competition law.

ARTICLE 17.3

Application of competition policy to enterprises

1. A Party shall ensure that the measures referred to in Article 17.2.2 apply to the Parties to the extent required by its law.

2. For greater certainty:

(a) in Canada, the *Competition Act*, R.S.C. 1985, c. C-34 is binding on and applies to an agent of Her Majesty in right of Canada, or of a province, that is a corporation, in respect of commercial activities engaged in by the corporation in competition, whether actual or potential, with other persons to the extent that it would apply if the agent were not an agent of Her Majesty. Such an agent may include state enterprises, monopolies, and enterprises granted special or exclusive rights or privileges; and

(b) in the European Union, state enterprises, monopolies, and enterprises granted special rights or privileges are subject to the European Union's rules on competition. However, enterprises entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly are subject to these rules, in so far as the application of these rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

ARTICLE 17.4

Dispute settlement

Nothing in this Chapter shall be subject to any form of dispute settlement pursuant to this Agreement.

CHAPTER EIGHTEEN

STATE ENTERPRISES, MONOPOLIES, AND ENTERPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES

ARTICLE 18.1

Definitions

For the purposes of this Chapter:

covered entity means:

(a) a monopoly;

(b) a supplier of a good or service, if it is one of a small number of goods or services suppliers authorised or established by a Party, formally or in effect, and the Party substantially prevents competition among those suppliers in its territory;

(c) any entity to which a Party has granted, formally or in effect, special rights or privileges to supply a good or service, substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions, and allowing the entity to escape, in whole or in part, competitive pressures or market constraints;[26] or

(d) a state enterprise;

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

in accordance with commercial considerations means consistent with customary business practices of a privately held enterprise in the relevant business or industry; and

non-discriminatory treatment means the better of national treatment and most-favoured-nation treatment as set out in this Agreement.

26 For greater certainty, the granting of a licence to a limited number of enterprises in allocating a scarce resource through objective, proportional and non-discriminatory criteria is not in and of itself a special right.

ARTICLE 18.2

Scope

1. The Parties confirm their rights and obligations under Articles XVII:1 through XVII:3 of the GATT 1994, the *Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994*, and Articles VIII:1 and VIII:2 of GATS, all of which are hereby incorporated into and made part of this Agreement.

2. This Chapter does not apply to the procurement by a Party of a good or service purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is a "covered procurement" within the meaning of Article 19.2 (Scope and coverage).

3. Articles 18.4 and 18.5 do not apply to the sectors set out in Article 8.2 (Scope) and Article 9.2 (Scope).

4 Articles 18.4 and 18.5 do not apply to a measure of a covered entity if a reservation of a Party, taken against a national treatment or most-favoured nation treatment obligation, as set out in that Party's Schedule to Annex I, II, or III, would be applicable if the same measure had been adopted or maintained by that Party.

ARTICLE 18.3

State enterprises, monopolies and enterprises granted special rights or privileges

1. Without prejudice to the Parties' rights and obligations under this Agreement, nothing in this Chapter prevents a Party from designating or maintaining a state enterprise or a monopoly or from granting an enterprise special rights or privileges.

2. A Party shall not require or encourage a covered entity to act in a manner inconsistent with this Agreement.

ARTICLE 18.4

Non-discriminatory treatment

1. Each Party shall ensure that in its territory a covered entity accords non-discriminatory treatment to a covered investment, to a good of the other Party, or to a service supplier of the other Party in the purchase or sale of a good or service.

2. If a covered entity described in paragraphs (b) through (d) of the definition of "covered entity" in Article 18.1 acts in accordance with Article 18.5.1, the Party in whose territory the covered entity is located shall be deemed to be in compliance with the obligations set out in paragraph 1 in respect of that covered entity.

ARTICLE 18.5

Commercial considerations

1. Each Party shall ensure that a covered entity in its territory acts in accordance with commercial considerations in the purchase or sale of goods, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, as well as in the purchase or supply of services, including when such goods or services are supplied to or by an investment of an investor of the other Party.

2. Provided that a covered entity's conduct is consistent with Article 18.4 and Chapter Seventeen (Competition Policy), the obligation contained in paragraph 1 does not apply:

(a) in the case of a monopoly, to the fulfilment of the purpose for which the monopoly has been created or for which special rights or privileges have been granted, such as a public service obligation or regional development; or,

(b) in the case of a state enterprise, to the fulfilment of its public mandate.

CHAPTER NINETEEN

GOVERNMENT PROCUREMENT

ARTICLE 19.1

Definitions

For the 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;

construction service means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

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

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 whereby the procuring entity contacts a supplier or suppliers of its choice;

measure means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

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;

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

open tendering means a procurement method whereby all interested suppliers may submit a tender;

person means "person" as defined in Article 1.1 (Definitions of general application);

procuring entity means an entity covered under Annexes 19-1, 19-2 or 19-3 of a Party's Market Access Schedule for this Chapter;

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

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

services includes construction services, unless otherwise specified;

standard means a document approved by a recognised body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. 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; and

technical specification means a tendering requirement that:

(a) lays down the characteristics of a good or a service 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 a service.

ARTICLE 19.2

Scope and coverage

Application of this Chapter

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

2. For the purposes of this Chapter, covered procurement means procurement for governmental purposes:

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

(i) as specified in each Party's Annexes to its Market Access Schedule for this Chapter; and

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

(b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party's Annexes to its Market Access Schedule for this Chapter, at the time of publication of a notice in accordance with Article 19.6;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage in paragraph 3 or a Party's Annexes to its Market Access Schedule for this Chapter.

3. Except as otherwise provided in a Party's Annexes to its Market Access Schedule for this Chapter, this Chapter does not apply to:

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

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

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

(d) public employment contracts;

(e) procurement conducted:

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

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

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

4. A procurement subject to this Chapter shall be all procurement covered by the Market Access Schedules of Canada and the European Union, in which each Party's commitments are set out as follows:

(a) in Annex 19-1, the central government entities whose procurement is covered by this Chapter;

(b) in Annex 19-2, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Annex 19-3, all other entities whose procurement is covered by this Chapter;

(d) in Annex 19-4, the goods covered by this Chapter;

(e) in Annex 19-5, the services, other than construction services, covered by this Chapter;

(f) in Annex 19-6, the construction services covered by this Chapter;

(g) in Annex 19-7, any General Notes; and

(h) in Annex 19-8, the means of publication used for this Chapter.

5. If a procuring entity, in the context of covered procurement, requires a person not covered under a Party's Annexes to its Market Access Schedule for this Chapter to procure in accordance with particular requirements, Article 19.4 shall apply *mutatis mutandis* to such requirements.

Valuation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 19.3

Security and general exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or from not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement:

(a) of arms, ammunition[27] or war material;

(b) or to procurement indispensable for national security; or

(c) for national defence purposes.

[27] The expression "ammunition" in this Article is considered equivalent to the expression "munitions".

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

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

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

(c) necessary to protect intellectual property; or

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

ARTICLE 19.4

General principles

Non-Discrimination

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

(a) within Canada, treatment no less favourable than that accorded by a province or territory, including its procuring entities, to goods and services of, and to suppliers located in, that province or territory; and

(b) within the European Union, treatment no less favourable than that accorded by a Member State or a sub-central region of a Member State, including its procuring entities, to goods and services of, and suppliers located in, that Member State or sub-central region, as the case may be.

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

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

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

Use of Electronic Means

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

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

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

Conduct of Procurement

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

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

Rules of Origin

5. For the purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

Offsets

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

Measures Not Specific to Procurement

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 covered procurement.

ARTICLE 19.5

Information on the procurement system

1. Each Party shall:

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

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

2. Each Party shall list, in Annex 19-8 of its Market Access Schedule:

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

(b) the electronic or paper media in which the Party publishes the notices required by Articles 19.6, 19.8.7 and 19.15.2; and

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

(i) its procurement statistics pursuant to Article 19.15.5; or

(ii) its notices concerning awarded contracts pursuant to Article 19.15.6.

3. Each Party shall promptly notify the Committee on Government Procurement of any modification to the Party's information listed in Annex 19-8.

ARTICLE 19.6

Notices

Notice of Intended Procurement

1. For each covered procurement a procuring entity shall publish a notice of intended procurement, except in the circumstances described in Article 19.12.

All the notices of intended procurement shall be directly accessible by electronic means free of charge through a single point of access subject to paragraph 2. The notices may also be published in an appropriate paper medium that is widely disseminated and those notices shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice.

The appropriate paper and electronic medium is listed by each Party in Annex 19-8.

2. A Party may apply a transitional period of up to 5 years from the date of entry into force of this Agreement to entities covered by Annexes 19-2 and 19-3 that are not ready to participate in a single point of access referred to in paragraph 1. Those entities shall, during such transitional period, provide their notices of intended procurement, if accessible by electronic means, through links in a gateway electronic site that is accessible free of charge and listed in Annex 19-8.

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

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

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

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

(d) a description of any options;

(e) the time-frame for delivery of goods or services or the duration of the contract;

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

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

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

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

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

(k) if, pursuant to Article 19.8, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender; and

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

Summary Notice

4. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in English or French. The summary notice shall contain at least the following information:

(a) the subject-matter of the procurement;

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

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

Notice of Planned Procurement

5. Procuring entities are encouraged to publish in the appropriate electronic, and, if available, paper medium listed in Annex 19-8 as early as possible in each fiscal year a notice regarding their future procurement plans ("notice of planned procurement"). The notice of planned procurement shall also be published in the single point of access site listed in Annex 19-8, subject to paragraph 2. The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

6. A procuring entity covered under Annexes 19-2 or 19-3 may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 3 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

ARTICLE 19.7

Conditions for participation

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

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

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

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

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

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

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

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

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

(a) bankruptcy;

(b) false declarations;

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

(d) final judgments in respect of serious crimes or other serious offences;

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

(f) failure to pay taxes.

ARTICLE 19.8

Qualification of suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Each Party shall ensure that:

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

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

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

Selective Tendering

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

(a) include in the notice of intended procurement at least the information specified in Article 19.6.3(a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time-period for tendering, at least the information in Article 19.6.3(c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article 19.10.3(b).

5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

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

Multi-Use Lists

7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:

(a) published annually; and

(b) if published by electronic means, made available continuously,

in the appropriate medium listed in Annex 19-8.

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

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

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

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

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

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

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

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

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

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

11. If a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time-period provided for in Article 19.10.2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.

Procuring Entities of Annex 19-2 and Annex 19-3

12. A procuring entity covered under Annexes 19-2 or 19-3 may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 7 and includes the information required under paragraph 8, as much of the information required under Article 19.6.3 as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article 19.6.3, to the extent such information is available.

13. A procuring entity covered under Annexes 19-2 or 19-3 may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 to tender in a given procurement, if there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

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

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

ARTICLE 19.9

Technical specifications and tender documentation

Technical Specifications

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

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

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

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

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

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

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

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

Tender Documentation

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

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

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

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

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

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

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

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

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

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

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

10. A procuring entity shall promptly:

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

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

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

Modifications

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

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, if such suppliers are known to the 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 re-submit amended tenders, as appropriate.

ARTICLE 19.10

Time-periods

General

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

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points if electronic means are not used.

These time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.

Deadlines

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

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

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

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

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

(a) the procuring entity has published a notice of planned procurement as described in Article 19.6.5 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

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

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

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

(v) as much of the information that is required for the notice of intended procurement under Article 19.6.3, as is available;

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

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

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

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

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

(c) the entity accepts tenders by electronic means.

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

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

8. If a procuring entity covered under Annexes 19-2 or 19-3 has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

ARTICLE 19.11

Negotiation

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

(a) if the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 19.6.3; or

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

2. A procuring entity shall:

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

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

ARTICLE 19.12

Limited tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 19.6 through 19.8, paragraphs 7 through 11 of Article 19.9, and Articles 19.10, 19.11, 19.13 and 19.14 under any of the following circumstances:

(a) if:

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

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

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

(iv) the tenders submitted have been collusive,

provided that the requirements of the tender documentation are not substantially modified;

(b) if 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 if a change of supplier for such additional goods or services:

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

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

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

(e) for goods purchased on a commodity market;

(f) if a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

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

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

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

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

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

ARTICLE 19.13

Electronic auctions

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

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

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

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

ARTICLE 19.14

Treatment of tenders and awarding of contracts

Treatment of Tenders

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

2. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

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

Awarding of Contracts

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

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

(a) the most advantageous tender; or

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

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

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

ARTICLE 19.15

Transparency of procurement information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to Articles 19.6.2 and 19.6.3, 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

2. Not later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Annex 19-8. If the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

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

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

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

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

(e) the date of award; and

(f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article 19.12, a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

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

(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 19.12; and

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

Collection and Reporting of Statistics

4. Each Party shall collect and report to the Committee on Government Procurement statistics on its contracts covered by this Chapter. Each report shall cover one year and be submitted within two years of the end of the reporting period, and shall contain:

(a) for Annex 19-1 procuring entities:

(i) the number and total value, for all such entities, of all contracts covered by this Chapter;

(ii) the number and total value of all contracts covered by this Chapter awarded by each such entity, broken down by categories of goods and services according to an internationally recognised uniform classification system; and

(iii) the number and total value of all contracts covered by this Chapter awarded by each such entity under limited tendering;

(b) for Annexes 19-2 and 19-3 procuring entities, the number and total value of contracts covered by this Chapter awarded by all such entities, broken down by Annex; and

(c) estimates for the data required under subparagraphs (a) and (b), with an explanation of the methodology used to develop the estimates, if it is not feasible to provide the data.

5. If a Party publishes its statistics on an official website, in a manner that is consistent with the requirements of paragraph 4, the Party may, instead of reporting to the Committee on Government Procurement, provide a link to the website, together with any instructions necessary to access and use such statistics.

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

ARTICLE 19.16

Disclosure of information

Provision of Information to Parties

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a 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 the information shall not disclose it to any supplier, except after consulting with, and obtaining the consent of, the Party that provided the information.

Non-Disclosure of Information

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

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

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

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

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

ARTICLE 19.17

Domestic review procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

(a) a breach of the Chapter; or

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

arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

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

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

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

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

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

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

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

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

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

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

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

7. Each Party shall adopt or maintain procedures that provide for:

(a) rapid 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 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. Just cause for not acting shall be provided in writing; and

(b) corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both, if a review body determines that there has been a breach or a failure as referred to in paragraph 1.

8. Not later than ten years after the entry into force of this Agreement, the Parties will take up negotiations to further develop the quality of remedies, including a possible commitment to introduce or maintain pre-contractual remedies.

ARTICLE 19.18

Modifications and rectifications to coverage

1. A Party may modify or rectify its Annexes to this Chapter.

Modifications

2. When a Party modifies an Annex to 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.

3. Notwithstanding subparagraph 2(b), a Party need not provide compensatory adjustments if:

(a) the modification in question is negligible in its effect; or

(b) the modification covers an entity over which the Party has effectively eliminated its control or influence.

4. If the other Party disputes that:

(a) an adjustment proposed under subparagraph 2(b) is adequate to maintain a comparable level of mutually agreed coverage;

(b) the modification is negligible in its effect; or

(c) the modification covers an entity over which the Party has effectively eliminated its control or influence under subparagraph 3(b),

it must object in writing within 45 days of receipt of the notification referred to in subparagraph 2(a) or be deemed to have accepted the adjustment or modification, including for the purposes of Chapter Twenty-Nine (Dispute Settlement).

Rectifications

5. The following changes to a Party's Annexes shall be considered a rectification, provided that they do not affect the mutually agreed coverage provided for in this Agreement:

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

(b) a merger of two or more entities listed within an Annex; and

(c) the separation of an entity listed in an Annex into two or more entities that are all added to the entities listed in the same Annex.

6. In the case of proposed rectifications to a Party's Annexes, the Party shall notify the other Party every two years, in line with the cycle of notifications provided for under the Agreement on Government Procurement, contained in Annex 4 of the WTO Agreement, following the entry into force of this Agreement.

7. A Party may notify the other Party of an objection to a proposed rectification within 45 days from having received the notification. If a Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a change provided for in paragraph 5 of this Article, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in the Agreement. If no such objection is submitted in writing within 45 days after having received the notification, the Party shall be deemed to have agreed to the proposed rectification.

ARTICLE 19.19

Committee on Government Procurement

1. The Committee on Government Procurement, established under Article 26.2.1(e), is to be composed of representatives from each Party and shall meet, as necessary, for the purpose of providing the Parties the opportunity to consult on any matters relating to the operation of this Chapter or the furtherance of its objectives, and to carry out other responsibilities as may be assigned to it by the Parties.

2. The Committee on Government Procurement shall meet, upon request of a Party, to:

(a) consider issues regarding public procurement that are referred to it by a Party;

(b) exchange information relating to the public procurement opportunities in each Party;

(c) discuss any other matters related to the operation of this Chapter; and

(d) consider the promotion of coordinated activities to facilitate access for suppliers to procurement opportunities in the territory of each Party. These activities may include information sessions, in particular with a view to improving electronic access to publicly-available information on each Party's procurement regime, and initiatives to facilitate access for small and medium-sized enterprises.

3. Each Party shall submit statistics relevant to the procurement covered by this Chapter, as set out in Article 19.15, annually to the Committee on Government Procurement.

CHAPTER TWENTY

INTELLECTUAL PROPERTY

SECTION A

General Provisions

ARTICLE 20.1

Objectives

The objectives of this Chapter are to:

(a) facilitate the production and commercialisation of innovative and creative products, and the provision of services, between the Parties; and

(b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

ARTICLE 20.2

Nature and scope of obligations

1. The provisions of this Chapter complement the rights and obligations between the Parties under the TRIPS Agreement.

2. Each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within its own legal system and practice.

3. This Agreement does not create any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general.

ARTICLE 20.3

Public health concerns

1. The Parties recognise the importance of the *Doha Declaration on the TRIPS Agreement and Public Health* ("Doha Declaration"), adopted on 14 November 2001 by the WTO Ministerial Conference. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration.

2. The Parties shall contribute to the implementation of and respect the *Decision of the WTO General Council of 30 August 2003* on Paragraph 6 of the Doha Declaration, as well as the *Protocol amending the TRIPS Agreement*, done at Geneva on 6 December 2005.

ARTICLE 20.4

Exhaustion

This Chapter does not affect the freedom of the Parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.

ARTICLE 20.5

Disclosure of information

This Chapter does not require a Party to disclose information that would otherwise be contrary to its law or exempt from disclosure under its law concerning access to information and privacy.

SECTION B

Standards Concerning Intellectual Property Rights

ARTICLE 20.6

Definition

For the purposes of this Section:

pharmaceutical product means a product including a chemical drug, biologic drug, vaccine or radiopharmaceutical, that is manufactured, sold or represented for use in:

(a) making a medical diagnosis, treating, mitigating or preventing disease, disorder, or abnormal physical state, or its symptoms, or

(b) restoring, correcting, or modifying physiological functions.

Sub-section A

Copyright and related rights

ARTICLE 20.7

Protection granted

1. The Parties shall comply with the following international agreements:

(a) Articles 2 through 20 of the *Berne Convention for the Protection of Literary and Artistic Works*, done at Paris on 24 July 1971;

(b) Articles 1 through 14 of the *WIPO Copyright Treaty*, done at Geneva on 20 December 1996;

(c) Articles 1 through 23 of the *WIPO Performances and Phonograms Treaty*, done at Geneva on 20 December 1996; and

(d) Articles 1 through 22 of the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations*, done at Rome on 26 October 1961.

2. To the extent permitted by the treaties referred to in paragraph 1, this Chapter shall not restrict each Party's ability to limit intellectual property protection that it accords to performances to those performances that are fixed in phonograms.

ARTICLE 20.8

Broadcasting and communication to the public

1. Each Party shall provide performers the exclusive right to authorise or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

2. Each Party shall ensure that a single equitable remuneration is paid by the user if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and shall ensure that this remuneration is shared between the relevant performers and phonogram producers. Each Party may, in the absence of an agreement between the performers and producers of phonograms, lay down the conditions as to the sharing of this remuneration between them.

ARTICLE 20.9

Protection of technological measures

1. For the purposes of this Article, **technological measures** means any technology, device, or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, performances, or phonograms, that are not authorised by authors, performers or producers of phonograms, as provided for by the law of a Party. Without prejudice to the scope of copyright or related rights contained in the law of a Party, technological measures shall be deemed effective where the use of protected works, performances, or phonograms is controlled by authors, performers or producers of phonograms through the application of a relevant access control or protection process, such as encryption or scrambling, or a copy control mechanism, that achieves the objective of protection.

2. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances, and phonograms, which are not authorised by the authors, the performers or the producers of phonograms concerned or permitted by law.

3. In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 2, each Party shall provide protection against at least:

(a) to the extent provided by its law:

(i) the unauthorised circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and

(ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and

(b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that:

(i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or

(ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.

4. Under paragraph 3, the term "to the extent provided by its law" means that each Party has flexibility in implementing subparagraphs (a)(i) and (ii).

5. In implementing paragraphs 2 and 3, a Party shall not be obliged to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise contravene that Party's measures implementing these paragraphs. The intention of this provision is that this Agreement does not require a Party to mandate interoperability in its law: there is no obligation for the information communication technology industry to design devices, products, components, or services to correspond to certain technological measures.

6. In providing adequate legal protection and effective legal remedies pursuant to paragraph 2, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 2 and 3. The obligations set forth in paragraphs 2 and 3 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under the law of a Party.

ARTICLE 20.10

Protection of rights management information

1. For the purposes of this Article, **rights management information** means:

(a) information that identifies the work, the performance, or the phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;

(b) information about the terms and conditions of use of the work, performance, or phonogram; or

(c) any numbers or codes that represent the information described in (a) and (b) above;

when any of these items of information is attached to a copy of a work, performance, or phonogram, or appears in connection with the communication or making available of a work, performance, or phonogram to the public.

2. To protect electronic rights management information, each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing, without authority, any of the following acts knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights:

(a) to remove or alter any electronic rights management information; or

(b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, performances, or phonograms, knowing that electronic rights management information has been removed or altered without authority.

3. In providing adequate legal protection and effective legal remedies pursuant to paragraph 2, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraph 2. The obligations set forth in paragraph 2 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under the law of a Party.

ARTICLE 20.11

Liability of intermediary service providers

1. Subject to the other paragraphs of this Article, each Party shall provide limitations or exceptions in its law regarding the liability of service providers, when acting as intermediaries, for infringements of copyright or related rights that take place on or through communication networks, in relation to the provision or use of their services.

2. The limitations or exceptions referred to in paragraph 1:

(a) shall cover at least the following functions:

(i) hosting of the information at the request of a user of the hosting services;

(ii) caching carried out through an automated process, when the service provider:

(A) does not modify the information other than for technical reasons;

(B) ensures that any directions related to the caching of the information that are specified in a manner widely recognised and used by industry are complied with; and

(C) does not interfere with the use of technology that is lawful and widely recognised and used by the industry in order to obtain data on the use of the information; and

(iii) mere conduit, which consists of the provision of the means to transmit information provided by a user, or the means of access to a communication network; and

(b) may also cover other functions, including providing an information location tool, by making reproductions of copyright material in an automated manner, and communicating the reproductions.

3. The eligibility for the limitations or exceptions referred to in this Article may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity.

4. Each Party may prescribe in its domestic law, conditions for service providers to qualify for the limitations or exceptions in this Article. Without prejudice to the above, each Party may establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification.

5. This Article is without prejudice to the availability in the law of a Party of other defences, limitations and exceptions to the infringement of copyright or related rights. This Article shall not affect the possibility of a court or administrative authority, in accordance with the legal system of a Party, of requiring the service provider to terminate or prevent an infringement.

ARTICLE 20.12

Camcording

Each Party may provide for criminal procedures and penalties to be applied in accordance with its laws and regulations against a person who, without authorisation of the theatre manager or the holder of the copyright in a cinematographic work, makes a copy of that work or any part thereof, from a performance of the work in a motion picture exhibition facility open to the public.

Sub-section B

Trademarks

ARTICLE 20.13

International agreements

Each Party shall make all reasonable efforts to comply with Articles 1 through 22 of the *Singapore Treaty on the Law of Trademarks*, done at Singapore on 27 March 2006, and to accede to the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, done at Madrid on 27 June 1989.

ARTICLE 20.14

Registration procedure

Each Party shall provide for a system for the registration of trademarks in which reasons for the refusal to register a trademark are communicated in writing to the applicant, who will have the opportunity to contest that refusal and to appeal a final refusal to a judicial authority. Each Party shall provide for the possibility of filing oppositions either against trademark applications or against trademark registrations. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.

ARTICLE 20.15

Exceptions to the rights conferred by a trademark

Each Party shall provide for the fair use of descriptive terms, including terms descriptive of geographical origin, as a limited exception to the rights conferred by a trademark. In determining what constitutes fair use, account shall be taken of the legitimate interests of the owner of the trademark and of third parties. Each Party may provide other limited exceptions, provided that these exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Sub-section C

Geographical Indications

ARTICLE 20.16

Definitions

For the purposes of this Sub-section:

geographical indication means an indication which identifies an agricultural product or foodstuff as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin; and

product class means a product class listed in Annex 20-C.

ARTICLE 20.17

Scope

This Sub-section applies to geographical indications identifying products falling within one of the product classes listed in Annex 20-C.

ARTICLE 20.18

Listed geographical indications

For the purposes of this Sub-section:

(a) the indications listed in Part A of Annex 20-A are geographical indications which identify a product as originating in the territory of the European Union or a region or locality in that territory; and

(b) the indications listed in Part B of Annex 20-A are geographical indications which identify a product as originating in the territory of Canada or a region or locality in that territory.

ARTICLE 20.19

Protection for geographical indications listed in Annex 20-A

1 Having examined the geographical indications of the other Party, each Party shall protect them according to the level of protection set out in this Sub-section.

2. Each Party shall provide the legal means for interested parties to prevent:

(a) the use of a geographical indication of the other Party listed in Annex 20-A for a product that falls within the product class specified in Annex 20-A for that geographical indication and that either:

(i) does not originate in the place of origin specified in Annex 20-A for that geographical indication; or

(ii) does originate in the place of origin specified in Annex 20-A for that geographical indication but was not produced or manufactured in accordance with the laws and regulations of the other Party that would apply if the product were for consumption in the other Party;

(b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good; and

(c) any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the *Paris Convention for the Protection of Industrial Property* (1967) done at Stockholm on 14 July 1967.

3. The protection referred to in subparagraph 2(a) shall be provided even where the true origin of the product is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

4. Each Party shall provide for enforcement by administrative action, to the extent provided for by its law, to prohibit a person from manufacturing, preparing, packaging, labelling, selling or importing or advertising a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its origin.

5. In accordance with paragraph 4, each Party will provide for administrative action in respect of complaints related to the labelling of products, including their presentation, in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding their origin.

6. The registration of a trademark which contains or consists of a geographical indication of the other Party listed in Annex 20-A shall be refused or invalidated, *ex officio* if a Party's legislation so permits or at the request of an interested party, with respect to a product that falls within the product class specified in Annex 20-A for that geographical indication and that does not originate in the place of origin specified in Annex 20-A for that geographical indication.

7. There shall be no obligation under this Sub-section to protect geographical indications which are not or cease to be protected in their place of origin, or which have fallen into disuse in that place. If a geographical indication of a Party listed in Annex 20-A ceases to be protected in its place of origin or falls into disuse in that place, that Party shall notify the other Party and request cancellation.

ARTICLE 20.20

Homonymous geographical indications

1. In the case of homonymous geographical indications of the Parties for products falling within the same product class, each Party shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

2. If a Party, in the context of negotiations with a third country, proposes to protect a geographical indication identifying a product originating in the third country, if that indication is homonymous with a geographical indication of the other Party listed in Annex 20-A and if that product falls within the product class specified in Annex 20-A for the homonymous geographical indication of the other Party, the other Party shall be informed and be given the opportunity to comment before the geographical indication becomes protected.

ARTICLE 20.21

Exceptions

1. Notwithstanding Articles 20.19.2 and 20.19.3, Canada shall not be required to provide the legal means for interested parties to prevent the use of the terms listed in Part A of Annex 20-A and identified by one asterisk[28] when the use of such terms is accompanied by expressions such as "kind", "type", "style", "imitation" or the like and is in combination with a legible and visible indication of the geographical origin of the product concerned.

2. Notwithstanding Articles 20.19.2 and 20.19.3, the protection of the geographical indications listed in Part A of Annex 20-A and identified by one asterisk[29] shall not prevent the use in the territory of Canada of any of these indications by any persons, including their successors and assignees, who made commercial use of those indications with regard to products in the class of "cheeses" preceding the date of 18 October 2013.

3. Notwithstanding Articles 20.19.2 and 20.19.3, the protection of the geographical indications listed in Part A of Annex 20-A and identified by two asterisks shall not prevent the use of this indication by any persons, including their successors and assignees, who made commercial use of this indication with regard to products in the class of "fresh, frozen and processed meats" for at least five years preceding the date of 18 October 2013. A transitional period of five years from the entry into force of this Article, during which the use of the above indication shall not be prevented, shall apply to any other persons, including their successors and assignees, who made commercial use of those indications with regard to products in the class of "fresh, frozen and processed meats", for less than five years preceding the date of 18 October 2013.

[28] For greater certainty, this paragraph applies equally to the term "Feta".
[29] For greater certainty, this paragraph applies equally to the term "Feta".

4. Notwithstanding Articles 20.19.2 and 20.19.3, the protection of the geographical indications listed in Part A of Annex 20-A and identified by three asterisks shall not prevent the use of those indications by any persons, including their successors and assignees, who made commercial use of those indications with regard to products in the classes of "dry-cured meats" and "cheeses", respectively, for at least ten years preceding the date of 18 October 2013. A transitional period of five years from the entry into force of this Article, during which the use of the above indications shall not be prevented, shall apply to any other persons, including their successors and assignees, who made commercial use of those indications with regard to products in the class of "dry-cured meats" and "cheeses", respectively, for less than ten years preceding the date of 18 October 2013.

5. If a trademark has been applied for or registered in good faith, or if rights to a trademark have been acquired through use in good faith, in a Party before the applicable date set out in paragraph 6, measures adopted to implement this Sub-section in that Party shall not prejudice the eligibility for or the validity of the registration of the trademark, or the right to use the trademark, on the basis that the trademark is identical with, or similar to, a geographical indication.

6. For the purposes of paragraph 5 the applicable date is:

(a) in respect of a geographical indication listed in Annex 20-A on the date of signing of this Agreement, the date of coming into force of this Sub-section; or

(b) in respect of a geographical indication added to Annex 20-A after the date of signing of this Agreement pursuant to Article 20.22, the date on which the geographical indication is added.

7. If a translation of a geographical indication is identical with or contains within it a term customary in common language as the common name for a product in the territory of a Party, or if a geographical indication is not identical with but contains within it such a term, the provisions of this Sub-section shall not prejudice the right of any person to use that term in association with that product in the territory of that Party.

8. Nothing shall prevent the use in the territory of a Party, with respect to any product, of a customary name of a plant variety or an animal breed, existing in the territory of that Party as of the date of entry into force of this Sub-section.

9. A Party may provide that any request made under this Sub-section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.

10. The provisions of this Sub-section shall not prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

11. (a) The provisions of this Sub-section shall not prejudice the right of any person to use, or to register in Canada a trademark containing or consisting of, any of the terms listed in Part A of Annex 20-B; and

(b) Subparagraph (a) does not apply to the terms listed in Part A of Annex 20-B in respect of any use that would mislead the public as to the geographical origin of the goods.

12. The use in Canada of the terms listed in Part B of Annex 20-B shall not be subject to the provisions of this Sub-section.

13. An assignment as referred to in paragraphs 2 through 4 does not include the transfer of the right to use a geographical indication on its own.

ARTICLE 20.22

Amendments to Annex 20-A

1. The CETA Joint Committee, established under Article 26.1 (The CETA Joint Committee), acting by consensus and on a recommendation by the CETA Committee on Geographical Indications, may decide to amend Annex 20-A by adding geographical indications or by removing geographical indications which have ceased to be protected or have fallen into disuse in their place of origin.

2. A geographical indication shall not in principle be added to Part A of Annex 20-A, if it is a name that on the date of the signing of this Agreement is listed in the relevant Register of the European Union with a status of "Registered", in respect of a Member State of the European Union.

3. A geographical indication identifying a product originating in a particular Party shall not be added to Annex 20-A:

(a) if it is identical to a trademark that has been registered in the other Party in respect of the same or similar products, or to a trademark in respect of which in the other Party rights have been acquired through use in good faith and an application has been filed in respect of the same or similar products;

(b) if it is identical to the customary name of a plant variety or an animal breed existing in the other Party; or

(c) if it is identical with the term customary in common language as the common name for such product in the other Party.

ARTICLE 20.23

Other protection

The provisions of this Sub-section are without prejudice to the right to seek recognition and protection of a geographical indication under the relevant law of a Party.

Sub-section D

Designs

ARTICLE 20.24

International agreements

Each Party shall make all reasonable efforts to accede to the *Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs*, done at Geneva on 2 July 1999.

ARTICLE 20.25

Relationship to copyright

The subject matter of a design right may be protected under copyright law if the conditions for this protection are met. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

Sub-section E

Patents

ARTICLE 20.26

International agreements

Each Party shall make all reasonable efforts to comply with Articles 1 through 14 and Article 22 of the *Patent Law Treaty,* done at Geneva on 1 June 2000.

ARTICLE 20.27

Sui generis protection for pharmaceuticals

1. For the purposes of this Article:

basic patent means a patent which protects a product as such, a process to obtain a product or an application of a product, and which has been designated by the holder of a patent that may serve as a basic patent, as the basic patent for the purpose of the granting of *sui generis* protection; and

product means the active ingredient or combination of active ingredients of a pharmaceutical product.

2. Each Party shall provide a period of *sui generis* protection in respect of a product that is protected by a basic patent in force at the request of the holder of the patent or his successor in title, provided the following conditions have been met:

(a) an authorisation has been granted to place the product on the market of that Party as a pharmaceutical product (referred to as "marketing authorisation" in this Article);

(b) the product has not already been the subject of a period of sui generis protection; and

(c) the marketing authorisation referred to in subparagraph (a) is the first authorisation to place the product on the market of that Party as a pharmaceutical product.

3. Each Party may:

(a) provide a period of *sui generis* protection only if the first application for the marketing authorisation is submitted within a reasonable time limit prescribed by that Party; and

(b) prescribe a time limit of no less than 60 days from the date on which the first marketing authorisation was granted for the submission of the request for the period of *sui generis* protection. However, where the first marketing authorisation is granted before the patent is granted, each Party will provide a period of at least 60 days from the grant of the patent during which the request for a period of protection under this Article may be submitted.

4. In the case where a product is protected by one basic patent, the period of *sui generis* protection shall take effect at the end of the lawful term of that patent.

In the case where a product is protected by more than one patent that may serve as a basic patent, a Party may provide for only a single period of *sui generis* protection, which takes effect at the end of the lawful term of the basic patent,

(a) in the case where all the patents that may serve as a basic patent are held by the same person, selected by the person requesting the period of *sui generis* protection; and

(b) in the case where the patents that may serve as a basic patent are not held by the same person and this gives rise to conflicting requests for the *sui generis* protection, selected by agreement between the patent holders.

5. Each Party shall provide that the period of *sui generis* protection be for a period equal to the period which elapsed between the date on which the application for the basic patent was filed and the date of the first marketing authorisation, reduced by a period of five years.

6. Notwithstanding paragraph 5 and without prejudice to a possible extension of the period of *sui generis* protection by a Party as an incentive or a reward for research in certain target populations, such as children, the duration of the *sui generis* protection may not exceed a period of two to five years, to be established by each Party.

7. Each Party may provide that the period of *sui generis* protection shall lapse:

(a) if the *sui generis* protection is surrendered by the beneficiary; or

(b) if any prescribed administrative fees are not paid.

Each Party may reduce the period of *sui generis* protection commensurate with any unjustified delays resulting from the inactions of the applicant after applying for the market authorisation, when the holder of the basic patent is the applicant for market authorisation or an entity related to it.

8. Within the limits of the protection conferred by the basic patent, the *sui generis* protection shall extend only to the pharmaceutical product covered by the marketing authorisation and for any use of that product as a pharmaceutical product that has been authorised before the expiry of the *sui generis* protection. Subject to the preceding sentence, the *sui generis* protection shall confer the same rights as conferred by the patent and shall be subject to the same limitations and obligations.

9. Notwithstanding paragraphs 1 through 8, each Party may also limit the scope of the protection by providing exceptions for the making, using, offering for sale, selling or importing of products for the purpose of export during the period of protection.

10. Each Party may revoke the *sui generis* protection on grounds relating to invalidity of the basic patent, including if that patent has lapsed before its lawful term expires or is revoked or limited to the extent that the product for which the protection was granted would no longer be protected by the claims of the basic patent, or on grounds relating to the withdrawal of the marketing authorisation or authorisations for the respective market, or if the protection was granted contrary to the provisions of paragraph 2.

ARTICLE 20.28

Patent linkage mechanisms relating to pharmaceutical products

If a Party relies on "patent linkage" mechanisms whereby the granting of marketing authorisations (or notices of compliance or similar concepts) for generic pharmaceutical products is linked to the existence of patent protection, it shall ensure that all litigants are afforded equivalent and effective rights of appeal.

Sub-section F

Data Protection

ARTICLE 20.29

Protection of undisclosed data related to pharmaceutical products

1. If a Party requires, as a condition for authorising the marketing of pharmaceutical products that utilise new chemical entities[30] (referred to as "authorisation" in this Article) the submission of undisclosed test or other data necessary to determine whether the use of those products is safe and effective, the Party shall protect such data against disclosure, if the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data are protected against unfair commercial use.

2. Each Party shall provide that for data subject to paragraph 1 that are submitted to the Party after the date of entry into force of this Agreement:

(a) no person other than the person who submitted them may, without the latter's permission, rely on such data in support of an application for an authorisation during a period of not less than six years from the date on which the Party granted authorisation to the person that produced the data for authorisation; and

[30] For greater certainty, with respect to data protection, a "chemical entity" in Canada includes a biologic or radiopharmaceutical which is regulated as a new drug under the Food and Drug Regulations of Canada.

(b) a Party shall not grant an authorisation to any person who relies on such data during a period of not less than eight years from the date on which the Party granted the authorisation to the person that produced the data for the authorisation, unless the person that produced these data provides permission.

Subject to this paragraph, there shall be no limitation on either Party to implement abbreviated authorisation procedures for such products on the basis of bioequivalence and bioavailability studies.

ARTICLE 20.30

Protection of data related to plant protection products

1. Each Party shall determine safety and efficacy requirements before authorising the placing on the market of a plant protection product (referred to as "authorisation" in this Article).

2. Each Party shall provide a limited period of data protection for a test or study report submitted for the first time to obtain an authorisation. During such period, each Party shall provide that the test or study report will not be used for the benefit of any other person aiming to obtain an authorisation, except when the explicit consent of the first authorisation holder is proved.

3. The test or study report should be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops.

4. In each Party, the period of data protection shall be at least ten years starting at the date of the first authorisation in that Party with respect to the test or study report supporting the authorisation of a new active ingredient and data supporting the concurrent registration of the end-use product containing the active ingredient. The duration of protection may be extended in order to encourage the authorisation of low-risk plant protection products and minor uses.

5. Each Party may also establish data protection requirements or financial compensation requirements for the test or study report supporting the amendment or renewal of an authorisation.

6. Each Party shall establish rules to avoid duplicative testing on vertebrate animals. Any applicant intending to perform tests and studies involving vertebrate animals should be encouraged to take the necessary measures to verify that those tests and studies have not already been performed or initiated.

7. Each Party should encourage each new applicant and each holder of the relevant authorisations to make every effort to ensure that they share tests and studies involving vertebrate animals. The costs of sharing such test and study reports shall be determined in a fair, transparent and non-discriminatory way. An applicant is only required to share in the costs of information that the applicant is required to submit to meet the authorisation requirements.

8. The holder or holders of the relevant authorisation shall have a right to be compensated for a fair share of the costs incurred by them in respect of the test or study report that supported such authorisation by an applicant relying on such test and study reports to obtain an authorisation for a new plant protection product. Each Party may direct the parties involved to resolve any issue by binding arbitration administered under its law.

Sub-section G

Plant Varieties

ARTICLE 20.31

Plant varieties

Each Party shall co-operate to promote and reinforce the protection of plant varieties on the basis of the 1991 Act of the *International Convention for the Protection of New Varieties of Plants*, done at Paris on 2 December 1961.

SECTION C

Enforcement of Intellectual Property Rights

ARTICLE 20.32

General obligations

1. Each Party shall ensure that procedures for the enforcement of intellectual property rights are fair and equitable, and are not unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. In implementing the provisions of this Section, each Party shall take into account the need for proportionality between the seriousness of the infringement, the interests of third parties, and the applicable measures, remedies and penalties.

3. Articles 20.33 through 20.42 relate to civil enforcement.

4. For the purposes of Articles 20.33 through 20.42, unless otherwise provided, **intellectual property rights** means all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement.

ARTICLE 20.33

Entitled applicants

Each Party shall recognise as persons entitled to seek application of the procedures and remedies referred to in Articles 20.34 through 20.42:

(a) the holders of intellectual property rights in accordance with the provisions of its law;

(b) all other persons authorised to use those rights, if those persons are entitled to seek relief in accordance with its law;

(c) intellectual property collective rights management bodies that are regularly recognised as having a right to represent holders of intellectual property rights, if those bodies are entitled to seek relief in accordance with its law; and

(d) professional defence bodies that are regularly recognised as having a right to represent holders of intellectual property rights, if those bodies are entitled to seek relief in accordance with its law.

ARTICLE 20.34

Evidence

Each Party shall ensure that, in the case of an alleged infringement of an intellectual property right committed on a commercial scale, the judicial authorities shall have the authority to order, if appropriate and following an application, the production of relevant information, as provided for in its law, including banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

ARTICLE 20.35

Measures for preserving evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the judicial authorities may, on application by an entity that has presented reasonably available evidence to support its claims that its intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

2. Each Party may provide that the measures referred to in paragraph 1 include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production or distribution of these goods and the documents relating thereto. The judicial authorities shall have the authority to take those measures, if necessary without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

ARTICLE 20.36

Right of information

Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority, upon a justified request of the right holder, to order the infringer or the alleged infringer, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. This information may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of those goods or services and of their channels of distribution.

ARTICLE 20.37

Provisional and precautionary measures

1. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional and precautionary measures, including an interlocutory injunction, against a party, or where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of an intellectual property right from occurring, and in particular, to prevent infringing goods from entering into the channels of commerce.

2. Each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

3. Each Party shall provide that, in the case of an alleged infringement of an intellectual property right committed on a commercial scale, the judicial authorities may order, in accordance with its law, the precautionary seizure of property of the alleged infringer, including the blocking of its bank accounts and other assets. To that end, the judicial authorities may order the communication of relevant bank, financial or commercial documents, or access to other relevant information, as appropriate.

ARTICLE 20.38

Other remedies

1. Each Party shall ensure that the judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the definitive removal from the channels of commerce, or the destruction, of goods that they have found to be infringing an intellectual property right. Each Party shall ensure that the judicial authorities may order, if appropriate, destruction of materials and implements predominantly used in the creation or manufacture of those goods. In considering a request for such remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account.

2. Each Party shall ensure that the judicial authorities have the authority to order that the remedies referred to in paragraph 1 shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

ARTICLE 20.39

Injunctions

1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to issue an order against a party to desist from an infringement, and among other things, an order to that party, or, where appropriate, to a third party over whom the relevant judicial authority exercises jurisdiction, to prevent infringing goods from entering into the channels of commerce.

2. Notwithstanding the other provisions of this Section, a Party may limit the remedies available against use by government, or by third parties authorised by government, without the use of authorisation of the right holders to the payment of remuneration provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing such use. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available.

ARTICLE 20.40

Damages

1. Each Party shall provide that:

(a) in civil judicial proceedings, its judicial authorities have the authority to order the infringer who knowingly or with reasonable grounds to know, engaged in infringing activity of intellectual property rights to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; or

(ii) the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in paragraph (i); and

(b) in determining the amount of damages for infringements of intellectual property rights, its judicial authorities may consider, among other things, any legitimate measure of value that may be submitted by the right holder, including lost profits.

2. As an alternative to paragraph 1, a Party's law may provide for the payment of remuneration, such as a royalty or fee, to compensate a right holder for the unauthorised use of the right holder's intellectual property.

ARTICLE 20.41

Legal costs

Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning the enforcement of intellectual property rights, that the prevailing party be awarded payment by the losing party of legal costs and other expenses, as provided for under that Party's law.

ARTICLE 20.42

Presumption of authorship or ownership

1. For the purposes of civil proceedings involving copyright or related rights, it is sufficient for the name of an author of a literary or artistic work to appear on the work in the usual manner in order for that author to be regarded as such, and consequently to be entitled to institute infringement proceedings, unless there is proof to the contrary. Proof to the contrary may include registration.

2. Paragraph 1 shall apply *mutatis mutandis* to the holders of related rights with regard to the protected subject matter of such rights.

SECTION D

Border Measures

ARTICLE 20.43

Scope of border measures

1. For the purposes of this Section:

counterfeit geographical indication goods means any goods under Article 20.17 falling within one of the product classes listed in Annex 20-C, including packaging, bearing without authorisation, a geographical indication which is identical to the geographical indication validly registered or otherwise protected in respect of such goods and which infringes the rights of the owner or right holder of the geographical indication in question under the law of the Party in which the border measure procedures are applied;

counterfeit trademark goods means any goods, including packaging, bearing, without authorisation, a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which infringes the rights of the owner of the trademark in question under the law of the Party in which the border measure procedures are applied;

export shipments means shipments of goods which are to be taken from the territory of a Party to a place outside that territory, excluding shipments in customs transit and transhipments;

import shipments means shipments of goods brought into the territory of a Party from a place outside that territory, while those goods remain under customs control, including goods brought into the territory to a free zone or customs warehouse, but excludes shipments in customs transit and transhipments;

pirated copyright goods means any goods which are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party in which the border measure procedures are applied;

shipments in customs transit means shipments of goods that enter the territory of a Party from a place outside that territory and are authorised by customs authorities for transport under continuous customs control from an office of entry to an office of exit, for the purpose of exiting the territory. Shipments in customs transit that are subsequently approved for removal from customs control without exiting the territory are considered to be import shipments; and

transhipments means shipments of goods that are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office which is the office of both importation and exportation.

2. The references to the infringement of intellectual property rights in this Section shall be interpreted as referring to instances of counterfeit trademark goods, pirated copyright goods or counterfeit geographical indication goods.

3. It is the understanding of the Parties that there shall be no obligation to apply the procedures set forth in this Section to goods put on the market in another country by or with the consent of the right holder.

4. Each Party shall adopt or maintain procedures with respect to import and export shipments under which a right holder may request its competent authorities to suspend the release of, or detain, goods suspected of infringing an intellectual property right.

5. Each Party shall adopt or maintain procedures with respect to import and export shipments under which its competent authorities may act on their own initiative to temporarily suspend the release of, or detain, goods suspected of infringing an intellectual property right, in order to provide an opportunity to right holders to formally request assistance under paragraph 4.

6. Each Party may enter into an arrangement with one or more third countries to establish common security customs clearance procedures. Goods cleared pursuant to the terms of the common customs procedures of such an arrangement shall be deemed to be in compliance with paragraphs 4 and 5, provided the Party concerned retains the legal authority to comply with these paragraphs.

7. Each Party may adopt or maintain the procedures referred to in paragraphs 4 and 5 with respect to transhipments and shipments in customs transit.

8. Each Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage or small quantities of goods of a non-commercial nature sent in small consignments.

ARTICLE 20.44

Application by the right holder

1. Each Party shall provide that its competent authorities require a right holder who requests the procedures described in Article 20.43 to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is *prima facie* an infringement of the right holder's intellectual property right, and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognisable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in Article 20.43.

2. Each Party shall provide for applications to suspend the release of, or to detain, goods suspected of infringing an intellectual property right listed in Article 20.43, under customs control in its territory. The requirement to provide for such applications is subject to the obligations to provide procedures referred to in Articles 20.43.4 and 20.43.5. The competent authorities may provide for such applications to apply to multiple shipments. Each Party may provide that, at the request of the right holder, the application to suspend the release of, or to detain, suspect goods may apply to selected points of entry and exit under customs control.

3. Each Party shall ensure that its competent authorities inform the applicant within a reasonable period whether they have accepted the application. Where its competent authorities have accepted the application, they shall also inform the applicant of the period of validity of the application.

4. Each Party may provide that, where the applicant has abused the procedures described in Article 20.43, or where there is due cause, its competent authorities have the authority to deny, suspend, or void an application.

ARTICLE 20.45

Provision of information from the right holder

Each Party shall permit its competent authorities to request a right holder to supply relevant information that may reasonably be expected to be within the right holder's knowledge to assist the competent authorities in taking the border measures referred to in this Section. Each Party may also allow a right holder to supply such information to its competent authorities.

ARTICLE 20.46

Security or equivalent assurance

1. Each Party shall provide that its competent authorities have the authority to require a right holder who requests the procedures described in Article 20.43 to provide reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Each Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of, or detention of, the goods in the event the competent authorities determine that the goods are not infringing. A Party may, only in exceptional circumstances or pursuant to a judicial order, permit the defendant to obtain possession of suspect goods by posting a bond or other security.

ARTICLE 20.47

Determination as to infringement

Each Party shall adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in Article 20.43, whether the suspect goods infringe an intellectual property right.

ARTICLE 20.48

Remedies

1. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination referred to in Article 20.47 that the goods are infringing. In cases where such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the channels of commerce, in such a manner as to avoid any harm to the right holder.

2. In respect of counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

3. Each Party may provide that its competent authorities have the authority to impose administrative penalties following a determination referred to in Article 20.47 that the goods are infringing.

ARTICLE 20.49

Specific cooperation in the area of border measures

1. Each Party agrees to cooperate with the other Party with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, each Party shall establish contact points in its administration and be ready to exchange information on trade in infringing goods. Each Party shall, in particular, promote the exchange of information and cooperation between its customs authorities and those of the other Party with regard to trade in goods infringing intellectual property rights.

2. The cooperation referred to in paragraph 1 may include exchanges of information regarding mechanisms for receiving information from rights holders, best practices, and experiences with risk management strategies, as well as information to aid in the identification of shipments suspected of containing infringing goods.

3. The cooperation under this Section shall be conducted consistent with relevant international agreements that are binding on both Parties. The Joint Customs Cooperation Committee referred to in Article 6.14 (Joint Customs Cooperation Committee) will set the priorities and provide for the adequate procedures for cooperation under this Section between the competent authorities of the Parties.

SECTION E

Co-operation

ARTICLE 20.50

Co-operation

1. Each Party agrees to co-operate with the other Party with a view to supporting the implementation of the commitments and obligations undertaken under this Chapter. Areas of co-operation include exchanges of information or experience on the following:

(a) the protection and enforcement of intellectual property rights, including geographical indications; and

(b) the establishment of arrangements between their respective collecting societies.

2. Pursuant to paragraph 1, each Party agrees to establish and maintain an effective dialogue on intellectual property issues to address topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and any other relevant issue.

CHAPTER TWENTY-ONE

REGULATORY COOPERATION

ARTICLE 21.1

Scope

This Chapter applies to the development, review and methodological aspects of regulatory measures of the Parties' regulatory authorities that are covered by, among others, the TBT Agreement, the SPS Agreement, the GATT 1994, the GATS, and Chapters Four (Technical Barriers to Trade), Five (Sanitary and Phytosanitary Measures), Nine (Cross-Border Trade in Services), Twenty-Two (Trade and Sustainable Development), Twenty-Three (Trade and Labour) and Twenty-Four (Trade and Environment).

ARTICLE 21.2

Principles

1. The Parties reaffirm their rights and obligations with respect to regulatory measures under the TBT Agreement, the SPS Agreement, the GATT 1994 and the GATS.

2. The Parties are committed to ensure high levels of protection for human, animal and plant life or health, and the environment in accordance with the TBT Agreement, the SPS Agreement, the GATT 1994, the GATS, and this Agreement.

3. The Parties recognise the value of regulatory cooperation with their relevant trading partners both bilaterally and multilaterally. The Parties will, whenever practicable and mutually beneficial, approach regulatory cooperation in a way that is open to participation by other international trading partners.

4. Without limiting the ability of each Party to carry out its regulatory, legislative and policy activities, the Parties are committed to further develop regulatory cooperation in light of their mutual interest in order to:

(a) prevent and eliminate unnecessary barriers to trade and investment;

(b) enhance the climate for competitiveness and innovation, including by pursuing regulatory compatibility, recognition of equivalence, and convergence; and

(c) promote transparent, efficient and effective regulatory processes that support public policy objectives and fulfil the mandates of regulatory bodies, including through the promotion of information exchange and enhanced use of best practices.

5. This Chapter replaces the Framework on Regulatory Co-operation and Transparency between the Government of Canada and the European Commission, done at Brussels on 21 December 2004, and governs the activities previously undertaken in the context of that Framework.

6. The Parties may undertake regulatory cooperation activities on a voluntary basis. For greater certainty, a Party is not required to enter into any particular regulatory cooperation activity, and may refuse to cooperate or may withdraw from cooperation. However, if a Party refuses to initiate regulatory cooperation or withdraws from cooperation, it should be prepared to explain the reasons for its decision to the other Party.

ARTICLE 21.3

Objectives of regulatory cooperation

The objectives of regulatory cooperation include to:

(a) contribute to the protection of human life, health or safety, animal or plant life or health and the environment by:

    (i) leveraging international resources in areas such as research, pre-market review and risk analysis to address important regulatory issues of local, national and international concern; and

(ii) contributing to the base of information used by regulatory departments to identify, assess and manage risks;

(b) build trust, deepen mutual understanding of regulatory governance and obtain from each other the benefit of expertise and perspectives in order to:

(i) improve the planning and development of regulatory proposals;

(ii) promote transparency and predictability in the development and establishment of regulations;

(iii) enhance the efficacy of regulations;

(iv) identify alternative instruments;

(v) recognise the associated impacts of regulations;

(vi) avoid unnecessary regulatory differences; and

(vii) improve regulatory implementation and compliance;

(c) facilitate bilateral trade and investment in a way that:

(i) builds on existing cooperative arrangements;

(ii) reduces unnecessary differences in regulation; and

(iii) identifies new ways of working for cooperation in specific sectors;

(d) contribute to the improvement of competitiveness and efficiency of industry in a way that:

(i) minimises administrative costs whenever possible;

(ii) reduces duplicative regulatory requirements and consequential compliance costs whenever possible; and

(iii) pursues compatible regulatory approaches including, if possible and appropriate, through:

(A) the application of regulatory approaches which are technology-neutral; and

(B) the recognition of equivalence or the promotion of convergence.

ARTICLE 21.4

Regulatory cooperation activities

The Parties endeavour to fulfil the objectives set out in Article 21.3 by undertaking regulatory cooperation activities that may include:

(a) engaging in ongoing bilateral discussions on regulatory governance, including to:

(i) discuss regulatory reform and its effects on the Parties' relationship;

(ii) identify lessons learned;

(iii) explore, if appropriate, alternative approaches to regulation; and

(iv) exchange experiences with regulatory tools and instruments, including regulatory impact assessments, risk assessment and compliance and enforcement strategies;

(b) consulting with each other, as appropriate, and exchanging information throughout the regulatory development process. This consultation and exchange should begin as early as possible in that process;

(c) sharing non-public information to the extent that this information may be made available to foreign governments in accordance with the applicable rules of the Party providing the information;

(d) sharing proposed technical or sanitary and phytosanitary regulations that may have an impact on trade with the other Party at the earliest stage possible so that comments and proposals for amendments may be taken into account;

(e) providing, upon request by the other Party, a copy of the proposed regulation, subject to applicable privacy law, and allow sufficient time for interested parties to provide comments in writing;

(f) exchanging information about contemplated regulatory actions, measures or amendments under consideration, at the earliest stage possible, in order to:

(i) understand the rationale behind a Party's regulatory choices, including the instrument choice, and examine the possibilities for greater convergence between the Parties on how to state the objectives of regulations and how to define their scope. The Parties should also address the interface between regulations, standards and conformity assessment in this context; and

(ii) compare methods and assumptions used to analyse regulatory proposals, including, when appropriate, an analysis of technical or economic practicability and the benefits in relation to the objective pursued of any major alternative regulatory requirements or approaches considered. This information exchange may also include compliance strategies and impact assessments, including a comparison of the potential cost-effectiveness of the regulatory proposal to that of major alternative regulatory requirements or approaches considered;

(g) examining opportunities to minimise unnecessary divergences in regulations through means such as:

(i) conducting a concurrent or joint risk assessment and a regulatory impact assessment if practicable and mutually beneficial;

(ii) achieving a harmonised, equivalent or compatible solution; or

(iii) considering mutual recognition in specific cases;

(h) cooperating on issues that concern the development, adoption, implementation and maintenance of international standards, guides and recommendations;

(i) examining the appropriateness and possibility of collecting the same or similar data about the nature, extent and frequency of problems that may potentially give rise to regulatory action when it would expedite making statistically significant judgments about those problems;

(j) periodically comparing data collection practices;

(k) examining the appropriateness and the possibility of using the same or similar assumptions and methodologies that the other Party uses to analyse data and assess the underlying issues to be addressed through regulation in order to:

(i) reduce differences in identifying issues; and

(ii) promote similarity of results;

(l) periodically comparing analytical assumptions and methodologies;

(m) exchanging information on the administration, implementation and enforcement of regulations, as well as on the means to obtain and measure compliance;

(n) conducting cooperative research agendas in order to:

(i) reduce duplicative research;

(ii) generate more information at less cost;

(iii) gather the best data;

(iv) establish, when appropriate, a common scientific basis;

(v) address the most pressing regulatory problems in a more consistent and performance-oriented manner; and

(vi) minimise unnecessary differences in new regulatory proposals while more effectively improving health, safety and environmental protection;

(o) conducting post-implementation reviews of regulations or policies;

(p) comparing methods and assumptions used in those post-implementation reviews;

(q) when applicable, making available to each other summaries of the results of those post-implementation reviews;

(r) identifying the appropriate approach to reduce adverse effects of existing regulatory differences on bilateral trade and investment in sectors identified by a Party, including, when appropriate, through greater convergence, mutual recognition, minimising the use of trade and investment distorting regulatory instruments, and the use of international standards, including standards and guides for conformity assessment; or

(s) exchanging information, expertise and experience in the field of animal welfare in order to promote collaboration on animal welfare between the Parties.

ARTICLE 21.5

Compatibility of regulatory measures

With a view to enhancing convergence and compatibility between the regulatory measures of the Parties, each Party shall, when appropriate, consider the regulatory measures or initiatives of the other Party on the same or related topics. A Party is not prevented from adopting different regulatory measures or pursuing different initiatives for reasons including different institutional or legislative approaches, circumstances, values or priorities that are particular to that Party.

ARTICLE 21.6

The Regulatory Cooperation Forum

1. A Regulatory Cooperation Forum ("RCF") is established, pursuant to Article 26.2.1(h) (Specialised committees), to facilitate and promote regulatory cooperation between the Parties in accordance with this Chapter.

2. The RCF shall perform the following functions:

(a) provide a forum to discuss regulatory policy issues of mutual interest that the Parties have identified through, among others, consultations conducted in accordance with Article 21.8;

(b) assist individual regulators to identify potential partners for cooperation activities and provide them with appropriate tools for that purpose, such as model confidentiality agreements;

(c) review regulatory initiatives, whether in progress or anticipated, that a Party considers may provide potential for cooperation. The reviews, which will be carried out in consultation with regulatory departments and agencies, should support the implementation of this Chapter; and

(d) encourage the development of bilateral cooperation activities in accordance with Article 21.4 and, on the basis of information obtained from regulatory departments and agencies, review the progress, achievements and best practices of regulatory cooperation initiatives in specific sectors.

3. The RCF shall be co-chaired by a senior representative of the Government of Canada at the level of a Deputy Minister, equivalent or designate, and a senior representative of the European Commission at the level of a Director General, equivalent or designate, and shall comprise relevant officials of each Party. The Parties may by mutual consent invite other interested parties to participate in the meetings of the RCF.

4. The RCF shall:

(a) adopt its terms of reference, procedures and work-plan at its first meeting after the entry into force of this Agreement;

(b) meet within one year from the date of entry into force of this Agreement and at least annually thereafter, unless the Parties decide otherwise; and

(c) report to the CETA Joint Committee on the implementation of this Chapter, as appropriate.

ARTICLE 21.7

Further cooperation between the Parties

1. Pursuant to Article 21.6.2(c) and to enable monitoring of forthcoming regulatory projects and to identify opportunities for regulatory cooperation, the Parties shall periodically exchange information of ongoing or planned regulatory projects in their areas of responsibility. This information should include, if appropriate, new technical regulations and amendments to existing technical regulations that are likely to be proposed or adopted.

2. The Parties may facilitate regulatory cooperation through the exchange of officials pursuant to a specified arrangement.

3. The Parties endeavour to cooperate and to share information on a voluntary basis in the area of non-food product safety. This cooperation or exchange of information may in particular relate to:

(a) scientific, technical, and regulatory matters, to help improve non-food product safety;

(b) emerging issues of significant health and safety relevance that fall within the scope of a Party's authority;

(c) standardisation related activities;

(d) market surveillance and enforcement activities;

(e) risk assessment methods and product testing; and

(f) coordinated product recalls or other similar actions.

4. The Parties may establish reciprocal exchange of information on the safety of consumer products and on preventive, restrictive and corrective measures taken. In particular, Canada may receive access to selected information from the European Union RAPEX alert system, or its successor, with respect to consumer products as referred to in Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety. The European Union may receive early warning information on restrictive measures and product recalls from Canada's consumer product incident reporting system, known as RADAR, or its successor, with respect to consumer products as defined in the *Canada Consumer Product Safety Act*, S.C. 2010, c. 21 and cosmetics as defined in the *Food and Drugs Act*, R.S.C. 1985, c. F-27. This reciprocal exchange of information shall be done on the basis of an arrangement setting out the measures referred to under paragraph 5.

5. Before the Parties conduct the first exchange of information provided for under paragraph 4, they shall ensure that the Committee on Trade in Goods endorse the measures to implement these exchanges. The Parties shall ensure that these measures specify the type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data protection rules.

6. The Committee on Trade in Goods shall endorse the measures under paragraph 5 within one year from the date of entry into force of this Agreement unless the Parties decide to extend the date.

7. The Parties may modify the measures referred to in paragraph 5. The Committee on Trade in Goods shall endorse any modification to the measures.

ARTICLE 21.8

Consultations with private entities

In order to gain non-governmental perspectives on matters that relate to the implementation of this Chapter, each Party or the Parties may consult, as appropriate, with stakeholders and interested parties, including representatives from academia, think-tanks, non-governmental organisations, businesses, consumer and other organisations. These consultations may be conducted by any means the Party or Parties deem appropriate.

ARTICLE 21.9

Contact points

1. The contact points for communication between the Parties on matters arising under this Chapter are:

(a) in the case of Canada, the Technical Barriers and Regulations Division of the Department of Foreign Affairs, Trade and Development, or its successor; and

(b) in the case of the European Union, the International Affairs Unit of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, European Commission, or its successor.

2. Each contact point is responsible for consulting and coordinating with its respective regulatory departments and agencies, as appropriate, on matters arising under this Chapter.

CHAPTER TWENTY-TWO

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 22.1

Context and objectives

1. The Parties recall the Rio Declaration on Environment and Development of 1992, the Agenda 21 on Environment and Development of 1992, the Johannesburg Declaration on Sustainable Development of 2002 and the Plan of Implementation of the World Summit on Sustainable Development of 2002, the Ministerial Declaration of the United Nations Economic and Social Council on Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development of 2006, and the ILO Declaration on Social Justice for a Fair Globalisation of 2008. The Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, and reaffirm their commitment to promoting the development of international trade in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations.

2. The Parties underline the benefit of considering trade-related labour and environmental issues as part of a global approach to trade and sustainable development. Accordingly, the Parties agree that the rights and obligations under Chapters Twenty-Three (Trade and Labour) and Twenty-Four (Trade and Environment) are to be considered in the context of this Agreement.

3. In this regard, through the implementation of Chapters Twenty-Three (Trade and Labour) and Twenty-Four (Trade and Environment), the Parties aim to:

(a) promote sustainable development through the enhanced coordination and integration of their respective labour, environmental and trade policies and measures;

(b) promote dialogue and cooperation between the Parties with a view to developing their trade and economic relations in a manner that supports their respective labour and environmental protection measures and standards, and to upholding their environmental and labour protection objectives in a context of trade relations that are free, open and transparent;

(c) enhance enforcement of their respective labour and environmental law and respect for labour and environmental international agreements;

(d) promote the full use of instruments, such as impact assessment and stakeholder consultations, in the regulation of trade, labour and environmental issues and encourage businesses, civil society organisations and citizens to develop and implement practices that contribute to the achievement of sustainable development goals; and

(e) promote public consultation and participation in the discussion of sustainable development issues that arise under this Agreement and in the development of relevant law and policies.

ARTICLE 22.2

Transparency

The Parties stress the importance of ensuring transparency as a necessary element to promote public participation and making information public within the context of this Chapter, in accordance with the provisions of this Chapter and Chapter Twenty-Seven (Transparency) as well as Articles 23.6 (Public information and awareness) and 24.7 (Public information and awareness).

ARTICLE 22.3

Cooperation and promotion of trade supporting sustainable development

1. The Parties recognise the value of international cooperation to achieve the goal of sustainable development and the integration at the international level of economic, social and environmental development and protection initiatives, actions and measures. Therefore, the Parties agree to dialogue and consult with each other with regard to trade-related sustainable development issues of common interest.

2. The Parties affirm that trade should promote sustainable development. Accordingly, each Party shall strive to promote trade and economic flows and practices that contribute to enhancing decent work and environmental protection, including by:

(a) encouraging the development and use of voluntary schemes relating to the sustainable production of goods and services, such as eco-labelling and fair trade schemes;

(b) encouraging the development and use of voluntary best practices of corporate social responsibility by enterprises, such as those in the OECD Guidelines for Multinational Enterprises, to strengthen coherence between economic, social and environmental objectives;

(c) encouraging the integration of sustainability considerations in private and public consumption decisions; and

(d) promoting the development, the establishment, the maintenance or the improvement of environmental performance goals and standards.

3. The Parties recognise the importance of addressing specific sustainable development issues by assessing the potential economic, social and environmental impacts of possible actions, taking account of the views of stakeholders. Therefore, each Party commits to review, monitor and assess the impact of the implementation of this Agreement on sustainable development in its territory in order to identify any need for action that may arise in connection with this Agreement. The Parties may carry out joint assessments. These assessments will be conducted in a manner that is adapted to the practices and conditions of each Party, through the respective participative processes of the Parties, as well as those processes set up under this Agreement.

ARTICLE 22.4

Institutional mechanisms

1. The Committee on Trade and Sustainable Development, established under Article 26.2.1(g) (Specialised committees), shall be comprised of high level representatives of the Parties responsible for matters covered by this Chapter and Chapters Twenty-Three (Trade and Labour) and Twenty-Four (Trade and Environment). The Committee on Trade and Sustainable Development shall oversee the implementation of those Chapters, including cooperative activities and the review of the impact of this Agreement on sustainable development, and address in an integrated manner any matter of common interest to the Parties in relation to the interface between economic development, social development and environmental protection. With regard to Chapters Twenty-Three (Trade and Labour) and Twenty-Four (Trade and Environment), the Committee on Trade and Sustainable Development can also carry out its duties through dedicated sessions comprising participants responsible for any matter covered, respectively, under these Chapters.

2. The Committee on Trade and Sustainable Development shall meet within the first year of the entry into force of this Agreement, and thereafter as often as the Parties consider necessary. The contact points referred to in Articles 23.8 (Institutional mechanisms) and 24.13 (Institutional mechanisms) are responsible for the communication between the Parties regarding the scheduling and the organisation of those meetings or dedicated sessions.

3. Each regular meeting or dedicated session of the Committee on Trade and Sustainable Development includes a session with the public to discuss matters relating to the implementation of the relevant Chapters, unless the Parties decide otherwise.

4. The Committee on Trade and Sustainable Development shall promote transparency and public participation. To this end:

(a) any decision or report of the Committee on Trade and Sustainable Development shall be made public, unless it decides otherwise;

(b) the Committee on Trade and Sustainable Development shall present updates on any matter related to this Chapter, including its implementation, to the Civil Society Forum referred to in Article 22.5. Any view or opinion of the Civil Society Forum shall be presented to the Parties directly, or through the consultative mechanisms referred to in Articles 23.8.3 (Institutional mechanisms) and 24.13 (Institutional mechanisms). The Committee on Trade and Sustainable Development shall report annually on the follow-up to those communications;

(c) the Committee on Trade and Sustainable Development shall report annually on any matter that it addresses pursuant to Article 24.7.3 (Public information and awareness) or Article 23.8.4 (Institutional mechanisms).

ARTICLE 22.5

Civil Society Forum

1. The Parties shall facilitate a joint Civil Society Forum composed of representatives of civil society organisations established in their territories, including participants in the consultative mechanisms referred to in Articles 23.8.3 (Institutional mechanisms) and 24.13 (Institutional mechanisms), in order to conduct a dialogue on the sustainable development aspects of this Agreement.

2. The Civil Society Forum shall be convened once a year unless otherwise agreed by the Parties. The Parties shall promote a balanced representation of relevant interests, including independent representative employers, unions, labour and business organisations, environmental groups, as well as other relevant civil society organisations as appropriate. The Parties may also facilitate participation by virtual means.

CHAPTER TWENTY-THREE

TRADE AND LABOUR

ARTICLE 23.1

Context and objectives

1. The Parties recognise the value of international cooperation and agreements on labour affairs as a response of the international community to economic, employment and social challenges and opportunities resulting from globalisation. They recognise the contribution that international trade could make to full and productive employment and decent work for all and commit to consulting and cooperating as appropriate on trade-related labour and employment issues of mutual interest.

2. Affirming the value of greater policy coherence in decent work, encompassing core labour standards, and high levels of labour protection, coupled with their effective enforcement, the Parties recognise the beneficial role that those areas can have on economic efficiency, innovation and productivity, including export performance. In this context, they also recognise the importance of social dialogue on labour matters among workers and employers, and their respective organisations, and governments, and commit to the promotion of such dialogue.

ARTICLE 23.2

Right to regulate and levels of protection

Recognising the right of each Party to set its labour priorities, to establish its levels of labour protection and to adopt or modify its laws and policies accordingly in a manner consistent with its international labour commitments, including those in this Chapter, each Party shall seek to ensure those laws and policies provide for and encourage high levels of labour protection and shall strive to continue to improve such laws and policies with the goal of providing high levels of labour protection.

ARTICLE 23.3

Multilateral labour standards and agreements

1. Each Party shall ensure that its labour law and practices embody and provide protection for the fundamental principles and rights at work which are listed below. The Parties affirm their commitment to respect, promote and realise those principles and rights in accordance with the obligations of the members of the International Labour Organization (the "ILO") and the commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998 adopted by the International Labour Conference at its 86th Session:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

2. Each Party shall ensure that its labour law and practices promote the following objectives included in the ILO Decent Work Agenda, and in accordance with the ILO Declaration on Social Justice for a Fair Globalization of 2008 adopted by the International Labour Conference at its 97th Session, and other international commitments:

(a) health and safety at work, including the prevention of occupational injury or illness and compensation in cases of such injury or illness;

(b) establishment of acceptable minimum employment standards for wage earners, including those not covered by a collective agreement; and,

(c) non-discrimination in respect of working conditions, including for migrant workers.

3. Pursuant to subparagraph 2(a), each Party shall ensure that its labour law and practices embody and provide protection for working conditions that respect the health and safety of workers, including by formulating policies that promote basic principles aimed at preventing accidents and injuries that arise out of or in the course of work, and that are aimed at developing a preventative safety and health culture where the principle of prevention is accorded the highest priority. When preparing and implementing measures aimed at health protection and safety at work, each Party shall take into account existing relevant scientific and technical information and related international standards, guidelines or recommendations, if the measures may affect trade or investment between the Parties. The Parties acknowledge that in case of existing or potential hazards or conditions that could reasonably be expected to cause injury or illness to a natural person, a Party shall not use the lack of full scientific certainty as a reason to postpone cost-effective protective measures.

4. Each Party reaffirms its commitment to effectively implement in its law and practices in its whole territory the fundamental ILO Conventions that Canada and the Member States of the European Union have ratified respectively. The Parties shall make continued and sustained efforts to ratify the fundamental ILO Conventions if they have not yet done so. The Parties shall exchange information on their respective situations and advances regarding the ratification of the fundamental as well as priority and other ILO Conventions that are classified as up to date by the ILO.

ARTICLE 23.4

Upholding levels of protection

1. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protection afforded in their labour law and standards.

2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law and standards, to encourage trade or the establishment, acquisition, expansion or retention of an investment in its territory.

3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its labour law and standards to encourage trade or investment.

ARTICLE 23.5

Enforcement procedures, administrative proceedings
and review of administrative action

1. Pursuant to Article 23.4, each Party shall promote compliance with and shall effectively enforce its labour law, including by:

(a) maintaining a system of labour inspection in accordance with its international commitments aimed at securing the enforcement of legal provisions relating to working conditions and the protection of workers which are enforceable by labour inspectors; and

(b) ensuring that administrative and judicial proceedings are available to persons with a legally recognised interest in a particular matter who maintain that a right is infringed under its law, in order to permit effective action against infringements of its labour law, including appropriate remedies for violations of such law.

2. Each Party shall, in accordance with its law, ensure that the proceedings referred to in subparagraph 1(b) are not unnecessarily complicated or prohibitively costly, do not entail unreasonable time limits or unwarranted delays, provide injunctive relief, if appropriate, and are fair and equitable, including by:

(a) providing defendants with reasonable notice when a procedure is initiated, including a description of the nature of the proceeding and the basis of the claim;

(b) providing the parties to the proceedings with a reasonable opportunity to support or defend their respective positions, including by presenting information or evidence, prior to a final decision;

(c) providing that final decisions are made in writing and give reasons as appropriate to the case and based on information or evidence in respect of which the parties to the proceeding were offered the opportunity to be heard; and

(d) allowing the parties to administrative proceedings an opportunity for review and, if warranted, correction of final administrative decisions within a reasonable period of time by a tribunal established by law, with appropriate guarantees of tribunal independence and impartiality.

ARTICLE 23.6

Public information and awareness

1. In addition to its obligations under Article 27.1 (Publication), each Party shall encourage public debate with and among non-state actors as regards the development and definition of policies that may lead to the adoption of labour law and standards by its public authorities.

2. Each Party shall promote public awareness of its labour law and standards, as well as enforcement and compliance procedures, including by ensuring the availability of information and by taking steps to further the knowledge and understanding of workers, employers and their representatives.

ARTICLE 23.7

Cooperative activities

1. The Parties commit to cooperate to promote the objectives of this Chapter through actions such as:

(a) the exchange of information on best practices on issues of common interest and on relevant events, activities, and initiatives;

(b) cooperation in international fora that deal with issues relevant for trade and labour, including in particular the WTO and the ILO;

(c) the international promotion and the effective application of fundamental principles and rights at work referred to in Article 23.3.1, and the ILO Decent Work Agenda;

(d) dialogue and information-sharing on the labour provisions in the context of their respective trade agreements, and the implementation thereof;

(e) the exploration of collaboration in initiatives regarding third parties; and

(f) any other form of cooperation deemed appropriate.

2. The Parties will consider any views provided by representatives of workers, employers, and civil society organisations when identifying areas of cooperation, and carrying out cooperative activities.

3. The Parties may establish cooperative arrangements with the ILO and other competent international or regional organisations to draw on their expertise and resources to achieve the objectives of this Chapter.

ARTICLE 23.8

Institutional mechanisms

1. Each Party shall designate an office to serve as the contact point with the other Party for the implementation of this Chapter, including with regard to:

(a) cooperative programmes and activities in accordance with Article 23.7;

(b) the receipt of submissions and communications under Article 23.9; and

(c) information to be provided to the other Party, the Panels of Experts and the public.

2. Each Party shall inform the other Party, in writing, of the contact point referred to in paragraph 1.

3. The Committee on Trade and Sustainable Development established under Article 26.2.1(g) (Specialised committees) shall, through its regular meetings or dedicated sessions comprising participants responsible for matters covered under this Chapter:

(a) oversee the implementation of this Chapter and review the progress achieved under it, including its operation and effectiveness; and

(b) discuss any other matter within the scope of this Chapter.

4. Each Party shall convene a new or consult its domestic labour or sustainable development advisory groups, to seek views and advice on issues relating to this Chapter. Those groups shall comprise independent representative organisations of civil society in a balanced representation of employers, unions, labour and business organisations, as well as other relevant stakeholders as appropriate. They may submit opinions and make recommendations on any matter related to this Chapter on their own initiative.

5. Each Party shall be open to receive and shall give due consideration to submissions from the public on matters related to this Chapter, including communications on implementation concerns. Each Party shall inform its respective domestic labour or sustainable development advisory groups of those communications.

6. The Parties shall take into account the activities of the ILO so as to promote greater cooperation and coherence between the work of the Parties and the ILO.

ARTICLE 23.9

Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. The Party shall present the matter clearly in its request, identify the questions at issue and provide a brief summary of any claims under this Chapter. Consultations must commence promptly after a Party delivers a request for consultations.

2. During consultations, each Party shall provide the other Party with sufficient information in its possession to allow a full examination of the matters raised, subject to its law regarding confidential personal and commercial information.

3. If relevant, and if both Parties consent, the Parties shall seek the information or views of any person, organisation or body, including the ILO, that may contribute to the examination of the matter that arises.

4. If a Party considers that further discussion of the matter is required, that Party may request that the Committee on Trade and Sustainable Development be convened to consider the matter by delivering a written request to the contact point of the other Party. The Committee on Trade and Sustainable Development shall convene promptly and endeavour to resolve the matter. If appropriate, it shall seek the advice of the Parties' domestic labour or sustainable development advisory groups through the consultative mechanisms referred to in Article 23.8.

5. Each Party shall make publicly available any solution or decision on a matter discussed under this Article.

ARTICLE 23.10

Panel of Experts

1. For any matter that is not satisfactorily addressed through consultations under Article 23.9, a Party may, 90 days after the receipt of a request for consultations under Article 23.9.1, request that a Panel of Experts be convened to examine that matter, by delivering a written request to the contact point of the other Party.

2. Subject to the provisions of this Chapter, the Parties shall apply the Rules of Procedure and Code of Conduct set out in Annexes 29-A and 29-B, unless the Parties decide otherwise.

3. The Panel of Experts is composed of three panellists.

4. The Parties shall consult with a view to reaching an agreement on the composition of the Panel of Experts within 10 working days of the receipt by the responding Party of the request for the establishment of a Panel of Experts. Due attention shall be paid to ensuring that proposed panellists meet the requirements set out in paragraph 7 and have the expertise appropriate to the particular matter.

5. If the Parties are unable to decide on the composition of the Panel of Experts within the period of time specified in paragraph 4, the selection procedure set out in paragraphs 3 through 7 of Article 29.7 (Composition of the arbitration panel) applies in respect of the list established in paragraph 6.

6. The Committee on Trade and Sustainable Development shall, at its first meeting after the entry into force of this Agreement, establish a list of at least nine individuals chosen for their objectivity, reliability and sound judgment, who are willing and able to serve as panellists. Each Party shall name at least three individuals to the list to serve as panellists. The Parties shall also name at least three individuals who are not nationals of either Party and who are willing and able to serve as chairperson of a Panel of Experts. The Committee on Trade and Sustainable Development shall ensure that the list is always maintained at this level.

7. The experts proposed as panellists must have specialised knowledge or expertise in labour law, other issues addressed in this Chapter, or in the resolution of disputes arising under international agreements. They must be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to the matter in issue. They must not be affiliated with the government of either Party, and must comply with the Code of Conduct referred to in paragraph 2.

8. Unless the Parties decide otherwise, within five working days of the date of the selection of the panellists, the terms of reference of the Panel of Experts are as follows:

"*to examine, in the light of the relevant provisions of Chapter Twenty-Three (Trade and Labour), the matter referred to in the request for the establishment of the Panel of Experts, and to deliver a report, in accordance with Article 23.10 (Panel of Experts) of Chapter Twenty-Three (Trade and Labour), that makes recommendations for the resolution of the matter.*"

9. In respect of matters related to multilateral agreements as set out in Article 23.3, the Panel of Experts should seek information from the ILO, including any pertinent available interpretative guidance, findings or decisions adopted by the ILO.[31]

10. The Panel may request and receive written submissions or any other information from persons with relevant information or specialised knowledge.

11. The Panel of Experts shall issue to the Parties an interim report and a final report setting out the findings of fact, its determinations on the matter including as to whether the responding Party has conformed with its obligations under this Chapter and the rationale behind any findings, determinations and recommendations that it makes. The Panel of Experts shall deliver to the Parties the interim report within 120 days after the last panellist is selected, or as otherwise decided by the Parties. The Parties may provide comments to the Panel of Experts on the interim report within 45 days of its delivery. After considering these comments, the Panel of Experts may reconsider its report or carry out any further examination that it considers appropriate. The Panel of Experts shall deliver the final report to the Parties within 60 days of the submission of the interim report. Each Party shall make the final report publicly available within 30 days of its delivery.

[31] The Parties shall apply this provision in accordance with rule 42 of the Rules of Procedure for Arbitration set out in Annex 29-A.

12. If the final report of the Panel of Experts determines that a Party has not conformed with its obligations under this Chapter, the Parties shall engage in discussions and shall endeavour, within three months of the delivery of the final report, to identify appropriate measures or, if appropriate, to decide upon a mutually satisfactory action plan. In these discussions, the Parties shall take into account the final report. The responding Party shall inform in a timely manner its labour or sustainable development advisory groups and the requesting Party of its decision on any actions or measures to be implemented. Furthermore, the requesting Party shall inform in a timely manner its labour or sustainable development advisory groups and the responding Party of any other action or measure it may decide to take, as a follow-up to the final report, to encourage the resolution of the matter in a manner consistent with this Agreement. The Committee on Trade and Sustainable Development shall monitor the follow-up to the final report and the recommendations of the Panel of Experts. The labour or sustainable development advisory groups of the Parties and the Civil Society Forum may submit observations to the Committee on Trade and Sustainable Development in this regard.

13. If the Parties reach a mutually agreed solution to the matter following the establishment of a Panel of Experts, they shall notify the Committee on Trade and Sustainable Development and the Panel of Experts of that solution. Upon that notification, the panel procedure shall be terminated.

ARTICLE 23.11

Dispute resolution

1. For any dispute that arises under this Chapter, the Parties shall only have recourse to the rules and procedures provided in this Chapter.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of a dispute. At any time, the Parties may have recourse to good offices, conciliation, or mediation to resolve that dispute.

3. The Parties understand that the obligations included under this Chapter are binding and enforceable through the procedures for the resolution of disputes provided in Article 23.10. Within this context, the Parties shall discuss, through the meetings of the Committee on Trade and Sustainable Development, the effectiveness of the implementation of the Chapter, policy developments in each Party, developments in international agreements, and views presented by stakeholders, as well as possible reviews of the procedures for the resolution of disputes provided for in Article 23.10.

4. In the case of disagreement under paragraph 3, a Party may request consultations according to the procedures established in Article 23.9 in order to review the provisions for the resolution of disputes provided for in Article 23.10, with a view to reaching a mutually agreed solution to the matter.

5. The Committee on Trade and Sustainable Development may recommend to the CETA Joint Committee modifications to relevant provisions of this Chapter, in accordance with the amendment procedures established in Article 30.2 (Amendments).

CHAPTER TWENTY-FOUR

TRADE AND ENVIRONMENT

ARTICLE 24.1

Definition

For the purposes of this Chapter:

environmental law means a law, including a statutory or regulatory provision, or other legally binding measure of a Party, the purpose of which is the protection of the environment, including the prevention of a danger to human life or health from environmental impacts, such as those that aim at:

(a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,

(b) the management of chemicals and waste or the dissemination of information related thereto, or

(c) the conservation and protection of wild flora or fauna, including endangered species and their habitats, as well as protected areas,

but does not include a measure of a Party solely related to worker health and safety, which is subject to Chapter Twenty-Three (Trade and Labour), or a measure of a Party the purpose of which is to manage the subsistence or aboriginal harvesting of natural resources.

ARTICLE 24.2

Context and objectives

The Parties recognise that the environment is a fundamental pillar of sustainable development and recognise the contribution that trade could make to sustainable development. The Parties stress that enhanced cooperation to protect and conserve the environment brings benefits that will:

(a) promote sustainable development;

(b) strengthen the environmental governance of the Parties;

(c) build upon international environmental agreements to which they are party; and

(d) complement the objectives of this Agreement.

ARTICLE 24.3

Right to regulate and levels of protection

The Parties recognise the right of each Party to set its environmental priorities, to establish its levels of environmental protection, and to adopt or modify its laws and policies accordingly and in a manner consistent with the multilateral environmental agreements to which it is party and with this Agreement. Each Party shall seek to ensure that those laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve such laws and policies and their underlying levels of protection.

ARTICLE 24.4

Multilateral environmental agreements

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems and stress the need to enhance the mutual supportiveness between trade and environment policies, rules, and measures.

2. Each Party reaffirms its commitment to effectively implement in its law and practices, in its whole territory, the multilateral environmental agreements to which it is party.

3. The Parties commit to consult and cooperate as appropriate with respect to environmental issues of mutual interest related to multilateral environmental agreements, and in particular, trade-related issues. This commitment includes exchanging information on:

(a) the implementation of multilateral environmental agreements, to which a Party is party;

(b) on-going negotiations of new multilateral environmental agreements; and

(c) each Party's respective views on becoming a party to additional multilateral environmental agreements.

4. The Parties acknowledge their right to use Article 28.3 (General exceptions) in relation to environmental measures, including those taken pursuant to multilateral environmental agreements to which they are party.

ARTICLE 24.5

Upholding levels of protection

1. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protection afforded in their environmental law.

2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental law, to encourage trade or the establishment, acquisition, expansion or retention of an investment in its territory.

3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental law to encourage trade or investment.

ARTICLE 24.6

Access to remedies and procedural guarantees

1. Pursuant to the obligations in Article 24.5:

(a) each Party shall, in accordance with its law, ensure that its authorities competent to enforce environmental law give due consideration to alleged violations of environmental law brought to its attention by any interested persons residing or established in its territory; and

(b) each Party shall ensure that administrative or judicial proceedings are available to persons with a legally recognised interest in a particular matter or who maintain that a right is infringed under its law, in order to permit effective action against infringements of its environmental law, including appropriate remedies for violations of such law.

2. Each Party shall, in accordance with its domestic law, ensure that the proceedings referred to in subparagraph 1(b) are not unnecessarily complicated or prohibitively costly, do not entail unreasonable time limits or unwarranted delays, provide injunctive relief if appropriate, and are fair, equitable and transparent, including by:

(a) providing defendants with reasonable notice when a proceeding is initiated, including a description of the nature of the proceeding and the basis of the claim;

(b) providing the parties to the proceeding with a reasonable opportunity to support or defend their respective positions, including by presenting information or evidence, prior to a final decision;

(c) providing that final decisions are made in writing and give reasons as appropriate to the case and based on information or evidence in respect of which the parties to the proceeding were offered the opportunity to be heard; and

(d) allowing the parties to administrative proceedings an opportunity for review and, if warranted, correction of final administrative decisions within a reasonable period of time by a tribunal established by law, with appropriate guarantees of tribunal independence and impartiality.

ARTICLE 24.7

Public information and awareness

1. In addition to Article 27.1 (Publication), each Party shall encourage public debate with and among non-state actors as regards the development and definition of policies that may lead to the adoption of environmental law by its public authorities.

2. Each Party shall promote public awareness of its environmental law, as well as enforcement and compliance procedures, by ensuring the availability of information to stakeholders.

3. Each Party shall be open to receive and shall give due consideration to submissions from the public on matters related to this Chapter, including communications on implementation concerns. Each Party shall inform its respective civil society organisations of those communications through the consultative mechanisms referred to in Article 24.13.5.

ARTICLE 24.8

Scientific and technical information

1. When preparing and implementing measures aimed at environmental protection that may affect trade or investment between the Parties, each Party shall take into account relevant scientific and technical information and related international standards, guidelines, or recommendations.

2. The Parties acknowledge that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

ARTICLE 24.9

Trade favouring environmental protection

1. The Parties are resolved to make efforts to facilitate and promote trade and investment in environmental goods and services, including through addressing the reduction of non-tariff barriers related to these goods and services.

2. The Parties shall, consistent with their international obligations, pay special attention to facilitating the removal of obstacles to trade or investment in goods and services of particular relevance for climate change mitigation and in particular trade or investment in renewable energy goods and related services.

ARTICLE 24.10

Trade in forest products

1. The Parties recognise the importance of the conservation and sustainable management of forests for providing environmental functions and economic and social opportunities for present and future generations, and of market access for forest products harvested in accordance with the law of the country of harvest and from sustainably managed forests.

2. To this end, and in a manner consistent with their international obligations, the Parties undertake to:

(a) encourage trade in forest products from sustainably managed forests and harvested in accordance with the law of the country of harvest;

(b) exchange information, and if appropriate, cooperate on initiatives to promote sustainable forest management, including initiatives designed to combat illegal logging and related trade;

(c) promote the effective use of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, done at Washington on 3 March 1973, with regard to timber species considered at risk; and

(d) cooperate, where appropriate, in international *fora* that deal with the conservation and sustainable management of forests.

3. The Parties shall discuss the subjects referred to in paragraph 2, in the Committee on Trade and Sustainable Development or in the Bilateral Dialogue on Forest Products referred to in Chapter Twenty-Five (Bilateral Dialogues and Cooperation), in accordance with their respective spheres of competence.

ARTICLE 24.11

Trade in fisheries and aquaculture products

1. The Parties recognise the importance of the conservation and the sustainable and responsible management of fisheries and aquaculture and their contribution to providing environmental, economic and social opportunities for present and future generations.

2. To this end, and in a manner consistent with their international obligations, the Parties undertake to:

(a) adopt or maintain effective monitoring, control and surveillance measures, such as observer schemes, vessel monitoring schemes, transhipment control, inspections at sea, port state control, and associated sanctions, aimed at the conservation of fish stocks and the prevention of overfishing;

(b) adopt or maintain actions and cooperate to combat illegal, unreported and unregulated ("IUU") fishing, including, where appropriate, the exchange of information on IUU activities in their waters and the implementation of policies and measures to exclude IUU products from trade flows and fish farming operations;

(c) cooperate with, and where appropriate in, regional fisheries management organisations in which the Parties are either members, observers, or cooperating non-contracting parties, with the aim of achieving good governance, including by advocating for science-based decisions and for compliance with those decisions in these organisations; and

(d) promote the development of an environmentally responsible and economically competitive aquaculture industry.

ARTICLE 24.12

Cooperation on environment issues

1. The Parties recognise that enhanced cooperation is an important element to advance the objectives of this Chapter, and commit to cooperate on trade-related environmental issues of common interest, in areas such as:

(a) the potential impact of this Agreement on the environment and ways to enhance, prevent, or mitigate such impact, taking into account any impact assessment carried out by the Parties;

(b) activity in international *fora* dealing with issues relevant for both trade and environmental policies, including in particular the WTO, the OECD, the United Nations Environment Programme, and multilateral environmental agreements;

(c) the environmental dimension of corporate social responsibility and accountability, including the implementation and follow-up of internationally recognised guidelines;

(d) the trade impact of environmental regulations and standards as well as the environmental impact of trade and investment rules including on the development of environmental regulations and policy;

(e) trade-related aspects of the current and future international climate change regime, as well as domestic climate policies and programmes relating to mitigation and adaptation, including issues relating to carbon markets, ways to address adverse effects of trade on climate, as well as means to promote energy efficiency and the development and deployment of low-carbon and other climate-friendly technologies;

(f) trade and investment in environmental goods and services, including environmental and green technologies and practices; renewable energy; energy efficiency; and water use, conservation and treatment;

(g) cooperation on trade-related aspects of the conservation and sustainable use of biological diversity;

(h) promotion of life-cycle management of goods, including carbon accounting and end-of-life management, extended producer-responsibility, recycling and reduction of waste, and other best practices;

(i) improved understanding of the effects of economic activity and market forces on the environment; and

(j) exchange of views on the relationship between multilateral environmental agreements and international trade rules.

2. Cooperation further to paragraph 1 shall take place through actions and instruments that may include technical exchanges, exchanges of information and best practices, research projects, studies, reports, conferences and workshops.

3. The Parties will consider views or input from the public and interested stakeholders for the definition and implementation of their cooperation activities, and they may involve such stakeholders further in those activities, as appropriate.

ARTICLE 24.13

Institutional mechanisms

1. Each Party shall designate an office to serve as contact point with the other Party for the implementation of this Chapter, including with regard to:

(a) cooperative programmes and activities in accordance with Article 24.12;

(b) the receipt of submissions and communications under Article 24.7.3; and

(c) information to be provided to the other Party, the Panel of Experts, and the public.

2. Each Party shall inform the other Party, in writing, of the contact point referred to in paragraph 1.

3. The Committee on Trade and Sustainable Development established under Article 26.2.1(g) (Specialised committees) shall, through its regular meetings or dedicated sessions comprising participants responsible for matters covered under this Chapter:

(a) oversee the implementation of this Chapter and review the progress achieved under it;

(b) discuss matters of common interest; and

(c) discuss any other matter within the scope of this Chapter as the Parties jointly decide.

4. The Parties shall take into account the activities of relevant multilateral environmental organisations or bodies so as to promote greater cooperation and coherence between the work of the Parties and these organisations or bodies.

5. Each Party shall make use of existing, or establish new, consultative mechanisms, such as domestic advisory groups, to seek views and advice on issues relating to this Chapter. These consultative mechanisms shall comprise independent representative organisations of civil society in a balanced representation of environmental groups, business organisations, as well as other relevant stakeholders as appropriate. Through such consultative mechanisms, stakeholders may submit opinions and make recommendations on any matter related to this Chapter on their own initiative.

ARTICLE 24.14

Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. The Party shall present the matter clearly in the request, identify the questions at issue, and provide a brief summary of any claims under this Chapter. Consultations must commence promptly after a Party delivers a request for consultations.

2. During consultations, each Party shall provide the other Party with sufficient information in its possession to allow a full examination of the matters raised, subject to its law regarding the protection of confidential or proprietary information.

3. If relevant, and if both Parties consent, the Parties shall seek the information or views of any person, organisation, or body, including the relevant international organisation or body, that may contribute to the examination of the matter at issue.

4. If a Party considers that further discussion of the matter is required, that Party may request that the Committee on Trade and Sustainable Development be convened to consider the matter by delivering a written request to the contact point of the other Party. The Committee on Trade and Sustainable Development shall convene promptly and endeavour to resolve the matter. If appropriate, it shall seek the advice of the Parties' civil society organisations through the consultative mechanisms referred to in Article 24.13.5.

5. Each Party shall make publicly available any solution or decision on a matter discussed under this Article.

ARTICLE 24.15

Panel of Experts

1. For any matter that is not satisfactorily addressed through consultations under Article 24.14, a Party may, 90 days after the receipt of the request for consultations under Article 24.14.1, request that a Panel of Experts be convened to examine that matter, by delivering a written request to the contact point of the other Party.

2. Subject to the provisions of this Chapter, the Parties shall apply the Rules of Procedure and Code of Conduct set out in Annexes 29-A and 29-B, unless the Parties decide otherwise.

3. The Panel of Experts is composed of three panellists.

4. The Parties shall consult with a view to reaching an agreement on the composition of the Panel of Experts within 10 working days of the receipt by the responding Party of a request for the establishment of a Panel of Experts. Due attention shall be paid to ensuring that proposed panellists meet the requirements set out in paragraph 7 and have the expertise appropriate to the particular matter.

5. If the Parties are unable to decide on the composition of the Panel of Experts within the period of time specified in paragraph 4, the selection procedure set out in paragraphs 3 through 7 of Article 29.7 (Composition of the arbitration panel) applies in respect of the list established in paragraph 6.

6. The Committee on Trade and Sustainable Development shall, at its first meeting after the entry into force of this Agreement, establish a list of at least nine individuals chosen for their objectivity, reliability, and sound judgment, who are willing and able to serve as panellists. Each Party shall name at least three individuals to the list to serve as panellists. The Parties shall also name at least three individuals who are not nationals of either Party and who are willing and able to serve as chairperson of a Panel of Experts. The Committee on Trade and Sustainable Development shall ensure that the list is always maintained at this level.

7. The experts proposed as panellists must have specialised knowledge or expertise in environmental law, issues addressed in this Chapter, or in the resolution of disputes arising under international agreements. They must be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to the matter in issue. They must not be affiliated with the governments of either Party, and must comply with the Code of Conduct referred to in paragraph 2.

8. Unless the Parties otherwise decide, within five working days of the date of the selection of the panellists, the terms of reference of the Panel of Experts are as follows:

"to examine, in the light of the relevant provisions of Chapter Twenty-Four (Trade and Environment), the matter referred to in the request for the establishment of the Panel of Experts, and to deliver a report in accordance with Article 24.15 (Panel of Experts) of Chapter Twenty-Four (Trade and Environment), that makes recommendations for the resolution of the matter"

9. In respect of matters related to multilateral environmental agreements as set out in Article 24.4, the Panel of Experts should seek views and information from relevant bodies established under these agreements, including any pertinent available interpretative guidance, findings, or decisions adopted by those bodies.[32]

10. The Panel of Experts shall issue to the Parties an interim report and a final report setting out the findings of fact, its determinations on the matter, including as to whether the responding Party has conformed with its obligations under this Chapter and the rationale behind any findings, determinations and recommendations that it makes. The Panel of Experts shall deliver to the Parties the interim report within 120 days after the last panellist is selected, or as otherwise decided by the Parties. The Parties may provide comments to the Panel of Experts on the interim report within 45 days of its delivery. After considering these comments, the Panel of Experts may reconsider its report or carry out any further examination that it considers appropriate. The Panel of Experts shall deliver the final report to the Parties within 60 days of the submission of the interim report. Each Party shall make the final report publicly available within 30 days of its delivery.

[32] The Parties shall apply this provision in accordance with rule 42 of the Rules of Procedure for Arbitration set out in Annex 29-A.

11. If the final report of the Panel of Experts determines that a Party has not conformed with its obligations under this Chapter, the Parties shall engage in discussions and shall endeavour, within three months of the delivery of the final report, to identify an appropriate measure or, if appropriate, to decide upon a mutually satisfactory action plan. In these discussions, the Parties shall take into account the final report. The responding Party shall inform, in a timely manner, its civil society organisations, through the consultative mechanisms referred to in Article 24.13.5, and the requesting Party of its decision on any action or measure to be implemented. The Committee on Trade and Sustainable Development shall monitor the follow-up to the final report and the recommendations of the Panel of Experts. The civil society organisations, through the consultative mechanisms referred to in Article 24.13.5, and the Civil Society Forum may submit observations to the Committee on Trade and Sustainable Development in this regard.

12. If the Parties reach a mutually agreed solution to the matter following the establishment of a Panel of Experts, they shall notify the Committee on Trade and Sustainable Development and the Panel of Experts of that solution. Upon that notification, the panel procedure shall be terminated.

ARTICLE 24.16

Dispute resolution

1. For any dispute that arises under this Chapter, the Parties shall only have recourse to the rules and procedures provided for in this Chapter.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of a dispute. At any time, the Parties may have recourse to good offices, conciliation, or mediation to resolve that dispute.

CHAPTER TWENTY-FIVE

BILATERAL DIALOGUES AND COOPERATION

ARTICLE 25.1

Objectives and principles

1. Building upon their well-established partnership and shared values, the Parties agree to facilitate cooperation on issues of common interest, including through:

(a) strengthening bilateral cooperation on biotechnology through the Dialogue on Biotech Market Access Issues;

(b) fostering and facilitating bilateral dialogue and exchange of information on issues related to trade in forest products through the Bilateral Dialogue on Forest Products;

(c) endeavour to establish and maintain effective cooperation on raw materials issues through the Bilateral Dialogue on Raw Materials; and

(d) encouraging enhanced cooperation on science, technology, research and innovation issues.

2. Unless otherwise provided in this Agreement, bilateral dialogues shall take place without undue delay at the request of either Party or of the CETA Joint Committee. The dialogues shall be co-chaired by representatives of Canada and the European Union. The meeting schedules and agendas shall be determined by agreement between the co-chairs.

3. The co-chairs of a bilateral dialogue shall inform the CETA Joint Committee of the schedules and agendas of any bilateral dialogue sufficiently in advance of meetings. The co-chairs of a bilateral dialogue shall report to the CETA Joint Committee on the results and conclusions of a dialogue as appropriate or on request by the CETA Joint Committee. The creation or existence of a dialogue shall not prevent either Party from bringing any matter directly to the CETA Joint Committee.

4. The CETA Joint Committee may decide to change or undertake the task assigned to a dialogue or dissolve a dialogue.

5. The Parties may engage in bilateral cooperation in other areas under this Agreement on consent of the CETA Joint Committee.

ARTICLE 25.2

Dialogue on Biotech Market Access Issues

1. The Parties agree that cooperation and information exchange on issues in connection with biotechnology products are of mutual interest. Such cooperation and exchange of information shall take place in the bilateral dialogue on agricultural biotech market access issues of mutual interest which was established by the Mutually Agreed Solution reached on 15 July 2009 between Canada and the European Union following the WTO dispute *European Communities – Measures Affecting the Approval and Marketing of Biotech Products* WT/DS292. The bilateral dialogue covers any relevant issue of mutual interest to the Parties, including:

(a) biotechnology product approvals in the territory of the Parties as well as, where appropriate, forthcoming applications for product approvals of commercial interest to either side;

(b) the commercial and economic outlook for future approvals of biotechnology products;

(c) any trade impact related to asynchronous approvals of biotechnology products or the accidental release of unauthorised products, and any appropriate measures in this respect;

(d) any biotech-related measures that may affect trade between the Parties, including measures of Member States of the European Union;

(e) any new legislation in the field of biotechnology; and

(f) best practices in the implementation of legislation on biotechnology.

2. The Parties also note the importance of the following shared objectives with respect to cooperation in the field of biotechnology:

(a) to exchange information on policy, regulatory and technical issues of common interest related to biotechnology products, and, in particular, information on their respective systems and processes for risk assessments for decision-making on the use of genetically modified organisms;

(b) to promote efficient science-based approval processes for biotechnology products;

(c) to cooperate internationally on issues related to biotechnology, such as low level presence of genetically modified organisms; and

(d) to engage in regulatory cooperation to minimise adverse trade impacts of regulatory practices related to biotechnology products.

ARTICLE 25.3

Bilateral Dialogue on Forest Products

1. The Parties agree that bilateral dialogue, cooperation and exchange of information and views on relevant laws, regulations, policies and issues of importance to the production, trade, and consumption of forest products are of mutual interest. The Parties agree to carry out this dialogue, cooperation and exchange in the Bilateral Dialogue on Forest Products, including:

(a) the development, adoption and implementation of relevant laws, regulations, policies and standards, and testing, certification and accreditation requirements and their potential impact on trade in forest products between the Parties;

(b) initiatives of the Parties related to the sustainable management of forests and forest governance;

(c) mechanisms to assure the legal or sustainable origin of forest products;

(d) access for forest products to the Parties or other markets;

(e) perspectives on multilateral and plurilateral organisations and processes in which they participate, which seek to promote sustainable forest management or combat illegal logging;

(f) issues referred to in Article 24.10 (Trade in forest products); and

(g) any other issue related to forest products as agreed upon by the Parties.

2. The Bilateral Dialogue on Forest Products shall meet within the first year of the entry into force of this Agreement, and thereafter in accordance with Article 25.1.2.

3. The Parties agree that discussions taking place in the Bilateral Dialogue on Forest Products can inform discussions in the Committee on Trade and Sustainable Development.

ARTICLE 25.4

Bilateral Dialogue on Raw Materials

1. Recognising the importance of an open, non-discriminatory and transparent trading environment based on rules and science, the Parties endeavour to establish and maintain effective cooperation on raw materials. For the purposes of this cooperation, raw materials include, but are not limited to, minerals, metals and agricultural products with an industrial use.

2. The Bilateral Dialogue on Raw Materials covers any relevant issue of mutual interest, including:

(a) to provide a forum of discussion on cooperation in the field of raw materials between the Parties, to contribute to market access for raw material goods and related services and investments and to avoid non-tariff barriers to trade for raw materials;

(b) to enhance mutual understanding in the field of raw materials with a view to exchange information on best-practices and on the Parties' regulatory policies vis-à-vis raw materials;

(c) to encourage activities that support corporate social responsibility in accordance with internationally-recognised standards such as the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas; and

(d) to facilitate, as appropriate, consultation on the Parties' positions in multilateral or plurilateral *fora* where issues related to raw materials may be raised and discussed.

ARTICLE 25.5

Enhanced cooperation on science, technology, research and innovation

1. The Parties acknowledge the interdependence of science, technology, research and innovation, and international trade and investment in increasing industrial competitiveness and social and economic prosperity.

2. Building upon this shared understanding, the Parties agree to strengthen their cooperation in the areas of science, technology, research and innovation.

3. The Parties shall endeavour to encourage, develop and facilitate cooperative activities on a reciprocal basis in support of, or supplementary to the *Agreement for Scientific and Technological Cooperation between the European Community and Canada*, done at Halifax on 17 June 1995. The Parties agree to conduct these activities on the basis of the following principles:

(a) the activities are of mutual benefit to the Parties;

(b) the Parties agree on the scope and parameters of the activities; and

(c) the activities should take into account the important role of the private sector and research institutions in the development of science, technology, research and innovation, and the commercialisation of goods and services thereof.

4. The Parties also recognise the importance of enhanced cooperation in science, technology, research and innovation, such as activities initiated, developed or undertaken by a variety of stakeholders, including the Canadian federal government, the Canadian Provinces and Territories, the European Union and its Member States.

5. Each Party shall encourage, in accordance with its law, the participation of the private sector, research institutions and civil society within its territory in activities to enhance cooperation.

CHAPTER TWENTY-SIX

ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

ARTICLE 26.1

CETA Joint Committee

1. The Parties hereby establish the CETA Joint Committee comprising representatives of the European Union and representatives of Canada. The CETA Joint Committee shall be co-chaired by the Minister for International Trade of Canada and the Member of the European Commission responsible for Trade, or their respective designees.

2. The CETA Joint Committee shall meet once a year or at the request of a Party. The CETA Joint Committee shall agree on its meeting schedule and its agenda.

3. The CETA Joint Committee is responsible for all questions concerning trade and investment between the Parties and the implementation and application of this Agreement. A Party may refer to the CETA Joint Committee any issue relating to the implementation and interpretation of this Agreement, or any other issue concerning trade and investment between the Parties.

4. The CETA Joint Committee shall:

(a) supervise and facilitate the implementation and application of this Agreement and further its general aims;

(b) supervise the work of all specialised committees and other bodies established under this Agreement;

(c) without prejudice to Chapters Eight (Investment), Twenty-Two (Trade and Sustainable Development), Twenty-Three (Trade and Labour), Twenty-Four (Trade and Environment), and Twenty-Nine (Dispute Settlement), seek appropriate ways and methods of preventing problems that might arise in areas covered by this Agreement, or of resolving disputes that may arise regarding the interpretation or application of this Agreement;

(d) adopt its own rules of procedure;

(e) make decisions as set out in Article 26.3; and

(f) consider any matter of interest relating to an area covered by this Agreement.

5. The CETA Joint Committee may:

(a) delegate responsibilities to the specialised committees established pursuant to Article 26.2;

(b) communicate with all interested parties including private sector and civil society organisations;

(c) consider or agree on amendments as provided in this Agreement;

(d) study the development of trade between the Parties and consider ways to further enhance trade relations between the Parties;

(e) adopt interpretations of the provisions of this Agreement, which shall be binding on tribunals established under Section F of Chapter Eight (Resolution of investment disputes between investors and states) and Chapter Twenty-Nine (Dispute Settlement);

(f) make recommendations suitable for promoting the expansion of trade and investment as envisaged in this Agreement;

(g) change or undertake the tasks assigned to specialised committees established pursuant to Article 26.2 or dissolve any of these specialised committees;

(h) establish specialised committees and bilateral dialogues in order to assist it in the performance of its tasks; and

(i) take such other action in the exercise of its functions as decided by the Parties.

ARTICLE 26.2

Specialised committees

1. The following specialised committees are hereby established, or in the case of the Joint Customs Cooperation Committee referred to in subparagraph (c), is granted authority to act under the auspices of the CETA Joint Committee:

(a) the Committee on Trade in Goods, which addresses matters concerning trade in goods, tariffs, technical barriers to trade, the Protocol on the mutual acceptance of the results of conformity assessment and intellectual property rights related to goods. At the request of a Party, or upon a reference from the relevant specialised committee, or when preparing a discussion in the CETA Joint Committee, the Committee on Trade in Goods may also address matters arising in the area of rules of origin, origin procedures, customs and trade facilitation and border measures, sanitary and phytosanitary measures, government procurement, or regulatory cooperation, if this facilitates the resolution of a matter that cannot otherwise be resolved by the relevant specialised committee. The Committee on Agriculture, the Committee on Wines and Spirits, and the Joint Sectoral Group on Pharmaceuticals shall also be established under and report to the Committee on Trade in Goods;

(b) the Committee on Services and Investment, which addresses matters concerning cross-border trade in services, investment, temporary entry, electronic commerce, and intellectual property rights related to services. At the request of a Party, or upon a reference from the relevant specialised committee, or when preparing a discussion in the CETA Joint Committee, the Committee on Services and Investment may also address matters arising in the area of financial services or government procurement if this facilitates the resolution of a matter that cannot otherwise be resolved by the relevant specialised committee.

A Joint Committee on Mutual Recognition of Professional Qualifications shall be established under and report to the Committee on Services and Investment;

(c) the Joint Customs Cooperation Committee (JCCC), established under the 1998 *Agreement between the European Community and Canada on Customs Cooperation and Mutual Assistance in Customs Matters*, done at Ottawa on 4 December 1997, which addresses matters under this Agreement concerning rules of origin, origin procedures, customs and trade facilitation, border measures and temporary suspension of preferential tariff treatment;

(d) the Joint Management Committee on Sanitary and Phytosanitary Measures, which addresses matters concerning sanitary and phytosanitary measures;

(e) the Committee on Government Procurement, which addresses matters concerning government procurement;

(f) the Financial Services Committee, which addresses matters concerning financial services;

(g) the Committee on Trade and Sustainable Development, which addresses matters concerning sustainable development;

(h) the Regulatory Cooperation Forum, which addresses matters concerning regulatory cooperation; and

(i) the CETA Committee on Geographical Indications, which addresses matters concerning geographical indications.

2. The specialised committees established pursuant to paragraph 1 shall operate according to the provisions of paragraphs 3 through 5.

3. The remit and tasks of the specialised committees established pursuant to paragraph 1 are further defined in the relevant Chapters and Protocols of this Agreement.

4. Unless otherwise provided under this Agreement, or if the co-chairs decide otherwise, the specialised committees shall meet once a year. Additional meetings may be held at the request of a Party or of the CETA Joint Committee. They shall be co-chaired by representatives of Canada and the European Union. The specialised committees shall set their meeting schedule and agenda by mutual consent. They shall set and modify their own rules of procedures, if they deem it appropriate. The specialised committees may propose draft decisions for adoption by the CETA Joint Committee, or take decisions when this Agreement so provides.

5. Each Party shall ensure that when a specialised committee meets, all the competent authorities for each issue on the agenda are represented, as each Party deems appropriate, and that each issue can be discussed at the adequate level of expertise.

6. The specialised committees shall inform the CETA Joint Committee of their schedules and agenda sufficiently in advance of their meetings and shall report to the CETA Joint Committee on results and conclusions from each of their meetings. The creation or existence of a specialised committee does not prevent a Party from bringing any matter directly to the CETA Joint Committee.

ARTICLE 26.3

Decision making

1. The CETA Joint Committee shall, for the purpose of attaining the objectives of this Agreement, have the power to make decisions in respect of all matters when this Agreement so provides.

2. The decisions made by the CETA Joint Committee shall be binding on the Parties, subject to the completion of any necessary internal requirements and procedures, and the Parties shall implement them. The CETA Joint Committee may also make appropriate recommendations.

3. The CETA Joint Committee shall make its decisions and recommendations by mutual consent.

ARTICLE 26.4

Information sharing

When a Party submits to the CETA Joint Committee or any specialised committee established under this Agreement information considered as confidential or protected from disclosure under its laws, the other Party shall treat that information as confidential.

ARTICLE 26.5

CETA contact points

1. Each Party shall promptly appoint a CETA contact point and notify the other Party within 60 days following the entry into force of this Agreement.

2. The CETA contact points shall:

(a) monitor the work of all institutional bodies established under this Agreement, including communications relating to successors to those bodies;

(b) coordinate preparations for committee meetings;

(c) follow up on any decisions made by the CETA Joint Committee, as appropriate;

(d) except as otherwise provided in this Agreement, 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;

(e) respond to any information requests pursuant to Article 27.2 (Provision of information); and

(f) consider any other matter that may affect the operation of this Agreement as mandated by the CETA Joint Committee.

3. The CETA contact points shall communicate as required.

ARTICLE 26.6

Meetings

1. Meetings referred to in this Chapter should be in person. Parties may also agree to meet by videoconference or teleconference.

2. The Parties shall endeavour to meet within 30 days after a Party receives a request to meet by the other Party.

CHAPTER TWENTY-SEVEN

TRANSPARENCY

ARTICLE 27.1

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 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 27.2

Provision of information

1. At the request of the other Party, a Party shall, to the extent possible, promptly provide information and respond to questions pertaining to any existing or proposed measure that materially affects the operation of this Agreement.

2. Information provided under this Article is without prejudice as to whether the measure is consistent with this Agreement.

ARTICLE 27.3

Administrative proceedings

To administer a measure of general application affecting matters covered by this Agreement in a consistent, impartial and reasonable manner, each Party shall ensure that its administrative proceedings applying measures referred to in Article 27.1 to a particular person, good or service of the other Party in a specific case:

(a) whenever possible, provide reasonable notice to a person of the other Party who is directly affected by a proceeding, 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 the issues in controversy;

(b) provide a person referred to in subparagraph (a) a reasonable opportunity to present facts and arguments in support of its position prior to any final administrative action, when permitted by time, the nature of the proceeding, and the public interest; and

(c) are conducted in accordance with its law.

ARTICLE 27.4

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, if warranted, correction of final administrative actions regarding matters covered by this Agreement. Each Party shall ensure that its tribunals are impartial and independent of the office or authority entrusted with administrative enforcement and that they do not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any tribunals or procedures referred to in paragraph 1, 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, if required by its law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decisions are implemented by and govern the practice of the offices or authorities with respect to the administrative action at issue.

ARTICLE 27.5

Cooperation on promoting increased transparency

The Parties agree to cooperate in bilateral, regional and multilateral *fora* on ways to promote transparency in respect of international trade and investment.

CHAPTER TWENTY-EIGHT

EXCEPTIONS

ARTICLE 28.1

Definitions

For the purposes of this Chapter:

residence means residence for tax purposes;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

tax and **taxation measure** includes an excise duty, but does not include:

(a) a customs duty as defined in Article 1.1 (General definitions), and

(b) a measure listed in exceptions (b) or (c) in the definition of "customs duty" in Article 1.1 (General definitions).

ARTICLE 28.2

Party-specific definitions

For the purposes of this Chapter:

competition authority means:

(a) for Canada, the Commissioner of Competition or a successor notified to the other Party through the CETA contact points; and

(b) for the European Union, the Commission of the European Union with respect to its responsibilities pursuant to the competition laws of the European Union;

competition laws means:

(a) for Canada, the *Competition Act*, R.S.C. 1985, c. C-34; and

(b) for the European Union, Articles 101, 102 and 106 of the *Treaty on the Functioning of the European Union*, of 13 December 2007, Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings, and their implementing regulations or amendments; and

information protected under its competition laws means:

(a) for Canada, information within the scope of Section 29 of the *Competition Act*, R.S.C. 1985, c. C-34; and

(b) for the European Union, information within the scope of Article 28 of Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty or Article 17 of Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

ARTICLE 28.3

General exceptions

1. For the purposes of Article 30.8.5 (Termination, suspension or incorporation of other existing agreements), Chapters Two (National Treatment and Market Access for Goods), Five (Sanitary and Phytosanitary Measures), and Six (Customs and Trade Facilitation), the Protocol on rules of origin and origin procedures and Sections B (Establishment of investment) and C (Non-discriminatory treatment) of Chapter Eight (Investment), Article XX of the GATT 1994 is incorporated into and made part of this Agreement. The Parties understand that the measures referred to in Article XX (b) of the GATT 1994 include environmental measures necessary to protect human, animal or plant life or health. The Parties understand that Article XX(g) of the GATT 1994 applies to measures for the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapters Nine (Cross-Border Trade in Services), Ten (Temporary Entry and Stay of Natural Persons for Business Purposes), Twelve (Domestic Regulations), Thirteen (Financial Services), Fourteen (International Maritime Transport Services), Fifteen (Telecommunications), Sixteen (Electronic Commerce), and Sections B (Establishment of investments) and C (Non-discriminatory treatment) of Chapter Eight (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary:

(a) to protect public security or public morals or to maintain public order;[33]

(b) to protect human, animal or plant life or health;[34] or

(c) to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

[33] The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

[34] The Parties understand that the measures referred to in subparagraph (b) include environmental measures necessary to protect human, animal or plant life or health.

(iii) safety.

ARTICLE 28.4

Temporary safeguard measures with regard to capital movements and payments

1. Where, in exceptional circumstances, capital movements and payments, including transfers, cause or threaten to cause serious difficulties for the operation of the economic and monetary union of the European Union, the European Union may impose safeguard measures that are strictly necessary to address such difficulties for a period not to exceed 180 days.

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

ARTICLE 28.5

Restrictions in case of serious balance of payments and external financial difficulties

1. Where Canada or a Member State of the European Union that is not a member of the European Monetary Union experiences serious balance-of-payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements or payments, including transfers.

2. Measures referred to in paragraph 1 shall:

(a) not treat a Party less favourably than a third country in like situations;

(b) be consistent with the *Articles of Agreement of the International Monetary Fund*, done at Bretton Woods on 22 July 1944, as applicable;

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

(d) be temporary and phased out progressively as the situation specified in paragraph 1 improves and shall not exceed 180 days. If extremely exceptional circumstances arise such that a Party seeks to extend such measures beyond a period of 180 days, it will consult in advance with the other Party regarding the implementation of any proposed extension.

3. In the case of trade in goods, a Party may adopt restrictive measures in order to safeguard its balance-of-payments or external financial position. Such measures shall be in accordance with the GATT 1994 and the *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement.

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

5. A Party that adopts or maintains a measure referred to in paragraph 1 shall promptly notify the other Party and provide, as soon as possible, a schedule for its removal.

6. Where the restrictions are adopted or maintained under this Article, consultations between the Parties shall be held promptly in the CETA Joint Committee, if such consultations are not otherwise taking place in a forum outside of this Agreement. The consultations held under this paragraph shall assess the balance-of-payments or external financial difficulty that led to the respective measures, taking into account, among other things, such factors as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; or

(c) the availability of alternative corrective measures.

7. The consultations pursuant to paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 through 4. The Parties shall accept all findings of statistical and other facts presented by the International Monetary Fund ("IMF") relating to foreign exchange, monetary reserves, balance-of-payments, and their conclusions shall be based on the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

ARTICLE 28.6

National security

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests; or

(b) to prevent a Party from taking an action that it considers necessary to protect its essential security interests:

(i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology undertaken, and to economic activities, carried out directly or indirectly for the purpose of supplying a military or other security establishment;[35]

(ii) taken in time of war or other emergency in international relations; or

(iii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(c) prevent a Party from taking any action in order to carry out its international obligations for the purpose of maintaining international peace and security.

[35] The expression "traffic in arms, ammunition and implements of war" in this Article is equivalent to the expression "trade in arms, munitions and war material".

ARTICLE 28.7

Taxation

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining any taxation measure that distinguishes between persons who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining any taxation measure aimed at preventing the avoidance or evasion of taxes pursuant to its tax laws or tax conventions.

3. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of inconsistency between this Agreement and a tax convention, that convention prevails to the extent of the inconsistency.

4. Nothing in this Agreement or in any arrangement adopted under this Agreement shall apply:

(a) to a taxation measure of a Party that provides a more favourable tax treatment to a corporation, or to a shareholder of a corporation, on the basis that the corporation is wholly or partly owned or controlled, directly or indirectly, by one or more investors who are residents of that Party;

(b) to a taxation measure of a Party that provides an advantage relating to the contributions made to, or income of, an arrangement providing for the deferral of, or exemption from, tax for pension, retirement, savings, education, health, disability or other similar purposes, conditional on a requirement that that Party maintains continuous jurisdiction over such arrangement;

(c) to a taxation measure of a Party that provides an advantage relating to the purchase or consumption of a particular service, conditional on a requirement that the service be provided in the territory of that Party;

(d) to a taxation measure of a Party that is aimed at ensuring the equitable and effective imposition or collection of taxes, including a measure that is taken by a Party in order to ensure compliance with the Party's taxation system;

(e) to a taxation measure that provides an advantage to a government, a part of a government, or a person that is directly or indirectly owned, controlled or established by a government;

(f) to an existing non-conforming taxation measure not otherwise covered in paragraphs 1, 2 and 4(a) through (e), to the continuation or prompt renewal of such a measure, or an amendment of such a measure, provided that the amendment does not decrease its conformity with the provisions of this Agreement as it existed immediately before the amendment.

5. For greater certainty, the fact that a taxation measure constitutes a significant amendment to an existing taxation measure, takes immediate effect as of its announcement, clarifies the intended application of an existing taxation measure, or has an unexpected impact on an investor or covered investment, does not, in and of itself, constitute a violation of Article 8.10 (Treatment of investors and of covered investments).

6. Articles 8.7 (Most-favoured-nation treatment), 9.5 (Most-favoured-nation treatment) and 13.4 (Most-favoured-nation treatment) do not apply to an advantage accorded by a Party pursuant to a tax convention.

7. (a) Where an investor submits a request for consultations pursuant to Article 8.19 (Consultations) claiming that a taxation measure breaches an obligation under Sections C (Non-discriminatory treatment) or D (Investment protection) of Chapter Eight (Investment), the respondent may refer the matter for consultation and joint determination by the Parties as to whether:

(i) the measure is a taxation measure;

(ii) the measure, if it is found to be a taxation measure, breaches an obligation under Sections C (Non-discriminatory treatment) or D (Investment protection) of Chapter Eight (Investment); or

(iii) there is an inconsistency between the obligations in this Agreement that are alleged to have been breached and those of a tax convention.

(b) A referral pursuant to subparagraph (a) cannot be made later than the date the Tribunal fixes for the respondent to submit its counter-memorial. Where the respondent makes such a referral the time periods or proceedings specified in Section F (Resolution of investment disputes between investors and states) of Chapter Eight (Investment) shall be suspended. If within 180 days from the referral the Parties do not agree to consider the issue, or fail to make a joint determination, the suspension of the time periods or proceedings shall no longer apply and the investor may proceed with its claim.

(c) A joint determination by the Parties pursuant to subparagraph (a) shall be binding on the Tribunal.

(d) Each Party shall ensure that its delegation for the consultations to be conducted pursuant to subparagraph (a) shall include persons with relevant expertise on the issues covered by this Article, including representatives from the relevant tax authorities of each Party. For Canada, this means officials from the Department of Finance Canada.

8. For greater certainty,

(a) **taxation measure of a Party** means a taxation measure adopted at any level of government of a Party; and

(b) for measures of a sub-national government, **resident of a Party**, means either resident of that sub-national jurisdiction or resident of the Party of which it forms a part.

ARTICLE 28.8

Disclosure of information

1. This Agreement does not require a Party to furnish or allow access to information which, if disclosed, would impede law enforcement or the disclosure of which is prohibited or restricted under its law.

2. In the course of a dispute settlement procedure under this Agreement,

(a) a Party is not required to furnish or allow access to information protected under its competition laws; and

(b) a competition authority of a Party is not required to furnish or allow access to information that is privileged or otherwise protected from disclosure.

ARTICLE 28.9

Exceptions applicable to culture

The Parties recall the exceptions applicable to culture as set out in the relevant provisions of Chapters Seven (Subsidies), Eight (Investment), Nine (Cross-Border Trade in Services), Twelve (Domestic Regulation) and Nineteen (Government Procurement).

ARTICLE 28.10

WTO waivers

If a right or obligation in this Agreement duplicates one under the WTO Agreement, the Parties agree that a measure in conformity with a waiver decision adopted by the WTO pursuant to Article IX of the WTO Agreement is deemed to be also in conformity with the duplicated provision in this Agreement.

CHAPTER TWENTY-NINE

DISPUTE SETTLEMENT

SECTION A

Initial provisions

ARTICLE 29.1

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 29.2

Scope

Except as otherwise provided in this Agreement, this Chapter applies to any dispute concerning the interpretation or application of the provisions of this Agreement.

ARTICLE 29.3

Choice of forum

1. Recourse to the dispute settlement provisions of this Chapter is without prejudice to recourse to dispute settlement under the WTO Agreement or under any other agreement to which the Parties are party.

2. Notwithstanding paragraph 1, if an obligation is equivalent in substance under this Agreement and under the WTO Agreement, or under any other agreement to which the Parties are party, a Party may not seek redress for the breach of such an obligation in the two fora. In such case, once a dispute settlement proceeding has been initiated under one agreement, the Party shall not bring a claim seeking redress for the breach of the substantially equivalent obligation under the other agreement, unless the forum selected fails, for procedural or jurisdictional reasons, other than termination under paragraph 20 of Annex 29-A, to make findings on that claim.

3. For the purposes of paragraph 2:

(a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the DSU;

(b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 29.6; and

(c) dispute settlement proceedings under any other agreement are deemed to be initiated by a Party's request for the establishment of a dispute settlement panel or tribunal in accordance with the provisions of that agreement.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the WTO Dispute Settlement Body. A Party may not invoke the WTO Agreement to preclude the other Party from suspending obligations pursuant to this Chapter.

SECTION B

Consultations and mediation

ARTICLE 29.4

Consultations

1. A Party may request in writing consultations with the other Party regarding any matter referred to in Article 29.2.

2. The requesting Party shall transmit the request to the responding Party, and shall set out the reasons for the request, including the identification of the specific measure at issue and the legal basis for the complaint.

3. Subject to paragraph 4, the Parties shall enter into consultations within 30 days of the date of receipt of the request by the responding Party.

4. In cases of urgency, including those involving perishable or seasonal goods, or services that rapidly lose their trade value, consultations shall commence within 15 days of the date of receipt of the request by the responding Party.

5. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations. To this end, each Party shall:

(a) provide sufficient information to enable a full examination of the matter at issue;

(b) protect any confidential or proprietary information exchanged in the course of consultations as requested by the Party providing the information; and

(c) make available the personnel of its government agencies or other regulatory bodies who have expertise in the matter that is the subject of the consultations.

6. Consultations are confidential and without prejudice to the rights of the Parties in proceedings under this Chapter.

7. Consultations shall take place in the territory of the responding Party unless the Parties agree otherwise. Consultations may be held in person or by any other means agreed to by the Parties.

8. A Party's proposed measure may be the subject of consultations under this Article but may not be the subject of mediation under Article 29.5 or the dispute settlement procedures under Section C.

ARTICLE 29.5

Mediation

The Parties may have recourse to mediation with regard to a measure if the measure adversely affects trade and investment between the Parties. Mediation procedures are set out in Annex 29-C.

SECTION C

Dispute settlement procedures and compliance

Sub-section A

Dispute settlement procedures

ARTICLE 29.6

Request for the establishment of an arbitration panel

1. Unless the Parties agree otherwise, if a matter referred to in Article 29.4 has not been resolved within:

(a) 45 days of the date of receipt of the request for consultations; or

(b) 25 days of the date of receipt of the request for consultations for matters referred to in Article 29.4.4,

the requesting Party may refer the matter to an arbitration panel by providing its written request for the establishment of an arbitration panel to the responding Party.

2. The requesting Party shall identify in its written request the specific measure at issue and the legal basis for the complaint, including an explanation of how such measure constitutes a breach of the provisions referred to in Article 29.2.

ARTICLE 29.7

Composition of the arbitration panel

1. The arbitration panel shall be composed of three arbitrators.

2. The Parties shall consult with a view to reaching an agreement on the composition of the arbitration panel within 10 working days of the date of receipt by the responding Party of the request for the establishment of an arbitration panel.

3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame set out in paragraph 2, either Party may request the Chair of the CETA Joint Committee, or the Chair's delegate, to draw by lot the arbitrators from the list established under Article 29.8. One arbitrator shall be drawn from the sub-list of the requesting Party, one from the sub-list of the responding Party and one from the sub-list of chairpersons. If the Parties have agreed on one or more of the arbitrators, any remaining arbitrator shall be selected by the same procedure in the applicable sub-list of arbitrators. If the Parties have agreed on an arbitrator, other than the chairperson, who is not a national of either Party, the chairperson and other arbitrator shall be selected from the sub-list of chairpersons.

4. The Chair of the CETA Joint Committee, or the Chair's delegate, shall select the arbitrators as soon as possible and normally within five working days of the request referred to in paragraph 3 by either Party. The Chair, or the Chair's delegate, shall give a reasonable opportunity to representatives of each Party to be present when lots are drawn. One of the Chairpersons can perform the selection by lot alone if the other Chairperson was informed about the date, time and place of the selection by lot and did not accept to participate within five working days of the request referred to in paragraph 3.

5. The date of establishment of the arbitration panel shall be the date on which the last of the three arbitrators is selected.

6. If the list provided for in Article 29.8 is not established or if it does not contain sufficient names at the time a request is made pursuant to paragraph 3, the three arbitrators shall be drawn by lot from the arbitrators who have been proposed by one or both of the Parties in accordance with Article 29.8.1.

7. Replacement of arbitrators shall take place only for the reasons and according to the procedure set out in paragraphs 21 through 25 of Annex 29-A.

ARTICLE 29.8

List of arbitrators

1. The CETA Joint Committee shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals, chosen on the basis of objectivity, reliability and sound judgment, who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals who are not nationals of either Party to act as chairpersons. Each sub-list shall include at least five individuals. The CETA Joint Committee may review the list at any time and shall ensure that the list conforms with this Article.

2. The arbitrators must have specialised knowledge of international trade law. The arbitrators acting as chairpersons must also have experience as counsel or panellist in dispute settlement proceedings on subject matters within the scope of this Agreement. The arbitrators shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct in Annex 29-B.

ARTICLE 29.9

Interim panel report

1. The arbitration panel shall present to the Parties an interim report within 150 days of the establishment of the arbitration panel. The report shall contain:

(a) findings of fact; and

(b) determinations as to whether the responding Party has conformed with its obligations under this Agreement.

2. Each Party may submit written comments to the arbitration panel on the interim report, subject to any time limits set by the arbitration panel. After considering any such comments, the arbitration panel may:

(a) reconsider its report; or

(b) make any further examination that it considers appropriate.

3. The interim report of the arbitration panel shall be confidential.

ARTICLE 29.10

Final panel report

1. Unless the Parties agree otherwise, the arbitration panel shall issue a report in accordance with this Chapter. The final panel report shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes. The ruling of the arbitration panel in the final panel report shall be binding on the Parties.

2. The arbitration panel shall issue to the Parties and to the CETA Joint Committee a final report within 30 days of the interim report.

3. Each Party shall make publicly available the final panel report, subject to paragraph 39 of Annex 29-A.

ARTICLE 29.11

Urgent proceedings

In cases of urgency, including those involving perishable or seasonal goods, or services that rapidly lose their trade value, the arbitration panel and the Parties shall make every effort to accelerate the proceedings to the greatest extent possible. The arbitration panel shall aim at issuing an interim report to the Parties within 75 days of the establishment of the arbitration panel, and a final report within 15 days of the interim report. Upon request of a Party, the arbitration panel shall make a preliminary ruling within 10 days of the request on whether it deems the case to be urgent.

Sub-section B

Compliance

ARTICLE 29.12

Compliance with the final panel report

The responding Party shall take any measure necessary to comply with the final panel report. No later than 20 days after the receipt of the final panel report by the Parties, the responding Party shall inform the other Party and the CETA Joint Committee of its intentions in respect of compliance.

ARTICLE 29.13

Reasonable period of time for compliance

1. If immediate compliance is not possible, no later than 20 days after the receipt of the final panel report by the Parties, the responding Party shall notify the requesting Party and the CETA Joint Committee of the period of time it will require for compliance.

2. In the event of disagreement between the Parties on the reasonable period of time in which to comply with the final panel report, the requesting Party shall, within 20 days of the receipt of the notification made under paragraph 1 by the responding Party, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the CETA Joint Committee. The arbitration panel shall issue its ruling to the Parties and to the CETA Joint Committee within 30 days from the date of the request.

3. The reasonable period of time may be extended by mutual agreement of the Parties.

4. At any time after the midpoint in the reasonable period of time and at the request of the requesting Party, the responding Party shall make itself available to discuss the steps it is taking to comply with the final panel report.

5. The responding Party shall notify the other Party and the CETA Joint Committee before the end of the reasonable period of time of measures that it has taken to comply with the final panel report.

ARTICLE 29.14

Temporary remedies in case of non-compliance

1. If:

(a) the responding Party fails to notify its intention to comply with the final panel report under Article 29.12 or the time it will require for compliance under Article 29.13.1;

(b) at the expiry of the reasonable period of time, the responding Party fails to notify any measure taken to comply with the final panel report; or

(c) the arbitration panel on compliance referred to in paragraph 6 establishes that a measure taken to comply is inconsistent with that Party's obligations under the provisions referred to in Article 29.2,

the requesting Party shall be entitled to suspend obligations or receive compensation. The level of the nullification and impairment shall be calculated starting from the date of notification of the final panel report to the Parties.

2. Before suspending obligations, the requesting Party shall notify the responding Party and the CETA Joint Committee of its intention to do so, including the level of obligations it intends to suspend.

3. Except as otherwise provided in this Agreement, the suspension of obligations may concern any provision referred to in Article 29.2 and shall be limited at a level equivalent to the nullification or impairment caused by the violation.

4. The requesting Party may implement the suspension 10 working days after the date of receipt of the notification referred to in paragraph 2 by the responding Party, unless a Party has requested arbitration under paragraphs 6 and 7.

5. A disagreement between the Parties concerning the existence of any measure taken to comply or its consistency with the provisions referred to in Article 29.2 ("disagreement on compliance"), or on the equivalence between the level of suspension and the nullification or impairment caused by the violation ("disagreement on equivalence"), shall be referred to the arbitration panel.

6. A Party may reconvene the arbitration panel by providing a written request to the arbitration panel, the other Party and the CETA Joint Committee. In case of a disagreement on compliance, the arbitration panel shall be reconvened by the requesting Party. In case of a disagreement on equivalence, the arbitration panel shall be reconvened by the responding Party. In case of disagreements on both compliance and on equivalence, the arbitration panel shall rule on the disagreement on compliance before ruling on the disagreement on equivalence.

7. The arbitration panel shall notify its ruling to the Parties and to the CETA Joint Committee accordingly:

(a) within 90 days of the request to reconvene the arbitration panel, in case of a disagreement on compliance;

(b) within 30 days of the request to reconvene the arbitration panel, in case of a disagreement on equivalence;

(c) within 120 days of the first request to reconvene the arbitration panel, in case of a disagreement on both compliance and equivalence.

8. The requesting Party shall not suspend obligations until the arbitration panel reconvened under paragraphs 6 and 7 has delivered its ruling. Any suspension shall be consistent with the arbitration panel's ruling.

9. The suspension of obligations shall be temporary and shall be applied only until the measure found to be inconsistent with the provisions referred to in Article 29.2 has been withdrawn or amended so as to bring it into conformity with those provisions, as established under Article 29.15, or until the Parties have settled the dispute.

10. At any time, the requesting Party may request the responding Party to provide an offer for temporary compensation and the responding Party shall present such offer.

ARTICLE 29.15

Review of measures taken to comply after the suspension of obligations

1. When, after the suspension of obligations by the requesting Party, the responding Party takes measures to comply with the final panel report, the responding Party shall notify the other Party and the CETA Joint Committee and request an end to the suspension of obligations applied by the requesting Party.

2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 29.2 within 60 days of the date of receipt of the notification, the requesting Party shall request in writing the arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the CETA Joint Committee. The final panel report shall be notified to the Parties and to the CETA Joint Committee within 90 days of the date of submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 29.2, the suspension of obligations shall be terminated.

SECTION D

General Provisions

ARTICLE 29.16

Rules of procedure

Dispute settlement procedure under this Chapter shall be governed by the rules of procedure for arbitration in Annex 29-A, unless the Parties agree otherwise.

ARTICLE 29.17

General rule of interpretation

The arbitration panel shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law, including those set out in the *Vienna Convention on the Law of Treaties*. The arbitration panel shall also take into account relevant interpretations in reports of Panels and the Appellate Body adopted by the WTO Dispute Settlement Body.

ARTICLE 29.18

Rulings of the arbitration panel

The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in this Agreement.

ARTICLE 29.19

Mutually agreed solutions

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall notify the CETA Joint Committee and the arbitration panel of any such solution. Upon notification of the mutually agreed solution, the arbitration panel shall terminate its work and the proceedings shall be terminated.

CHAPTER THIRTY

FINAL PROVISIONS

ARTICLE 30.1

Integral parts of this Agreement

The protocols, annexes, declarations, joint declarations, understandings and footnotes to this Agreement constitute integral parts thereof.

ARTICLE 30.2

Amendments

1. The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable internal requirements and procedures necessary for the entry into force of the amendment, or on the date agreed by the Parties.

2. Notwithstanding paragraph 1, the CETA Joint Committee may decide to amend the protocols and annexes of this Agreement. The Parties may approve the CETA Joint Committee's decision in accordance with their respective internal requirements and procedures necessary for the entry into force of the amendment. The decision shall enter into force on a date agreed by the Parties. This procedure shall not apply to amendments to Annexes I, II and III and to amendments to the annexes of Chapters Eight (Investment), Nine (Cross-Border Trade in Services), Ten (Temporary Entry and Stay of Natural Persons for Business Purposes) and Thirteen (Financial Services), except for Annex 10-A (List of Contact Points of the Member States of the European Union).

ARTICLE 30.3

Preference utilisation

For a period of 10 years after the entry into force of this Agreement, the Parties shall exchange quarterly figures at the tariff line level for HS Chapters 1 through 97, on imports of goods from the other Party that are subject to MFN-applied tariff rates and tariff preferences under this Agreement. Unless the Parties decide otherwise, this period will be renewed for five years and may be subsequently extended by them.

ARTICLE 30.4

Current account

The Parties shall authorise, in freely convertible currency and in accordance with Article VIII of the *Articles of Agreement of the International Monetary Fund* done at Bretton Woods on 22 July 1944, any payments and transfers on the current account of the balance of payments between the Parties.

ARTICLE 30.5

Movement of capital

The Parties shall consult each other with a view to facilitating the movement of capital between them by continuing to implement their policies regarding the liberalisation of the capital and financial account, and by supporting a stable and secure framework for long term investment.

ARTICLE 30.6

Private rights

1. Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties.

2. A Party shall not provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ARTICLE 30.7

Entry into force and provisional application

1. The Parties shall approve this Agreement in accordance with their respective internal requirements and procedures.

2. This Agreement shall enter into force on the first day of the second month following the date the Parties exchange written notifications certifying that they have completed their respective internal requirements and procedures or on such other date as the Parties may agree.

3. (a) The Parties may provisionally apply this Agreement from the first day of the month following the date on which the Parties have notified each other that their respective internal requirements and procedures necessary for the provisional application of this Agreement have been completed or on such other date as the Parties may agree.

(b) If a Party intends not to provisionally apply a provision of this Agreement, it shall first notify the other Party of the provisions that it will not provisionally apply and shall offer to enter into consultations promptly. Within 30 days of the notification, the other Party may either object, in which case this Agreement shall not be provisionally applied, or provide its own notification of equivalent provisions of this Agreement, if any, that it does not intend to provisionally apply. If within 30 days of the second notification, an objection is made by the other Party, this Agreement shall not be provisionally applied.

The provisions that are not subject to a notification by a Party shall be provisionally applied by that Party from the first day of the month following the later notification, or on such other date as the Parties may agree, provided the Parties have exchanged notifications under subparagraph (a).

(c) A Party may terminate the provisional application of this Agreement by written notice to the other Party. Such termination shall take effect on the first day of the second month following that notification.

(d) If this Agreement, or certain provisions of this Agreement, is provisionally applied, the Parties shall understand the term "entry into force of this Agreement" as meaning the date of provisional application. The CETA Joint Committee and other bodies established under this Agreement may exercise their functions during the provisional application of this Agreement. Any decisions adopted in the exercise of their functions will cease to be effective if the provisional application of this Agreement is terminated under subparagraph (c).

4. Canada shall submit notifications under this Article to the General Secretariat of the Council of the European Union or its successor. The European Union shall submit notifications under this Article to Canada's Department of Foreign Affairs, Trade and Development or its successor.

ARTICLE 30.8

Termination, suspension or incorporation of other existing agreements

1. The agreements listed in Annex 30-A shall cease to have effect, and shall be replaced and superseded by this Agreement. Termination of the agreements listed in Annex 30-A shall take effect from the date of entry into force of this Agreement.

2. In the event of the provisional application of Chapter Eight (Investment) in accordance with Article 30.7.3(a), the agreements listed in Annex 30-A, as well as the rights and obligations derived therefrom shall be suspended as of the date of provisional application. In the event the provisional application is terminated, the suspension of the agreements listed in Annex 30-A shall cease.

3. Notwithstanding paragraphs 1 and 2, a claim may be submitted under an agreement listed in Annex 30-A in accordance with the rules and procedures established in the agreement if:

(a) the treatment that is object of the claim was accorded when the agreement was not suspended or terminated; and

(b) no more than three years have elapsed since the date of suspension or termination of the agreement.

4. Notwithstanding paragraphs 1 and 2, if the provisional application of this Agreement is terminated and this Agreement does not enter into force, a claim may be submitted under Section F of Chapter Eight (Investment) within a period no longer than three years following the date of termination of the provisional application, regarding any matter arising during the provisional application of this Agreement, in accordance with the rules and procedures established in this Agreement.

5. The *Agreement between the European Economic Community and Canada concerning Trade and Commerce in Alcoholic Beverages*, done at Brussels on 28 February 1989, as amended, (the "1989 Alcoholic Beverages Agreement") and the *Agreement between the European Community and Canada on Trade in Wines and Spirit Drinks*, done at Niagara-on-the-Lake on 16 September 2003 (the "2003 Wines and Spirit Drinks Agreement") are incorporated into and made part of this Agreement, as amended by Annex 30-B.

6. The provisions of the 1989 Alcoholic Beverages Agreement or the 2003 Wines and Spirit Drinks Agreement, as amended and incorporated into this Agreement, prevail to the extent that there is an inconsistency between the provisions of those agreements and any other provision of this Agreement.

7. The *Agreement on Mutual Recognition between the European Community and Canada* (the "Agreement on Mutual Recognition"), done at London on 14 May 1998, shall be terminated from the date of entry into force of this Agreement. In the event of provisional application of Chapter Four (Technical Barriers to Trade) in accordance with Article 30.7.3(a), the Agreement on Mutual Recognition, as well as the rights and obligations derived therefrom, shall be suspended as of the date of provisional application. In the event the provisional application is terminated, the suspension of the Agreement on Mutual Recognition shall cease.

8. The Parties recognise the achievements that have been accomplished under the *Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in live animals and animal products*, done at Ottawa on 17 December 1998 (the "Veterinary Agreement") and confirm their intention to continue this work under this Agreement. The Veterinary Agreement shall be terminated from the date of entry into force of this Agreement. In the event of provisional application of Chapter Five (Sanitary and Phytosanitary Measures) in accordance with Article 30.7.3(a), the Veterinary Agreement, as well as the rights and obligations derived therefrom, shall be suspended as of the date of provisional application. In the event the provisional application is terminated, the suspension of the Veterinary Agreement shall cease.

9. The definition of "entry into force of this Agreement" in Article 30.7.3(d) shall not apply to this Article.

ARTICLE 30.9

Termination

1. A Party may denounce this Agreement by giving written notice of termination to the General Secretariat of the Council of the European Union and the Department of Foreign Affairs, Trade and Development of Canada, or their respective successors. This Agreement shall be terminated 180 days after the date of that notice. The Party giving a notice of termination shall also provide the CETA Joint Committee with a copy of the notice.

2. Notwithstanding paragraph 1, in the event that this Agreement is terminated, the provisions of Chapter Eight (Investment) shall continue to be effective for a period of 20 years after the date of termination of this Agreement in respect of investments made before that date. This paragraph shall not apply in the case of provisional application of this Agreement.

ARTICLE 30.10

Accession of new Member States of the European Union

1. The European Union shall notify Canada of any request made by a country to accede to the European Union.

2. During the negotiations between the European Union and the country seeking accession, the European Union shall:

(a) provide, upon the request of Canada, and to the extent possible, any information regarding any matter covered by this Agreement; and

(b) take into account any concerns expressed by Canada.

3. The European Union shall notify Canada of the entry into force of any accession to the European Union.

4. Sufficiently in advance of the date of accession of a country to the European Union, the CETA Joint Committee shall examine any effects of the accession on this Agreement and shall decide on any necessary adjustment or transition measures.

5. Any new Member State of the European Union shall accede to this Agreement from the date of its accession to the European Union by means of a clause to that effect in the act of accession to the European Union. If the act of accession to the European Union does not provide for the automatic accession of the European Union Member State to this Agreement, the European Union Member State concerned shall accede to this Agreement by depositing an act of accession to this Agreement with the General Secretariat of the Council of the European Union and the Department of Foreign Affairs, Trade and Development of Canada, or their respective successors.

ARTICLE 30.11

Authentic texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each version being equally authentic.