中華民國與巴拿馬共和國自由貿易協定
前言

中華民國政府（以下簡稱中華民國）與巴拿馬共和國政府（以下簡稱巴拿馬）雙方決議：

加強雙方傳統友誼暨其人民間之既有合作精神；善用各方在其個別所屬區域市場之戰略上與地理上之位置；達成彼此貿易關係之較佳平衡；為雙方領域內生產之貨品與服務，建構更廣大與穩定之市場；認知雙方發展程度與經濟規模之差異以及創造雙方經貿發展機會之需求；避免雙邊貿易之扭曲；

訂立規範貨品與服務貿易及促進與保護在雙方領域內投資之明確且互利之規則；尊重各方在「馬爾喀什設立世界貿易組織協定」與其他雙邊及多邊合作協定下之權利與義務；加強各方企業在全球市場之競爭力；

創造各方國民在其領域內之就業機會及提升其國民之生活水準；以符合環境保護、維護及永續發展之方式推動經貿發展；保有維護公眾福祉的能力；及鼓勵不同經濟領域從業人士，尤其是私人部門之積極參與，以強化締約國間的經貿關係；

爰同意如下：

第壹篇：總則

第一章　原則性條款

第 1.01 條　本自由貿易區之成立

締約國雙方茲依本協定，並按一九九四年關稅暨貿易總協定第廿四條及服務貿易總協定第五條之規定，成立自由貿易區。

第 1.02 條　本協定之遵行

締約國應依其內國憲法規範，採行一切必要措施，以確保本協定規定於其管轄領域內及其各級政府，均受遵行。

第 1.03 條　與其他國際協定之關係

1. 締約國重申維持彼此於世界貿易組織協定以及雙方均為締約國之其他協定下之權利及義務。

2. 如本協定規定與前項所述協定之規定發生任何牴觸，除本協定另有規定者外，就抵觸之部分悉依本協定之規定。

3. 如本協定規定與下述任一協定中有關貿易事項之特定義務發生牴觸：

(a) 一九七三年三月三日於華盛頓簽訂並於一九七九年六月廿二日修正之「瀕臨絕種野生動植物國際貿易公約」（華盛頓公約）；

(b) 一九八七年九月十六日簽訂並於一九九〇年六月廿九日修正之「管制破壞臭氧層物質之蒙特婁議定書」；或

(c) 一九八九年三月廿二日簽訂之「控制有害廢棄物越境轉移及其處置之巴塞爾公約」；

就抵觸之部分，悉以此等特定義務為優先，惟締約國應於有效履行此等義務之各項合理可行方式中，選擇採行與本協定其他規定牴觸程度較輕微之方式。

第 1.04 條　後繼協定

本協定中援引之其他條約或國際協定，包括雙方均為會員之後繼條約或國際協定。

第二章　總定義

第 2.01 條　　整體適用之定義

除他章另有規定者外，本協定相關用語定義如下：

章：國際貨品統一分類制度號列之前兩碼；

執委會：依本協定第 18.01 條（協定執行委員會）成立之協定執行委員會；

關稅：任何對進口貨品課徵或因與進口有關而課徵之稅或各種規費，包括各種形式之附加稅或附加費用，惟不含：

(a) 符合一九九四年關稅暨貿易總協定第三條第二項規定而課徵之內地稅；

(b) 依據締約國雙方內國法所課徵，且符合本協定第七章（不公平貿易行為）之反傾銷稅或平衡稅；

(c) 與進口有關，且與服務成本成比例之規費或其他收費；及

(d) 為管理進口數量限制措施、關稅配額或優惠關稅，而採行標售制度，因此就進口貨品提出或收取之金額；

關稅估價協定：世界貿易組織協定下之「一九九四年關稅暨貿易總協定第七條執行協定」，含其附註；

日：指日曆天，包括星期六、星期日及假日；

企業：依據締約國一方之法律所設立或組成的營利或非營利機構，不論私有或政府擁有，包括公司、法人團體、基金會、信託、合夥、獨資、合資或其他類型機構；

當時有效：本協定生效日當時為有效者；

服務貿易總協定：世界貿易組織協定下之「服務貿易總協定」；

一九九四年關稅暨貿易總協定：世界貿易組織協定下之「一九九四年關稅暨貿易總協定」；

貨品：任何原料、物質、產品或零件；

締約國一方之貨品：一九九四年關稅暨貿易總協定下所謂之國內產品，或指經締約國賦予此種性質之貨品，並包括原產於該締約國之貨品。締約國一方之貨品得含有來非締約國之原料；

統一分類制度：締約國相關法律所採行且仍為有效之「國際商品統一分類制度」，包含其解釋準則、類註、章註、節註及目註；

節：國際商品統一分類制度號列前四碼；

措施：任何法律、規章、程序、要求、規定或實務作法；

國民：附件 2.01 **所稱之自然人；**

原產貨品：符合本協定第四章（原產地規則）所規定原產地之貨品；

人：自然人或企業；

締約國之人：指締約國之國民或企業；

締約國：巴拿馬或中華民國；

生產者：從事製造、生產、加工或組裝貨品之人；或耕作、栽種、養殖、採礦、開採、收穫、漁撈、誘捕、收集、採集、狩獵、捕獲貨品者；

秘書處：依據本協定第 18.03 **條所設立之「秘書處」；**

國營企業：一締約國所擁有或透過所有權之利益而控制之企業；

目：國際商品統一分類制度號列前六碼；

關稅調降表：依據本協定附件 3.04 **所設置之「關稅調降表」；**

領域：締約國依據內國法及國際法而行使主權及管轄權之領土、領海、領空、專屬經濟區及大陸礁層；

與貿易有關之智慧財產權協定：世界貿易組織協定下之「與貿易有關之智慧財產權協定」；

瞭解書：世界貿易組織協定下之「爭端解決規則與程序瞭解書」；

統一規章：依本協定第 5.12 **條（統一規章）所制定之「統一規章」；及**

世界貿易組織協定：一九九四年四月十五日簽署之馬爾喀什設立世界貿易組織協定。

附件 2.01　個別國家之特殊定義

為本協定之目的，除他章另有規定者外，下列名詞應作如下定義：

國民：

就巴拿馬而言，係指：

(a) **依據巴拿馬共和國憲法第九條之規定，因出生而為國民者；**

(b) **依據巴拿馬共和國憲法第十條之規定，因歸化而為國民者；**

(c) **依據巴拿馬共和國憲法第十一條之規定，因收養而為國民者；及**

就中華民國而言，係指：

依據中華民國憲法第三條，且依中華民國國籍法第二條之規定，因出生或歸化而擁有中華民國國籍者。

第貳篇：貨品貿易

第三章　貨品之國民待遇及市場進入

第一節 定義及適用範圍

第 3.01 條　　定義

為本章之目的，相關用語定義如下：

廣告影片：經錄製而成之有聲或無聲視覺傳播媒介，其影像主要係顯示由締約國一方領域內設立或居住之任何人所販售或出租之貨品或服務之性質或功能；但該影片須僅適合展示予潛在客戶，而非對一般大眾播放，並且其進口係以小包方式為之，每一小包僅含單一影片之一份拷貝，而非屬大量發貨之一部分者。

農產品：列於統一分類制度 1996 年修訂版之下列章、節或目之貨品；

（註：貨名係供參考用）

稅則分類	貨名
第 01 章至第 24 章	（魚類或魚產品除外）
第 2905.43 目	甘露醇
第 2905.44 目	山梨醇
第 33.01 節	精油
第 35.01 至 35.05 節	蛋白、改質澱粉、膠
第 3809.10 目	澱粉基料
第 3824.60 目	山梨醇但 2905.44 目之貨品除外
第 41.01 至 41.03 節	生皮
第 43.01 節	生毛皮
第 50.01 至 50.03 節	生絲與廢絲
第 51.01 至 51.03 節	羊毛與動物毛
第 52.01 至 52.03 節	棉花
第 53.01 節	生亞麻
第 53.02 節	生大麻

低價值或無商業價值之商業樣品：商業樣品（個別而言或以整批發貨）之價值不超過美金壹元（US$1）或任一締約國等值貨幣，或因標示、損毀、破裂或處理方式等導致無法銷售，或僅能作為樣品用途者；

消耗：

(a) 實際消耗；或

(b) **經加工或製造而導致產品之價值、外形或用途產生實質改變或因使用於生產其它貨品，而產生實質改變；**

供展覽或展示之貨品：包括零件、配件及組件；

為運動之目的而進口之貨品：為在締約國領域內供參加運動比賽、體育活動、體育訓練之用，而進口之體育器材；但以成品為限；

印刷宣傳品：列於統一分類制度第 49 **章，屬免費發送、用於推廣、公開或廣告貨品或服務之小冊、印刷品、傳單、貨品目錄、商業團體年鑑、觀光推廣之物品與海報；**

修理或改裝：不含破壞貨品基本特性、轉變為新貨品或商業上不同貨品之作業或製程等活動。將非成品轉變為成品之生產或裝配等作業或製程，不屬於修理或改裝之範圍；

對農產品出口之補貼：係指與下列有關之補貼：

(a) **政府或其機構，對農產品之廠商、產業、生產者、此類生產者之合作社或其他協會、或行銷委員會，以出口實績為條件，而給予之直接補貼；實物補貼亦包括在內；**

(b) **政府或其機構為出口而銷售或處理其非商業性庫存農產品，其價格低於同類產品在國內市場銷售之可資比較價格者；**

(c) **因政府行為而對某一農產品之出口實施給付，而不問該給付是否有公共財務之負擔者；運用對該項農產品或出口產品之原料農產品之課稅收入所為之給付，亦包括在內；**

(d) **為降低出口農產品行銷成本而給予之補貼（出口者普遍可以獲得之出口推廣及諮詢服務除外）；包括處理、提昇品級及其他加工成本，以及國際運輸成本等；**

(e) **由政府提供或委託之境內運送及其運輸費率，對出口貨品所提供之條件，較對內銷產品提供者為優惠；或**

(f) **以農產品被使用於出口產品作為條件，而對該農產品給予之補貼；及**

貨品暫准通關：貨品暫准通關或暫時進口。

第 3.02 條　　適用範圍

除本協定另有規定外，本章適用於締約國間之貨品貿易。

第二節　國民待遇

第 3.03 條　　國民待遇

1. 締約國均應依據一九九四年關稅暨貿易總協定第三條及其附註之規定，給予締約國他方貨品國民待遇；締約國茲將該等條款納入本協定，並使其構成本協定之一部份。

2. 為前項之目的，締約國一方給予締約國他方貨品之待遇，不得低於其給予原產於其本國之同類貨品、直接競爭貨品或替代貨品之最優惠待遇。

第三節 關稅

第 3.04 條 關稅調降表

1. 締約國承諾自本協定生效時起，依照附件 3.04 所示之關稅調降表消除關稅，以確保原產貨品進入締約國他方市場。惟附件 3.04 另有規定者，不在此限。

2. 除本協定另有規定外，本條目的不在限制締約國於世界貿易組織協定或其下之其他任何協定允許之下，維持或提高其關稅。

3. 若締約國一方將貨品關稅調降至低於關稅調降表所訂之水準，則第一項規定並不禁止締約國調高其關稅；惟其水準不得高於關稅調降表所定者。於關稅調降過程中，締約國承諾原產地貨品相互貿易之關稅，適用關稅調降表與依一九九四年關稅暨貿易總協定第一條規定之當時有效關稅中之最低者。

4. 在任一締約國請求下，締約國雙方應就加速消除關稅調降表所列關稅之可能性展開諮商。

5. 不問前述第 1 項至第 4 項之規定，締約國得維持、採行或修改附件 3.04 關稅調降表所排除貨品之關稅。

第 3.05 條 貨品暫准通關

1. 締約國對於來自於締約國他方之下列貨品應予免稅暫准通關：

   (a) 符合本協定第十四章（商務人士暫准進入）規定條件之商務人士為執行其活動、商務或職業所需之專業設備；

   (b) 新聞設備、電台或電視台傳播訊號之設備以及電影設備；

   (c) 為運動目的而進口之貨品及為展覽或展示之貨品；及

   (d) 商業樣品或廣告影片。

2. 除本協定另有規定外，締約國對第 1 項之(a)、(b)、(c)三款所列貨品，除下列條件外，不得就給予免稅暫准通關另設條件：

   (a) 該貨品之暫時進口係由欲暫准進入之締約國他方國民或居民

所為；

(b) 該貨品完全由此人所使用，或在其親自監督下進行其商業活動、商務或專業之用；

(c) 該貨品在停留國內期間，非供出售或出租之用；

(d) 就該貨品要求繳納不超過相當於最終確定進口所應繳費用110%之押金，或提出其他方式之擔保；該等押金或擔保可在其復運出境時退回。暫准通關貨品如屬原產貨品，不得要求繳納押金；

(e) 該貨品於離境時仍屬容易識別；

(f) 該貨品與該人員一同出境或在暫准通關目的下之合理時間內出境；及

(g) 該貨品之進口，未超過其原目的下之合理數量。

3. 除本協定另有規定外，締約國對第 1 項(d)款所列貨品，除下列條件外，不得就給予免稅暫准通關另設條件：

(a) 該貨品進口之唯一目的，在為來自於締約國他方或非締約國之貨品或服務爭取訂單之用；

(b) 該貨品於停留其領域內時非供出售、出租、展示或展覽以外之用；

(c) 該貨品於離境時仍屬容易識別；

(d) 該貨品在暫准通關目的下之合理時間內出境；及

(e) 該貨品之進口，未超過其原目的下之合理數量。

4. 依第 1 項得免稅暫准通關之貨品，但未履行締約國依第 2 項或第 3 項所定之條件者，則該締約國得課以：

(a) 該貨品之進口關稅及任何因進口而課徵之其他稅費；及

(b) 依其情況適當之刑事、民事或行政處分。

第 3.06 條　低價值或無商業價值商業樣品及印刷宣傳品之免稅進口

締約國應准許來自締約國他方之低價值或無商業價值商業樣品及印刷宣傳品免稅進口，但得為如下要求：

(a) 該等商業樣品進口之唯一目的，在為來自於締約國他方或非締約國之貨品或服務，爭取訂單之用；或

(b) 該等印刷宣傳品，係以小包方式進口，每一小包內僅含一份，且非屬大量發貨之一部分者。

第 3.07 條　　修理或改裝貨品之復運進口

1. 締約國不得對先前出口至締約國他方進行修理或改裝之貨品，於復運進口時課徵關稅。

2. 締約國不得對自締約國他方暫時進口以進行修理或改裝之貨品，課徵關稅。

3. 第 1 項之「復運進口」及第 2 項之「暫時進口」二詞意義，係依各締約國法令規定。

第 3.08 條　　關稅估價

於本協定生效時，有關規範雙方貿易之關稅估價原則，應依關稅估價協定（含該協定之附件）之規定。締約國雙方並不得依官定最低價格，作為決定貨品關稅完稅價格之基礎。

第四節 非關稅措施

第 3.09 條　　境內支持

1. 締約國雙方咸認境內支持對其農業之重要性，但亦認其可能造成貿易扭曲及影響生產。因此締約國雙方所為之境內支持，應依世界貿易組織之農業協定及締約國雙方均簽署之後繼協定之規定。如締約國一方決定給予其國內農業生產者境內支持，該締約國應致力使其境內支持政策，符合下列要求：

(a) 對貿易及產出之扭曲最小或完全無影響；或

(b) 依照其在世界貿易組織下之承諾。

2. 為確保農業境內支持之透明性，締約國雙方同意對此種政策實施持續及永久性分析。為達此目標，雙方應使用所獲取之資訊，作為各個年度通知世界貿易組織農業委員會之主要資料來源；締約國一方提出要求時，雙方應交換此種通知文件。除前述規定外，締約國一方亦得向他方要求提供額外資訊與說明。受請求之一方並應立即提供該項資料。締約國一方提出要求時，上述資料及分析結果，得為貨品貿易委員會諮商之內容。

第 3.10 條　　出口補貼

1. 締約國雙方均認同世界貿易組織協定下所要求，消除農產品及非農產品出口補貼之目標；並同意在本協定生效時，即攜手合作，以達成此目標。

2. 締約國雙方亦承諾，無論世界貿易組織有關補貼暨平衡措施協定及農業協定之多邊談判結果如何，均不再重新採行任何出口補貼。

第 3.11 條　　進口與出口之限制

1. 各締約國承諾立即消除非關稅障礙；惟不包含各締約國依據一九九四年關稅暨貿易總協定第二十條及第二十一條，以及本協定第八章（食品安全檢驗與動植物防疫檢疫措施）與第九章（標準、度量衡及授權程序）之規定所享有之權利。

2. 除本協定另有規定外，締約國不得對締約國他方貨品之進口，或對銷往締約國他方之任何出口或為出口之目的而為之販售，採取或維持任何禁止或限制措施；惟不包含依一九九四年關稅暨貿易總協定第十一條及其附註之規定而採行之措施。為此，一九九四年關稅暨貿易總協定第十一條及其附註，茲均納入本協定，而為本協定之一部分。

3. 締約國雙方均理解，第 2 項所納入之一九九四年關稅暨貿易總協定權利與義務所禁止之其他形式的限制措施，包括禁止出口價格要求與進口價格之要求；但為執行平衡稅及反傾銷稅命令與價格具結者，不在此限。

4. 如一締約國對進口自或出口至一非締約國之貨品採取或維持禁止或限制措施，本協定並不禁止此一締約國採行下列措施：

(a) 限制或禁止自締約國他方進口該一非締約國之貨品；或

(b) 以出口至締約國他方之貨品，非經消耗不得直接或間接再出口至非締約國，作為允許出口之條件。

5. 如一締約國採行或維持禁止或限制自非締約國進口貨品措施，於任一締約國提出要求時，締約國雙方應對該措施展開諮商，以避免不當干預或扭曲締約國他方國內之價格、銷售及經銷機制。

6. 第 1 項至第 5 項不適用於附件 3.11 (6)所定之措施。

第 3.12 條　　海關手續費及領事事務費

1. 自本協定生效日起兩年後，締約國不得對原產地貨品收取現行之海關手續費，亦不得新設海關手續費。

2. 自本協定生效時起，締約國不得對原產地貨品收取領事事務費，亦不得要求領事手續。

第 3.13 條　　原產地標示

1. 締約國一方對締約國他方貨品適用其國內原產地標示之規定，應依一九九四年關稅暨貿易總協定第九條之規定。為此目的，茲將一九九四年關稅暨貿易總協定第九條納入本協定，作為本協定之一部

分。

2. 有關適用依據一九九四年關稅暨貿易總協定第九條而訂定之原產地標示之規定，締約國一方給予締約國他方貨品之待遇，不得低於其給予非締約國貨品者。

3. 締約國均應確保，其訂定及執行原產地標示相關法律之目的及效果，均非在使締約國間之貿易，造成不必要之障礙。

第 3.14 條　　出口稅

締約國一方不得對出口至締約國他方之貨品課徵或維持任何稅捐或費用；但如該等稅捐或費用係針對供國內消費之物品所採行或維持者，不在此限。

第 3.15 條　　依政府間協定所採行之措施

如締約國依據一九九四年關稅暨貿易總協定第二十條第（h）款下所簽定之政府間貨品協定採行措施，可能對締約國間之原物料貿易構成影響者，在採行措施前，該締約國應先與締約國他方進行諮商，以避免剝奪或減損該締約國依第 3.04 條所承諾之減讓。

第 3.16 條　　貨品貿易委員會

1. 締約國茲設立貨品貿易委員會，如附件 3.16。

2. 該委員會處理與本章、第四章（原產地規則）、第五章（海關作業程序）及統一規章有關之事項。

3. 在不損及第 18.05 條第 2 項（委員會）規定之情況下，本委員會應有如下之功能：

(a) 提請執委會審視妨礙貨品進入締約國之事項，特別是執行非關稅措施之事項；及

(b) 透過諮商及旨在修改附件 3.04 所定期限以加速關稅減讓之研究，以推動締約國間之貨品貿易。

附件 3.11(6)　**進出口之限制**

第一節　巴拿馬部份:

1. **不論本協定第** 3.03 **條及第** 3.11 **條之規定，巴拿馬得對以下依據巴拿馬海關分類號列所示之貨品採行限制或禁止進口：**

HS 1996 **號列**	**說明**
1301.90.20	**印度大麻(桑科屬植物)之膠與其餘麻醉物**
1302.11.10	**鴉片膠或鴉片萃取物**
1302.11.90	**其它產物**
1302.19.20	**印度大麻(桑科屬植物)之萃取物與染料**
1302.19.30	**罌粟之萃取物及其它麻醉物**
2903.46.10	**二氟一氯一溴甲烷**
2903.46.20	**三氟一氯一溴甲烷**
2903.46.30	**四氟一氯一溴甲烷**
3601.00.00	**火藥**
3602.00.00	**除粉狀之炸藥**
4004.00.00 ex	**未硬化橡膠之廢棄物，片狀，粉狀或粒狀**
4012.10 ex	**翻修輪胎**
4012.20 ex	**氣胎**
4907.00.52	**官方流通之彩券彩票**
6201-6217 ex	**舊衣服**
6401-6402 ex	**舊鞋**
8701-8716 ex	**舊車輛**
8710.00.00	**武裝作戰用之坦克車或其它車種**

8906.00.10	**軍艦**
8908.00.10	**戰艦**
9301.00.00	**作戰用之武器，左輪手槍、手槍與刀劍除外**
9305.90.10	**作戰用之武器**
9306.30.10	**戰爭用之武器及其零件**
9306.90.10	**其他戰爭用之武器、飛彈、手榴彈及其零件**
9307.00.10	**軍事用刀劍**
9504.10.11	**提供獎品之遊樂器**
9504.30.10	**提供獎品之顯影遊樂器**
9504.90.11	**用於貨幣之使用及提供獎品**

2. **不論第** 3.03 **條與第** 3.11 **條所述，巴拿馬將依據** 2002 **年** 6 **月** 5 **日第五十七號行政命令，採行或維持有關任何種類自然森林木材之相關出口措施。**

第二節 中華民國部份:

不論本協定第 3.03 **條及第** 3.11 **條之規定，中華民國得對以下依據中華民國海關分類號列所示之貨品採行限制或禁止進口：**

1. **限制進口貨品**

CCC **號列**	**說　　明**
0208.90.20ex	**狗肉，生鮮、冷藏或冷凍**
0303.79.99ex	**冷凍河魨（豚）**
0305.30.90ex	**乾、鹹或浸鹹河豚之切片，但未燻製；乾河魨（豚）**
0602.90.10ex	**含有毒品成分之菇類菌種（其成分係指行政院依「毒品危害防制條例」第二條第三項公告之各級毒品）**
1207.99.20ex	**其他大麻子、仁〈火麻子、仁〉**
1404.90.99ex	**含有毒品成分之菇類產品（其成分係指行政院依「毒品危害防制條例」第二條第三項公告之各級毒品）**
1604.19.90ex	**已調製或保藏河豚魚，整條或片塊（剁碎者除外），冷凍者；其他已調製或保藏河豚魚，整條或片塊（剁碎者除外）**
2710.00.51ex	**含石油重量比** 70%**及以上之摻配油料(含多氯聯苯)**
2710.00.91ex	**變壓器油，含多氯聯苯、多氯？、多氯聯三苯或六氯（代）苯**
2710.00.93ex	**電容器油，含多氯聯苯、多氯？、多氯聯三苯或六氯（代）苯**
2830.90.00ex	**次硫化鎳**
2903.14	**四氯化碳**
2903.19.10ex	**三氯乙烷**
2903.41	**一氟三氯甲烷**
2903.42	**二氟二氯甲烷**
2903.43	**三氟三氯乙烷**
2903.44	**四氟二氯乙烷及五氟一氯乙烷**
2903.45.00ex	**三氟一氯甲烷；一氟五氯乙烷；二氟四氯乙烷；一氟七氯丙烷；二氟六氯丙烷；三氟五氯丙烷；四氟四氯丙烷；五氟三氯丙烷；六氟二氯丙烷；七氟一**

	氯丙烷
2903.46	二氟一氯一溴甲烷、三氟一溴甲烷及四氟二溴乙烷
2903.49.00	二溴氯丙烷
2903.51	１，２，３，４，５，６–六氯環己烷
2903.62.20ex	六氯苯；滴滴涕〔１，１，１–三氯–２，２–雙（對氯苯）乙烷〕
2904.20.00ex	對–硝基聯苯
2908.10.10ex	五氯酚及其鹽類
2908.10.90ex	２，４，５–三氯酚
2909.19.90ex	二氯甲基醚；氯甲基甲基醚
2921.44.00ex	４–氨基聯苯；４–氨基聯苯鹽酸鹽
2921.45.00ex	２–胺；２–氨醋酸鹽；２–胺鹽酸鹽
2929.90.00ex	a–氰溴甲苯
2931.00.30ex	有機汞化合物
3301.90.11ex	鴉片之萃取含油樹脂
3403.19.90ex	潤滑製劑，含有多氯聯苯、多氯？、多氯聯三苯或六氯（代）苯，（以石油或自地瀝青所得之油為基本成分且其重量在 70%及以上者列入第 2710 節）
3404.90.90ex	由多氯聯苯或多氯？之混合物組成之蠟
3604.10	玩具煙火；玩具以外之煙火
3604.90.90ex	其他煙火製品
3813.00.00ex	滅火器配藥，含有三氟一溴甲烷（海龍 1301）、二氟一氯一溴甲烷（海龍 1211）或四氟二溴乙烷（海龍 2402）者
3824.90.23ex	非屬礦物油之電容器油，（含多氯聯苯、多氯？、多氯聯三苯或六氯（代）苯）
3824.90.99ex	多氯聯苯
8112.91.21ex	混合五金廢料
8424.10.00ex	滅火器，含有三氟一溴甲烷（海龍 1301）、二氟一氯一溴甲烷（海龍 1211）或四氟二溴乙烷（海龍 2402）藥劑者
8548.10.10ex	廢鉛酸蓄電池及耗損鉛酸蓄電池

不論本協定第 3.03 條及第 3.11 條之規定，中華民國得對以下依據中華民國海關分類號列所區分之貨品加以限制或禁止出口：

2. **限制出口貨品**

CCC **號列**	**說明**
0208.90.20ex	**狗肉，生鮮、冷藏或冷凍**
0301.91.00	**活鱒（褐鱒、麥克吻鱒、克氏吻鱒、黃吻鱒、吉利吻鱒、阿帕契吻鱒及金腹吻鱒）**
0302.11.00	**鱒（褐鱒、麥克吻鱒、克氏吻鱒、黃吻鱒、吉利吻鱒、阿帕契吻鱒及金腹吻鱒），生鮮或冷藏**
0302.12.10	**太平洋鮭（紅吻鮭、細鱗吻鮭、？吻鮭、大鱗吻鮭、銀吻鮭、馬蘇吻鮭及玫瑰吻鮭），生鮮或冷藏**
0302.12.20	**大西洋鮭及多瑙河鮭，生鮮或冷藏**
0302.19.00ex	**其他鮭鱒科，生鮮或冷藏**
0303.10.00	**冷凍太平洋鮭（紅吻鮭、細鱗吻鮭、？吻鮭、大鱗吻鮭、銀　吻鮭、馬蘇吻鮭及玫瑰吻鮭），肝及卵除外**
0303.21.00	**冷凍鱒（褐鱒、麥克吻鱒、克氏吻鱒、黃吻鱒、吉利吻鱒、阿帕契吻鱒及金腹吻鱒）**
0303.22.00	**冷凍大西洋鮭及多瑙河鮭**
0303.29.00ex	**其他冷凍鮭鱒類**
0304.10.50ex	**生鮮或冷藏鱒魚片及魚肉（不論是否經剁細）**
0304.10.90ex	**生鮮或冷藏鮭魚片及魚肉（不論是否經剁細）**
0304.20.20ex	**冷凍鮭魚片**
0304.20.30ex	**冷凍鱒魚片**
0305.30.90ex	**乾、鹹或浸鹹鮭鱒之切片，但未燻製**
0305.41.00	**燻製太平洋鮭（紅吻鮭、細鱗吻鮭、？吻鮭、大鱗吻鮭、銀吻鮭、馬蘇吻鮭及玫瑰吻鮭），大西洋鮭及多瑙河鮭**
0305.49.30ex	**燻製鱒類**
0305.69.10ex	**鹹薩門魚**
0602.10.90ex	**甘蔗，未長根插穗及裔芽**
0602.90.10ex	**含有毒品成分之菇類菌種（其成分係指行政院依「毒品危害防制條例」第二條第三項公告之各級毒品）**
0602.90.91ex	**其他竹苗**
1212.92.00ex	**白皮甘蔗，製糖用**
1404.90.99ex	**含有毒品成分之菇類產品（其成分係指行政院依「毒品危害防制條例」第二條第三項公告之各級毒品）**
1604.11.00ex	**已調製或保藏鮭類，整條或片塊（剁碎者除外），冷凍者；已調製或保藏鮭類，整條或片塊（剁碎者除外），罐頭；其**

	他已調製或保藏鮭類，整條或片塊（剁碎者除外）
1604.19.90ex	已調製或保藏鱒魚，整條或片塊（剁碎者除外），冷凍者；已調製或保藏鱒魚，整條或片塊（剁碎者除外），罐頭；其他已調製或保藏鱒魚，整條或片塊（剁碎者除外）
2903.51.00ex	１，２，３，４，５，６–六氯環己烷
2921.44.00ex	４–氨基聯苯；４–氨基聯苯鹽酸鹽
2921.45.00ex	２–？胺；２–？胺(ß？胺醋酸鹽)；２–？胺(ß？胺鹽酸鹽)
8710.00.00	坦克車與其他裝甲機動作戰用車輛，不論已否裝有武器；坦克車與其他裝甲機動作戰用車輛之零件
8906.00.10ex	軍用艦艇
9301.00.00	軍用武器，不包括轉輪槍、手槍及第 9307 節之武器
9705.00.00	武器之收集品及珍藏品；其他具有動物學、植物學、礦物學、解剖學、歷史學、考古學、古生物學、人種學或貨幣學價值之收集品及珍藏品
9706.00.00	其他年代超過 100 年之古董

附件 3.16　**貨品貿易委員會**

依據第 3.16 **條所成立之貨品貿易委員會，其組成如下：**

(a) **就巴拿馬而言，由外貿次長室或其繼受者所代表之貿工部；及**

(b) **就中華民國而言，由國際貿易局或其繼受者所代表之經濟部。**

第四章　原產地規則

第 4.01 條　定義

為本章之目的，相關用語定義如下：

起岸價格：進口貨品價格，包括貨品之保險費及貨品運達進口國口岸之運費成本；

離岸價格：出口貨品離開本國口岸之價格，賣方於起運地交貨給買方，不負擔運費（不問運輸方式）；

可替代貨品：為商業目的而可互相替代之貨品或材料，其屬性實質上完全相同且無法僅由目視予以分辨者；

一般公認會計原則：各締約國領域內適用於記錄收益、成本、費用、資產及負債相關資訊之提供與財務報表之編制，所提供之重要且具權威性之原則；此等普遍運用於會計之指標、執行規則及程序，得成為具有一般適用性之完整準則；

完全於一締約國取得或生產之貨品：

(a) 於該締約國領域內提煉或開採取得之礦物；
(b) 於該締約國領域內收穫、採摘或採集取得之植物或植物產品；
(c) 於該締約國領域內出生且養育之活動物；
(d) 於該締約國領域內經由狩獵、誘捕、漁撈、採集或捕獲取得之貨品；
(e) 於該締約國領域內之活動物取得之貨品；
(f) 由在該締約國註冊或登記，且為該國人民所有，並懸掛其旗幟之漁船，或由在該締約國境內設立之公司所租用之漁船，於締約國領海外所捕獲的魚類、甲殼類或其他海洋生物；
(g) 於該締約國註冊或登記，並懸掛其旗幟之加工船上，或於該締約國境內設立之公司所租用之加工船上，使用第(f)款之貨品所取得或生產之貨品；
(h) 由該締約國或該締約國之人，於該締約國領海之外所擁有開採權之海床或底土開採之貨品；
(i) 於該締約國領域內製造或加工或自該國消費所產生之碎屑及廢料，而僅適於丟棄或原料之回收者；
(j) 於該締約國領域內收集之物品，不具其原有功能，亦無法予以恢復或修理，而僅適於丟棄，或原料或零件之回收者；或

(k) **完全使用上述**(a)**款至**(j)**款之貨品，而於締約國一方或雙方領域內所生產之貨品；**

間接材料：使用於生產、測試或檢驗另一貨品，但並未實際併入於該另一貨品者；或使用於與貨品生產有關之建築物之維護或設備操作之貨品，包括：

(a) **燃料、能源、催化劑及溶劑；**

(b) **用於商品檢驗之設備、儀器及附屬品；**

(c) **手套、眼鏡、鞋子、服裝、安全設備及附屬品；**

(d) **生產工具及模具；**

(e) **用於保養設備及建築物之備用零件及材料；**

(f) **用於生產或用於設備操作或建築物保養之潤滑油、油脂、複合材料或其他材料；及**

(g) **其他任何未併入該商品之物料或用品，但可合理顯示係使用於生產過程者；**

材料：用於生產另一貨品之貨品，包括成分、零件、組件、次組件及實際上包含於另一貨品中或屬另一貨品生產過程之貨品；

生產者：第 2.01 **條（整體適用之定義）所定義之「生產者」；**

生產：取得貨品之方式，包括製造、生產、組裝、加工、養育、栽植、繁殖、開採、提煉、收穫、漁撈、誘捕、收集、採集、狩獵或捕獲；

貨品之交易價格：貨品之生產者關於貨品交易之實付或應付價格，依據關稅估價協定第一條之原則，並依該協定第八條第一項、第三項及第四項之原則調整者；而不問該貨品是否係為出口而銷售。為此定義之目的，關稅估價協定所稱之賣方，係指貨品之生產者；

材料之交易價格：貨品之生產者關於材料交易之實付或應付價格，依據關稅估價協定第一條之原則，並依該協定第八條第一項、第三項及第四項之原則調整者；而不問該材料是否係為出口而銷售。為此定義之目的，關稅估價協定所稱之賣方，係指材料之供應者；關稅估價協定所稱之買方為貨品之生產者；及

價格：依關稅估價協定之規則所估定之貨品或材料之價格。

第 4.02 條　適用之文件及解釋

1. **為本章之目的：**

(a) 貨品之稅則分類應以統一分類制度為基礎；且

(b) 認定貨品或材料之價格，應適用關稅估價協定之原則及規定。

2. 為本章之目的，適用關稅估價協定以認定貨品之原產地時：

(a) 關稅估價協定之原則及規定應依其適用於國際交易之情形，配合情況予以修正，以適用於國內交易；且

(b) 如本章之規定與關稅估價協定發生牴觸時，就牴觸部份應依本章之規定。

第 4.03 條　原產貨品

1. 除本章另有規定外，符合下列情形之貨品視為締約國之原產貨品：

(a) 完全於該締約國領域內取得或生產之貨品；

(b) 完全於締約國之一方或雙方領域內生產之貨品，以本章所認定之原產材料生產；

(c) 於締約國一方或雙方，使用非原產材料所生產之貨品，而該材料符合稅則分類變更或區域產值含量或依據附件 4.03 規定之其他規定，且該貨品符合本章所規定之其他相關要件者；

(d) 於締約國之一方或雙方領域內生產之貨品，由於下列因素致生產該貨品所使用之一項或多項非原產材料未能符合稅則分類變更者，其依第 4.07 條所判定之區域產值含量應不低於百分之三十五(35%)，且該貨品應符合本章其他相關規定，但依附件 4.03 之規定，該貨品所歸屬之稅則另有不同之區域產值含量規定者，應從其規定：

(i) 該貨品以未組裝或拆裝之型態進口至一締約國，而依統一分類制度之解釋準則第 2(a)點規定, 被歸類為組裝之商品；

(ii) 貨品本身及其零件歸於同一「節」，且未再進一步細分成「目」；或

(iii)貨品本身及其零件分類於同一「目」。

本款規定不適用統一分類制度所分類之第 61 章至第 63 章貨品。

2. 如一貨品已經符合附件 4.03 所列之原產地規則，則無須另外要求其符合第 1 項第(d)款所訂定之區域產值含量規定。

3. 為本章之目的，以非原產材料所生產之貨品，而符合附件 4.03 規定之稅則分類變更及其他規定，其生產必須完全在締約國一方或雙方領域內，且其貨物必須符合相關之區域產值含量之規定。

4. 不論本條其他規定，在締約國領域內完成其銷售之最終型態之貨品，其使用之非原產材料僅完成第 4.04 條所規定之作業，除附件 4.03 另有規定外，該貨品不得視為原產貨品。

第 4.04 條　微末作業或加工

下列各項微末作業或加工，不論其係單獨或合併執行，不因此使某一貨品成為原產貨品：

(a) 運送或儲存期間所必要之保存作業（包括晾乾、通風、乾燥、冷藏、冷凍、去除受損部分、敷油、塗防鏽漆或保護層、加鹽、二氧化硫或其他水溶液）；

(b) 清潔、清洗、過濾或篩選、分級或分等、揀選、去皮、剝殼或加條紋、去除粒狀、去核、擠壓或壓碎、浸漬、除塵或分離、分類、運送分裝、包裝歸類、於產品及其包裝上加上記號、標籤或區別符號、包裝、拆裝或重新包裝等簡單作業；

(c) 貨品之組合或混合作業，未使組合後或混合後之貨品或混合貨品之特性造成重大差異者；

(d) 將零件以簡單之接合或裝配或組裝之方式，成為一套或一組完整之貨品；

(e) 簡單之稀釋作業或離子化及鹽醃，未改變該貨品之本質者；及

(f) 屠宰動物。

第 4.05 條　間接材料

間接材料不論其製造及生產地點為何，應被視為原產材料，而該等材料之價格應為貨品生產者之會計記錄所登載之成本價格。

第 4.06 條　累積

1. 締約國僅得將締約國雙方領域之原產貨品累積認定原產地。

2. 以締約國之原產材料或原產貨品生產締約國他方之貨品，該貨品之原產地應屬最後完成生產之締約國。

3. 為認定一貨品是否屬原產貨品，該貨品之生產者得將締約國之一方或雙方領域內之其他生產者或製造商生產之材料合併累積至該貨品；如該貨品符合第 4.03 條規定者，即認定是項材料係由該製造商所生產。

第 4.07 條　區域產值含量

1. 貨品之區域產值含量以下列方式計算：

RVC= [(TV – VNM)/TV]*100

RVC：指區域產值含量，以百分比表示；

TV：指貨品依離岸價格為基準調整之交易價格，但本條第 2 項另有規定者，不在此限。如無法依關稅估價協定第一條之原則及規定認定時，則應依該協定第二條至第七條規定之原則與規則計算之；且

VNM：指依起岸價格為基準調整之非原產材料之交易價格，但本條第 5 項另有規定者除外。如無法依關稅估價協定第一條之原則及規定認定時，則應依該協定第二條至第七條規定之原則及規則計算之。

2. 如貨品之生產者非該貨品之直接出口人，則該貨品之價格以買方在生產者所在國家內收到貨品之點為基準，予以調整。

3. 如以區域產值含量認定貨品之原產地時，應符合附件 4.03 要求之百分比。

4. 計算區域產值含量之各項成本記錄，應依生產該貨品之締約國國內之一般公認之會計原則予以登錄並保存。

5. 生產者以所在締約國領域內取得之非原產材料生產貨品者，該非原產材料之價格應不包括運費、保險費、包裝費用及將材料自供應商倉庫運送至生產者所在地點的任何其他費用。

6. 為計算區域產值含量，使用於生產貨品之非原產材料之價格，不包括用於生產原產材料所使用之非原產材料之價格。

第 4.08 條　微量條款

1. 縱不符合附件 4.03 規定之稅則分類變更，如所有使用於生產貨品之所有非原產材料價格總計不超過依據第 4.07 條之規定所認定交易價格之百分之十（10%）者，該貨品仍應視為原產貨品。

2. 有關統一分類制度所分類之第 50 章至第 63 章貨品，前項之百分比係指使用於生產該貨品之纖維及紗佔貨品重量之比重。

3. 第 1 項規定之非原產材料不適用歸類於統一分類制度第 1 章至第 27 章之貨品，但該非原產材料與依據本條規定認定原產地貨品分屬不同之「目」者不在此限。

第 4.09 條　可替代性貨品

1. 生產或製造貨品所使用之原產或非原產可替代性貨品，生產商得依下列存貨管理方法擇一認定原產地：

(a) 先進先出法；

(b) 後進先出法；或

(c) 平均法。

2. 如原產或非原產之可替代性貨品存於倉庫時已混合，或已經物理上結合，且除卸貨、再裝貨、或在出口前為保持貨品於良好狀態或為運輸貨品至締約國他方而作之必要性之移動外，未經過任何之生產作業或加工者，該貨品應依照存貨管理方式擇一認定原產地。

3. 存貨管理方式一旦擇定，須於該會計年度中全年採行。

第 4.10 條　套裝或組裝貨品

1. 依據統一分類制度解釋準則第 3 點之規定而分類之套裝或組裝貨品，以及統一分類制度載明屬於套裝或組裝之貨品，如套裝或組裝品內之每一組件均符合本章及附件 4.03 之原產地規則者，應認定為原產貨品。

2. 不問第 1 項之規定，如組成套裝或組裝品之所有非原產組件之價格，依據第 4.07 條第 1 項或第 2 項規定之計算基準調整，其價格未超過第 4.08 條第 1 項所列之比重者，該套裝或組裝品應視為原產貨品。

3. 本條規定如與附件 4.03 特定原產地規則不同者，依本條規定。

第 4.11 條　附件、備用零件及工具

1. 與貨品一同交貨且習慣上成為該貨品之一部份之附件、備用零件及工具，如符合下列條件者，應與該貨品視為一組；在認定生產該貨品之所有非原產材料是否符合附件 4.03 規定之稅則分類變更時，應不予列入認定：

(a) 附件、備用零件或工具未與貨品分別開立發票；且

(b) 附件、備用零件及工具之數量及價格，應合乎該貨品之慣例。

2. 如適用區域產值含量之規定，在計算該貨品之區域產值含量時，其附件、備用零件及工具之價格應依情形視為原產或非原產材料計算區域產值。

3. 未符合上述條件之附件、備用零件及工具，應分別並分開判定其原產地。

第 4.12 條　零售貨品之包裝材料及容器

1. 零售貨品用之包裝材料及容器，依照統一分類制度如與該貨品歸於同一之稅則號列，在認定該貨品之所有非原產材料是否符合附件

4.03 所規定之稅則分類變更規則時，應不予列入考慮。

2. 如貨品適用區域產值含量之規定，在計算貨品之區域產值時，其包裝材料及容器之價值應依個案計入為原產地材料或非原產地材料。

第 4.13 條　為運輸需要之包裝材料及容器

在認定下述事項時，該貨品為運輸需要所使用之裝箱材料及容器，應不納入考慮：

(a) 用於產製該貨品之非原產材料是否符合附件 4.03 規定之稅則分類變更規定；及

(b) 該貨品是否符合區域產值含量之規定。

第 4.14 條　轉運

締約國他方之原產貨品，在下述情形下，應不失其原產資格：

(a) 自另一締約國領域直接運輸；或

(b) 為過境或暫時儲存倉庫之之目的，轉運貨品至其他一個或數個非締約國領域，該等貨品除卸貨、再裝貨，或為保存該貨品於良好狀況之作業外，未再進行其他相關作業。

第五章　海關作業程序

第 5.01 條　定義

1. **為本章之目的，相關用語定義如下：**

認證機關：中華民國指定之認證機關為經濟部國際貿易局或其授權之機關；巴拿馬指定之認證機關為外貿次長室或其繼受者；

商業性進口：指為銷售或任何商業性、產業性或其他類似目的而進口貨品至締約國境內者；

海關：指依法管理及執行關務法規之機關；

完稅價格：指依締約國法規，用以作為核算關稅之貨品價格；

日：依第 2.01 **條（整體適用之定義）所規定之「日」；**

出口人：指締約國境內之出口貨品之人，以及須依第 5.05 **條第** 1 **項第**(a)**款規定保存會計帳冊及其他有關文件於該締約國境內之人；**

同樣貨品：指物理特性、品質及商譽等各方面均相同之貨品，縱其外觀稍有差異，在所不論，但以該差異不影響依第四章（原產地規則）認定產地者為限；

進口人：指締約國境內進口貨品之人，以及須依第 5.05 **條第** 1 **項第**(b)**款規定保存會計帳冊及其他有關文件於該締約國境內之人；**

優惠關稅待遇：指原產貨品依第 3.04 **條（關稅調降表）所定關稅調降表所適用之關稅稅率；**

生產者：指位於締約國境內符合第 2.01 **條（整體適用之定義）所稱之生產者，且須依第** 5.05 **條第** 1 **項第**(a)**款規定保存會計帳冊及其他有關文件於該締約國境內者；**

原產地審核報告：指海關為確認一項貨品是否符合第四章（原產地規則）所規定之原產資格，依據原產地查證程序結果而製作之審核報告；

有效原產地證明書：指依第 5.02(1)**條規定之格式製作之書面証明，由締約國境內之貨物出口人依據本章規定所填寫、簽章並註明日期，且由出口國認證機關依本章規定認証者；及**

價格：指為適用第四章（原產地規則）需要，所訂定之貨品或材料價格。

2. **除本條另有定義外，第四章（原產地規則）所規定之定義適用於本章。**

第 5.02 條　原產地認證

1. 為本章之目的，於本協定生效前，締約國應設計統一格式之原產地證明書，並應使其與本協定同時生效。該證明書得經締約國雙方同意後修改。

2. 第 1 項之原產地證明書，用以作為自締約國一方出口至締約國他方之貨品具備原產資格之證明。

3. 締約國各方均應要求其境內之出口人或生產者，就每一出口貨物，填寫原產地證明書，並予簽署，以提供進口人申請優惠關稅待遇。

4. 原產地證明書須經出口締約國認證機關認證。認證機關應確認原產地證明書所載貨品符合第四章（原產地規則）及附件 4.03（個別產品原產地規則）之規定。

5. 締約國各方均應要求其認證機關，於認定貨品符合第四章（原產地規則）及附件 4.03（個別原產地規則）所規定之要件時，應於原產地證明書蓋印、簽名、註明日期，並編列序號，以便查證。

6. 締約國之認證機關，應依據貨物出口人或生產者所提供之資料，確認原產地證明書所列載貨品之原產地；出口人或生產者應對所提出之資料及原產地證明書內容之真實性負責。原產地之確認，在據以確認之情況及事實未改變前，均屬有效。

7. 出口締約國之認證機關應：

(a) 制定行政程序，以辦理由其出口人或生產人所填寫並簽署之原產地證明書之認證工作；

(b) 依進口締約國海關之要求，提供享受優惠關稅待遇之進口貨物原產地相關資料；且

(c) 在本協定生效前，以書面提供辦理本條第(a)款規定之原產地證明書認證機構及有權簽署人員名單，以及其簽名式樣與章戳。名單如有變更，應立即以書面通知締約國他方；認證機構名單之變更，於締約國他方接獲通知日起三十日生效。

8. 締約國應規定，出口人所填寫並簽名之原產地證明書，單一證明書僅適用於單一進口；但單一進口得包括一項或多項貨品。

9. 締約國應要求原產地證明書在認證機關簽署日起一年內均為進口國海關所接受。

10. 原產地證明書所列貨品之發票為貨品生產者或出口人在非締約國之分公司、子公司或代理人所開立者，不得拒絕給予該項貨品優惠關稅待遇；但該貨品需自另一締約國直接運送，且不影響第四章

（原產地規則）第 4.14 條（轉運）之規定。

第 5.03 條　有關進口之義務

1. 締約國應規定其境內申請適用優惠稅率之進口人，自他方締約國進口貨品時，應：

(a) 根據有效原產地證明書，於規定進口文件中，以書面申報該貨品符合原產地規則；

(b) 於申報時已取得原產地證明書；

(c) 依海關要求，提供一份原產地證明書；且

(d) 於進口人有理由認定據以申報進口之原產地證明書內容有誤時，立即申請更正申報事項並繳納應付稅款。進口人如在海關依據各締約國之內國法規通知修正前提出更正者，應免受處罰。

2. 締約國應規定，自他方締約國進口貨品之進口人，未履行本章規定者，不得適用優惠關稅待遇。

3. 締約國應規定，進口符合原產地資格之貨品，如進口人於進口時未申請適用優惠關稅待遇者，不得要求退稅或補償其溢付稅款。

4. 海關依據第 5.06 條規定拒絕給予進口貨品優惠關稅待遇時，縱使進口人履行本條規定，並不免除該進口人依進口國法律應繳納之相關稅費。

第 5.04 條　有關出口之義務

1. 締約國應要求其境內填寫及簽署原產地證明書之之出口人或生產者，於本國海關提出要求時，應提供一份原產地證明書。

2. 締約國應要求其領域內填寫及簽署原產地證明書或向認證機關提供資料之出口人或生產者，於有理由相信原產地證明書內容有誤，其影響原產地證明書正確性與有效性之修正事項，應立即以書面通知下列人員或機關，於此情形，出口人或生產者不應因提交錯誤之證明書或資料而受處罰：

(a) 收取該證明書之所有人；

(b) 認證機關；及

(c) 本國海關。

3. 締約國：

(a) 應規定本國之出口人或生產者，為使貨品得以具備原產資格出口至他方締約國而製作不實之證明書或提供不實資料者，締約國應處以與申報不實或為不實陳述而違反關稅法規

之進口人類似之處分；且

(b) 對於出口人或生產者未履行本章規定者，亦得採取類此措施。

4. 出口締約國之海關及其認證機關應就第 2 項所為之通知，以書面通知進口締約國海關。

第 5.05 條　會計帳冊

1. 締約國應規定：

(a) 填寫及簽署原產地證明書或向認證機關提供資料之本國出口人或生產者，對於與原產貨品有關之所有會計帳冊及文件，自其簽署原產地證明書之日起，至少應保存五年；應保存之相關文件如下：

(i) 自該國出口之貨物之取得、成本、價格與支付之款項；

(ii) 用於生產出口貨品所需之所有直接及間接材料之取得、成本、價格與所支付之款項；以及

(iii)出口貨品之生產方式。

(b) 自他方締約國進口貨品，並申請適用優惠關稅待遇之進口人，應將相關原產地證明書及進口締約國所要求之進口相關文件，自貨品進口日起，至少保存五年。

(c) 核發原產地證明書之出口締約國認證機關，應將核發原產地證明書之根據文件及原產地證明書影本，自其發證日起，至少保存五年。

2. 依第 1 項規定應保存會計帳冊及文件之貨品出口人、生產者或進口人，如有下列情形者，締約國對於受原產地查證之標的貨品，得拒絕給予優惠關稅待遇：

(a) 未依本章及第四章（原產地規則）規定，保存認定貨品原產地所須之相關會計帳冊或文件；或

(b) 拒絕接受查閱其會計帳冊或文件者。

第 5.06 條　原產地認定程序

1. 進口締約國得透過其海關，要求出口締約國之認證機關，提供貨品原產地之相關資料。

2. 為認定自他方締約國進口之貨品是否具有原產資格而得適用優惠關稅待遇，締約國海關得以下列方式查證進口貨品之原產地：

(a) 向他方締約國領域內之出口人或生產者發送書面問卷調查表；

(b) 實地訪查他方締約國領域內之出口人或生產者，檢視有關進口貨品符合第 5.05 條規定之相關會計帳冊及文件，並查核生產該等貨品之設備及材料；或得委託締約國之駐外單位代為執行實地查證；或

(c) 締約國雙方所同意之其他查證方式。

3. 為本條之目的，以問卷調查表、公函、核定書、通知書或其他書面方式，對出口人或生產者所提出之原產地查證通知，如以下列方式為之，應認為有效：

(a) 以雙掛號郵寄或其他足資證明是項文件確已送達出口人或生產者之方式；或

(b) 締約國雙方所同意之其他方式。

4. 第 2 項之規定不影響進口締約國海關對其本國之進口人、出口人及生產者就是否履行他項義務，行使查證之職權。

5. 第 2 項第(a)款之書面問卷調查表應：

(a) 敘明給予出口人或生產者答覆並繳回填寫妥當之問卷調查表或所要求之資料及文件之時限；該期限自接到通知之日起不得少於三十日；及

(b) 包含告知出口人或生產者，如其未於期限內答覆並繳回問卷調查表或提供所要求之資料者，海關得拒絕給予優惠關稅待遇。

6. 出口人或生產者收到第 2 項第(a)款之問卷調查表後，應於第 5 項第(a)款所定期限內答覆並繳回填寫妥當之問卷調查表；答覆期限自收到之日起算。出口人或生產者得於該期間內以書面向進口國海關申請展延一次，展延期限最多不超過三十日。締約國不得因出口人或生產者申請展延而拒絕給予優惠關稅待遇。

7. 締約國應規定，海關在規定期限內收到第 2 項(a)款之答覆問卷調查表時，為查證貨品原產地需要，該締約國得再要求提供補充資料以供認定。該締約國得透過其海關，提出後續問卷調查表，要求出口人或生產者提供補充資料；出口人或生產者應於接獲通知之日起三十日內答覆並提供資料。

8. 出口人或生產者未確實答覆問卷調查表，或未依第 6 項及第 7 項規定於規定期限內繳回問卷調查表時，進口締約國得拒絕給予受查證貨品享受優惠關稅待遇，但必須以書面核定書發給出口人或生產者，敘明所認定之事實及法律依據。

9. 進口締約國於進行第 2 項第(b)款規定之實地訪查前，應透過其海

關先以書面通知訪查意向。通知書須送達受訪查之出口人或生產者及受訪查締約國之認證機關及其海關；如受訪查締約國提出要求，亦須送達被訪查締約國派駐於進口締約國之大使館。進口締約國，應透過其海關，要求受訪查之出口人或生產者之書面同意。

10. 第 9 項規定之通知書應包括下列事項：

(a) 核發通知書之海關之身份證明；

(b) 擬訪查之出口人或生產者姓名；

(c) 訪查之時間及地點；

(d) 訪查之目的與範圍，並須特別指明擬訪查之貨品名稱；

(e) 訪查人員之姓名、個人資料與職稱；及

(f) 訪查之法律依據。

11. 修改第 10 項第(e)款所示之資料時，應於實地訪查前，以書面通知出口人或生產者及出口國海關與其認證機關；修改第 10 項第(a)款、第(b)款、第(c)款、第(d)款及第(f)款所示之資料時，應依第 9 項規定之方式通知。

12. 出口人或生產者未於收到第 9 項所稱之訪查通知書後三十日內，以書面答覆同意接受訪查者，進口締約國得拒絕給予受訪查貨品享受優惠關稅待遇。

13. 締約國得於其海關接獲第 9 項所稱之訪查通知書後十五日內，要求展延訪查期間，但展延期間不得超過接獲通知書日起六十日，或締約國所約定之較長期限。

14. 締約國不得僅因有依第 13 項所定之要求展延訪查，而拒絕給予優惠關稅待遇。

15. 締約國應准許受訪查之出口人或生產者於訪查期間指派兩名觀察員在場陪同訪查，但觀察員不得參與觀察以外之其他事項，且不得因出口人或生產者未指派觀察員而展延訪查之進行。

16. 締約國應規定出口人或生產者應提供第 5.05 條第 1 項第(a)款規定之會計帳冊及文件予進口締約國海關。如出口人或生產者未持有該等會計帳冊及文件時，締約國得要求材料生產者或供應商將該等會計帳冊及文件送交訪查之海關。

17. 締約國應由其海關依貨品出口締約國之一般公認會計原則，確認貨品是否符合區域產值含量、微量條款或第四章（原產地規則）所列之其他規定。

18. 進口國海關應製作訪查記錄，記載查證事實。生產者或出口人及

其指派之觀察員得於訪查記錄簽署。

19. 海關應於訪查結束後一百二十日內，依據訪查結果核發核定書予受訪查之貨品之出口人或生產者；核定書除須載明貨品是否具備原產資格外，並須註明所認定之事實與核定之法律依據。

20. 海關拒絕給予受訪查貨品優惠關稅待遇時，應核發附具充分之根據及理由之書面核定書，並依第 3 項所列之方式通知出口人或生產者，並於受通知人收到之次日起生效。

21. 依據查證結果，發現出口人或生產者提出超過一次之不實或虛假原產地資料時，進口締約國得中止該出口人或生產者所出口或生產之同樣貨品之優惠關稅待遇，迄至其證明符合第四章（原產地規則）之規定為止。

22. 待查證之貨品，如已經兩次或以上之原產地查證，且已核發兩件或以上之拒絕給予優惠關稅待遇之書面核定書者，應視為其出口人或生產者提出超過一次之不實或虛假原產地資料。

23. 締約國應規定，海關依據稅則分類或其本國就生產貨品所用一種或多種材料之價格，認定進口貨品未具備原產資格，且與出口締約國依據其稅則分類或材料價格所為之認定發生歧異時，在進口締約國以書面通知進口人、原產地證明書之填寫與簽署人及貨品生產者之前，進口締約國之核定書不發生效力。

24. 就下列情形，締約國不得以前項所為之核定，適用核定書生效日前進口之貨品：

(a) 出口締約國海關已就貨品稅則分類或材料價格作出核定，而相關之人有權以此為據者；且

(b) 此項核定係於開始進行原產地查證前做成者。

第 5.07 條　預先審核

1. 締約國海關應依據本國境內進口人或他方締約國之出口人或生產者所提供之下列事證及相關資料，於貨物進口前，儘速核發原產地預先審核報告：

(a) 依第四章（原產地規則）之規定，貨品是否具備原產資格；

(b) 貨品生產過程中所使用的非原產材料，是否符合附件 4.03（個別產品原產地規則）所定之稅則分類變更；

(c) 貨物是否符合第四章（原產地規則）所定之區域產值含量；

(d) 他方締約國之出口人或生產者對貨物或所該貨品生產過程中所使用材料之交易價格之計算方法是否依據關稅估價協定之原則，以預先審核該貨品依第四章（原產地規則）規定之區

域產值含量之規定認定貨品原產地時是否妥適；

(e) 貨品經運往締約國他方進行修理或裝配後再復運進口者，是否得根據第 3.07 條（修理或改裝貨品之復運進口）規定享受優惠關稅待遇；及

(f) 其他經締約國雙方同意之事項。

2. 締約國應依就下列事項，制定程序，以核發原產地預先審核報告：

(a) 為審理申請案件所合理需求之資料；

(b) 在審理過程中，海關隨時要求申請人提出補充資料之權限；

(c) 在所有必要資料均齊全之情形下，海關於一百二十日內核發原產地預先審核報告之義務；及

(d) 海關以完整、有具體根據及附帶理由之方法核發原產地預先審核報告之義務。

3. 締約國應自原產地預先核定書核發日起或自該核定書特別指定之日起，即對進口貨品履行其預先審核報告，但依第 5 項規定對原產地預先審核報告所為之修改或撤銷不在此限。

4. 締約國於各項事實與情況實質上均屬相同之情形時，對於申請預先審核之申請人，應給予相同之待遇，包括對第四章（原產地規則）有關原產地認定之解釋與適用亦應相同。

5. 原產地預先審核報告有下列情形者得予修改或撤銷:

(a) 若發現下列依據有誤：

(i) 事實；

(ii) 據以核定之貨物或材料之稅則分類；

(iii)適用第四章（原產地規則）規定之區域產值含量；或

(iv) 出口至締約國他方修理或裝配後復運進口之貨品，依據第 3.07 條（修理或改裝貨品之復運進口）規定是否給予免稅待遇；

(b) 原產地預先審核報告不符合締約國雙方對第三章（貨品之國民待遇及市場進入）或第四章（原產地規則）所協議之解釋；

(c) 預先審核所根據之情況或事實變更；

(d) 為配合第三章（貨品之國民待遇及市場進入）、第四章（原產地規則）或本章之修正需要；或

(e) 為配合行政裁決或司法判決或核發預先審核報告之締約國法規變更需要。

6. 原產地預先審核報告之修改或撤銷，應自修改或撤銷之日起生

效，或自特別指定之較後之日起生效，但對在該等日期前進口之貨物不適用；惟已接獲原產地預先審核報告之當事人未依照規定及條件辦理者，不在此限。

7. 締約國應規定，海關審核已核發原產地預先審核報告之貨品之區域產值含量時，應查核下列事項：

(a) 出口人或生產者是否履行原產地預先審核報告之條款及條件；

(b) 出口人或生產者之作業流程是否符合原產地預先審核報告核發所根據之實質情況與事實；及

(c) 計算價格之準則或方法所使用之資料和數據是否正確。

8. 締約國應規定，於其海關認定未符合第 7 項所定之任一要件時，得視情況修改或撤銷原產地預先審核報告。

9. 締約國應規定，於其海關發現其據以核發原產地預先審核報告之資料不實，但接獲原產地預先核定書之當事人證明其就所提供之事實及情況已盡合理注意及誠實作為者，不予處罰。

10. 締約國應規定，申請人為不實聲明或遺漏核發原產地預先審核報告所需之實質狀況及事實，或未能符合原產地預先審核報告之條款及條件時，核發原產地預先核定書之海關得依內國法採取適當措施。

11. 締約國應規定，原產地預先審核報告之持有人僅得於核發該報告所根據之事實或情況未改變時使用之。就此種情形，原產地預先審核報告之持有人得提出必要之資料，供核發預先審核報告之機關依第 5 項規定進行其程序。

12. 貨品正在查證原產地或正在任一締約國進行復查或申訴者，不得申請原產地預先審核。

第 5.08 條　保密條款

1. 締約國應依內國法，對依本章規定所取得之機密性資料，予以保密，並防止洩漏。

2. 依本章規定所取得之機密資料，僅得提供予執行及管理原產地認定之權責機關、關務及稅務機關。

第 5.09 條　再出口證明書之認證與受理

1. 在不影響本條第 4 項所述情況下，締約國茲設置貨品再出口證明書核發制度，以辨識由一締約國自由區再出口至另一締約國之貨品，如其符合下列條件者，視為來自第三國之貨品:

(a) 貨品處於再出口之締約國海關控管下；

(b) 貨品除銷售、卸貨、再裝貨或其他為維持貨品良好狀態所進行之必要作業外，未進行進一步加工或其他作業者；且

(c) 前述事實有文件証實者。

2. 根據第 1 項，締約國應規定自由區貨品之再出口人應填寫並簽署貨品再出口證明書，該證明書須經海關及貨品再出口之自由區行政主管機關簽署確認，並應以單一證明書處理單一進口，但證上得有一項或多項貨品。

3. 締約國得透過海關，要求由自由區進口貨品之進口人，於進口時繳交貨品再出口證明書，俾使該貨品得依據進口締約國與第三國所簽署之貿易協定或他項協定，被認定為原產地貨品，給予適用優惠關稅待遇。

4. 貨品再出口証明書所列之貨品具備本條第 5 項規定條件，且依進口國與第三國所簽訂之貿易協定或他項協定，具有原產資格者，不因其實際上係由該自由區所出口而喪失享有進口締約國所規定之優惠或關稅利益。

5. 為適用本條第 4 項之規定，締約國雙方應：

(a) 建立管理及控管此類貨品之機制；且

(b) 要求提交前項所稱享有優惠關稅待遇之第三國所核發之原產地證明書。

第 5.10 條　罰則

1. 締約國應訂定法規，對於違反與本章有關之內國法規者，課以刑事、民事或行政罰。

2. 締約國應訂定刑事、民事或行政罰規定，對認證機關核發不實或虛假之原產地證明書者，予以處分。

第 5.11 條　復查與申訴

1. 締約國對於其領域內之進口人、或填寫並簽署原產地証明書或提供資料以認定原產地之締約國他方之出口人或生產者，其貨品已接獲依第 5.06 條第 19 項核發原產地核定書或已接獲依第 5.07 條規定核發之原產地預先審核報告者，應給予相同之權利，以對其原產地認定及預先核定，進行復查及申訴。

2. 締約國就未依本章規定期限，向本國海關提出會計帳冊或其他資料之事實，核定拒絕給予某項貨品優惠關稅待遇之情形，其在復查或申訴之裁決，應僅處理本項所稱之期限之遵守問題。

3. 第 1 項及第 2 項所稱之權利，應至少包括一層級之獨立於原核定原產地或原產地預先審核報告之人員或機關之行政復查程序，以及

包括依各締約國法律，就行政最終裁決所為之司法審查程序。

第 5.12 條　統一規章

1. 締約國應於本協定生效日前，透過內國法規，訂定並施行統一規章，以解釋、施行及管理第四章（原產地規則）、本章及締約國雙方所同意之其他事項。

2. 締約國對統一規章之修訂或增列事項，應於雙方同意後一百八十日內或締約國協議之期限內施行。

第 5.13 條　合作

1. 締約國應將下列之核定、措施或裁決，包括即將施行者，通知締約國他方：

(a) 於依本章第 5.11 條進行復查與申訴程序確定後，依據本章第 5.06 條規定進行原產地訪查所核發之原產地核定；

(b) 締約國所為之原產地核定與締約國他方海關所作成有關貨品稅則分類、完稅價格或生產過程中所使用之材料價值之裁決有所抵觸者；

(c) 制定或大幅修訂行政管理政策之措施，而可能影響未來貨品之原產地認定者；及

(d) 依據本章第 5.07 條規定所核發或修訂之原產地預先審核報告。

2. 締約國應就下列事項進行合作：

(a) 有關執行本協定、海關間之互助協定或其他雙方均為締約國之關務協定之關務法規之執行事項；

(b) 在盡可能之範圍內，且為促進貿易流通，有關關務事項，諸如進出口貨品統計資料之蒐集與交換，資料元之標準化，及資訊交換等；

(c) 在盡可能之範圍內，有關海關程序文件之蒐集與交換；及

(d) 在盡可能之範圍內，且為認定貨品原產地需要，進口締約國海關得要求出口締約國認證機關於其國內進行相關之調查或徵詢，並繕具調查報告。

第六章　防衛措施

第 6.01 條　　定義

為本章之目的，相關用語定義如下：

防衛協定：指世界貿易組織協定下之「防衛協定」；

因果關係：依防衛協定內「因果關係」之定義；

緊急情況：係指如延遲採取防衛措施，將造成難以彌補之損害之情況；

國內產業：係指一締約國領域內同類或直接競爭產品之生產者整體，或其同類或直接競爭產品合計產量占國內總生產量主要部分之生產者；

調查主管機關：依附件 6.01「調查主管機關」之規定；

防衛措施：係指所有依照本章之規定所採取之關稅措施，惟不包括依照在本協定生效前開始進行之程序所實施之防衛措施；

嚴重損害：依防衛協定內「嚴重損害」之定義；

有嚴重損害之虞：依防衛協定內「有嚴重損害之虞」之定義；及

過渡期：依關稅調降表所列期限再加兩年。

第 6.02 條　　雙邊防衛措施

1. 雙邊防衛措施之採行應依本章規定辦理，並依一九九四年關稅暨貿易總協定第十九條、防衛協定及各締約國相關法規予以補充。

2. 於本條第 4 項至第 6 項限制之條件下，且在過渡期內，如因本協定所訂定之關稅減讓或關稅消除，導致來自一締約國之產品進口至另一締約國之數量，有絕對之增加，或相較於國內生產而有增加，且此種進口為造成生產同類或直接競爭之產品之國內產業遭受嚴重損害或有嚴重損害之虞之重要原因者，締約國得採行防衛措施。在補救或防止嚴重損害或有嚴重損害之虞所需之最低程度內，進口產品之締約國得：

(a) 暫停依本協定規定進一步調降該產品之任何關稅稅率；或

(b) 提高該產品關稅稅率，惟調高後之關稅不得超過下列二種情形之較低者：

(i) 採行措施時之最惠國稅率；與

(ii) 本協定生效實施前一日之最惠國稅率。

3. 依第 2 項規定採行防衛措施程序時，應遵守下列條件及限制：

(a) 一締約國對來自另一締約國產品展開擬採取防衛措施之程序時，應立即以書面通知另一締約國；

(b) 任何防衛措施最遲應自其程序展開之日起一年內採行；

(c) 任何防衛措施不得：

(i) 超過兩年，惟依第 6.04 條第 21 項規定之程序得額外展延一年之期限；或

(ii) 在過渡期結束之後存續，惟取得產品受防衛措施影響之締約國同意者不在此限；

(d) 在過渡期間，締約國各方僅得對同一產品採取防衛措施兩次，而不問該防衛措施是否經延長；

(e) 相同之防衛措施可再度採行，惟至少須距第一次防衛措施後相等於其實施期間之一半期間以上；

(f) 實施臨時性防衛措施之期間，應計入本項第(c)款規定最終防衛措施實施期限；

(g) 未成為最終防衛措施之臨時性防衛措施，應排除於本項第(d)款所定之限制；且

(h) 防衛措施結束時，實際進口稅率應為關稅調降表所規定者。

4. 在延遲將造成難以彌補之損害之緊急情況下，依初步認定有明顯證據顯示，因實施本協定規定之關稅減讓或關稅消除，造成來自另一締約國產品之進口增加，並已造成嚴重損害或有嚴重損害之虞時，締約國得實施暫時性雙邊防衛措施。暫時性防衛措施之期限不得超過一百二十日。

5. 一締約國僅得於另一締約國同意下，在過渡期結束後採行防衛措施，以處理因執行本協定而對國內產業造成之嚴重損害或有嚴重損害之虞。

6. 依本條規定採行防衛措施之締約國，應提供予另一締約國雙方均同意之補償，並以可獲得實質相同貿易效果或預估與防衛措施所收額外關稅等值的關稅減讓方式為之。倘締約國無法就補償達成協議，產品遭採行防衛措施之締約國，得採行實質等同於依據本條規定採行防衛措施之貿易效果之關稅措施。締約國僅得在可達到實質相同效果所需最短期間內，採行關稅措施。

第 6.03 條　　全球防衛措施

1. **各締約國保留其依一九九四年關稅暨貿易總協定第十九條及防衛協定規定之權利及義務，惟不包含與本協定不符之補償或報復以及防衛措施之排除。**

2. **任一締約國依第** 1 **項規定採行防衛措施時，除符合下列條件外，應將來自另一締約國之產品進口排除該措施之外：**

(a) **自另一締約國之進口占總進口重要比重；且**

(b) **自另一締約國之進口在總進口造成之嚴重損害或有嚴重損害之虞中占重要原因。**

3. **為決定：**

(a) **自另一締約國之進口是否占總進口重要比重時，以最近三年在總進口中所占比重為準，若該締約國非屬涉案產品之前五名主要供應者，該等進口一般應不被視為具重要比重；且**

(b) **自另一締約國之進口是否為造成嚴重損害或有嚴重損害之虞之重要原因時，調查主管機關應考量自該另一締約國之進口占總進口之比重變化、進口數量及其變化情形等因素。如在造成損害之快速成長進口之成長率，明顯較同一期間自所有地區總進口成長率為低時，自該締約國之進口，一般應不被認為造成嚴重損害或有嚴重損害之虞之重要原因。**

4. **一締約國依據第** 1 **項規定展開擬採行防衛措施之程序時，應立即以書面通知另一締約國。**

5. **如未事先且儘早以書面通知協定執行委員會及提供另一締約國事先諮商之適當機會，任一締約國不得依第** 1 **項規定對某一產品採取限制性措施。**

6. **如一締約國依本條規定，決定對來自另一締約國之產品採取防衛措施時，所採取者僅限於關稅措施。**

7. **一締約國依本條規定採行防衛措施時，應提供予另一締約國雙方均同意之貿易自由化之補償，並以可獲得實質相同貿易效果或預估與防衛措施所收額外關稅等值之關稅減讓方式為之。**

8. **倘締約國雙方無法就補償達成協議，產品遭採行防衛措施之締約國得採行實質等同於依據第** 1 **項規定採行防衛措施之貿易效果之措施。**

第 6.04 條　　有關防衛措施程序之管理

1. 各締約國應確保公平公正地適用規範一切防衛措施程序之法令、規章、決定及裁決。

2. 在採行防衛措施之程序中，有關防衛措施之採行、嚴重損害或有嚴重損害之虞之認定，由各締約國委由其調查主管機關負責。此等認定，並得依其內國法，受司法審查或行政複查。對於無嚴重損害或嚴重損害之虞之決定，除基於此等司法審查或行政複查外，調查主管機關不得更改之。締約國對內國法令授權執行防衛措施程序之調查主管機關，應提供予所有必要之資源，俾執行其職能。

3. 各締約國應依本條所列之要件，建立並維持公平、適時、透明且有效之採行防衛措施的程序。

程序之展開

4. 調查主管機關得依其職權或依符合資格之主體所提出之申請，展開採行防衛措施程序。提出申請之主體應證明其為生產進口產品之同類或直接競爭產品之國內產業代表。為此目的，所謂產業之主要部分，不得低於百分之二十五（25%）。

5. 除本條規定外，防衛措施程序之期限應於締約國內國法令中規定。

申請書內容

6. 代表國內產業提出申請展開調查之主體，在其申請書中應提供於政府機關或其他來源可公開獲得之資料，或倘無上述資料時，應提供其最佳估算及根據，該等資料包括：

(a) 產品說明：涉案進口產品之名稱及說明，海關稅則分類號列及現行關稅，以及同類或直接競爭國內產品之名稱與說明；

(b) 代表性：

(i) 提出申請案之主體之名稱及地址，以及其生產國內產品之所在地；

(ii) 上述廠商佔國內同類或直接競爭產品之生產比重及其認為可代表國內產業之原因；及

(iii) 國內所有其他生產同類或直接競爭產品之廠商名稱及所在地。

(c) 進口資料：採行防衛措施程序之前三年全年進口資料，以顯示涉案產品進口絕對數量或相對於國內生產量之相對數量，有穩定增加之事實；

(d) 國內生產資料：採行防衛措施程序之前三年全年國內同類或

直接競爭產品之總生產資料；

(e) 證明損害或有損害之虞之資料：顯示受影響國內產業遭受損害或有損害之虞之性質及程度之量化及客觀資料，諸如可證明銷售、價格、生產、生產力、設備產能利用率、市場佔有率、盈餘或虧損及僱用員工數等變化程度情形；

(f) 損害原因：列舉及陳述其主張造成損害或有損害之虞之原因，以及概要說明支持其主張因涉案產品相對於國內生產之進口增加，對於國內產業造成嚴重損害或有嚴重損害之虞之論據；及

(g) 將締約國納入之標準：顯示自另一締約國進口佔有率之量化及客觀資料，以及申請者對上述進口為造成嚴重損害或有嚴重損害之虞之重要原因之意見。

7. 締約國應確保，申請案被受理時，應立即使公眾得以閱覽，惟機密資料除外。

諮商

8. 如依據第 6 項規定提出之申請被受理時，在展開調查之前，擬展開調查之締約國應就此通知另一締約國，並邀其舉行諮商，以釐清案情。

9. 在整個調查期間，應給予產品遭調查之締約國適當機會繼續諮商。

10. 締約國得於諮商過程中處理調查程序、取消措施及第 6.02 條第 5 項所列事項等議題，並得交換是項措施之意見。

11. 在不影響提供適當諮商機會之義務下，第 8 項、第 9 項及第 10 項有關諮商規定之目的，並非在於阻礙任何一方締約國主管機關迅速展開調查或作成初步或最終之肯定或否定之認定，亦不阻礙該等機關依本協定規定採行防衛措施。

12. 進行調查之締約國，在產品遭調查之另一締約國之請求下，應允許其查閱展開調查或調查期間使用之公開資料，包括依機密資料所作成之非機密性摘要。

通知要件

13. 展開採行防衛措施之程序時，調查主管機關應按照締約國內國法令規定，於受理申請案起三十日內，公告於政府公報或其他全國發行之報紙公告展開調查。該項公告應立即以書面通知締約國他方。通知應包括下述資料：申請者姓名、涉案進口產品說明及海關稅則分類、作成決定之性質與期限、得閱覽申請書及於程序進行中提出

之其他文件之地點，以及得獲取進一步資料之機關名稱、地址與電話號碼。提出證明、報告、陳述及其他文件之期限，應依締約國各方之法律訂之。

14. 關於採行防衛措施之程序，若係基於某一主體主張其為國內產業之代表提出申請而展開，調查主管機關在未仔細評估是項申請案是否符合第 6 項規定之要件前，不應依第 13 項規定公告。

聽證會

15. 在所有程序期間，調查主管機關應：

(a) 於經合理通知後，並於舉行聽證會十五日前，將舉行日期及地點通知所有利害關係人，包括進口人、出口人、消費者團體及其他利害關係人，使其親自或透過代表出席，以就嚴重損害或有嚴重損害之虞及適當之救濟等提出證據、主張及被聽取意見。

(b)提供所有出席聽證會之利害關係人，就各利害關係人於會中提出之論據予以交叉詢問之機會。

機密資料

16. 為第 6.02 條之目的, 調查主管機關應制定或維持對程序中所提供受內國法令保護之機密資料處理程序，並要求提供該機密資料之利害關係人提出非機密性之書面摘要。倘利害關係人表示無法摘述此項機密資料時，應說明無法作成之理由。除非具有信服力之方式及適當資料來源證明該資料真實無誤，調查主管機關得不將該資料列入考量。

17. 調查主管機關於程序期間所獲得之資料，如本質上具有機密性，或其係以機密之基礎提供，而要求保密有正當理由，除提供資料者同意外，不得予以洩露。

損害或損害之虞之證據

18. 為執行程序，調查機關應儘可能蒐覓所有與作成決定相關之資訊，且應評估所有影響該國內產業情況之客觀及具可量化性質之因素，包括涉案產品相較國內產業之進口增加數量及其成長率、進口增加產品在國內市場之佔有率及銷售、生產、生產力、設備產能利用率、盈虧及僱用員工數等變化程度情形。在作成決定時，調查主管機關亦得考量其他經濟因素，諸如價格、存貨及國內產業所屬廠商募集資本能力之變化。

審理及決定

19. 除緊急情況及有關易腐性農產品之全球防衛措施外，調查主管機關在進行防衛措施程序作成採行該措施決定前，應有有充分時間蒐集及檢視相關資訊，並應舉行聽證會及提供所有利害關係人準備及提供意見之適當機會。

20. 最終決定應立即公布在政府公報或全國發行之報紙，並敘明調查之結果，及所有法令及事實之相關問題附理由之結論。決定中應敘明進口產品、海關稅則分類、程序中應用之標準及其認定。決定理由中應列明決定之根據，包括下列說明事項：

(a) 已遭受嚴重損害或有嚴重損害之虞之國內產業；

(b) 認定進口增加，國內產業遭受嚴重損害或有嚴重損害之虞，及進口增加正造成嚴重損害或有嚴重損害之虞等佐證資料。

(c) 如內國法令有救濟規定，有關認定與決定之適當救濟程序及其根據。

延長

21. 倘進口之締約國一方認為，導致採行雙邊防衛措施之理由依然存在，應於該措施效期結束至少九十日前，通知締約國他方主管機關擬予延長之意向，並提供導致採行防衛措施之因素仍存在之證據，俾依本條規定展開諮商。

22. 締約國應要求代表國內產業提出延長之申請案之主體，送交一份包括國內產業或其生產可控制變數之再調整計畫。

23. 延長之通知及補償，應於採行措施效期截止前，依本條規定提出。

第 6.05 條　　防衛措施之爭端解決

任一締約國於締約國他方採行防衛措施前，不得依第 19.09 條（成立仲裁小組之請求）之規定請求成立仲裁小組。

附件　6.01　調查主管機關

為本章之目的，調查主管機關如下：

(a) 中華民國部分，經濟部貿易調查委員會，或其繼受機構；及

(b) 巴拿馬部分，自由競爭暨消費者事務委員會，或其繼受機構。

第七章　不公平貿易行為

第 7.01 條　　適用範圍

1. 締約國雙方茲確認其在世界貿易組織協定下之一九九四年關稅暨貿易總協定第六條、第十六條規定及一九九四年關稅暨貿易總協定第六條執行協定、以及補貼暨平衡措施協定之權利與義務。就此，締約國雙方應確保其內國法律符合上述協定規定。

2. 締約國得依據本章、第一項所述協定與條款、及其內國法律之規定，展開調查程序及課徵平衡稅或反傾銷稅。

第 7.02 條　　結束調查之義務

1. 主管機關認定傾銷差額或補貼金額微小，或無充分證據顯示有傾銷、補貼、損害或因果關係存在時；抑或主管機關認定傾銷或受補貼之進口數量微不足道時，進口締約國得終止對相關利害關係人之調查。

2. 就第一項之目的而言，應認：

(a) 傾銷差額微小，係指該項差額低於出口價格之百分之六（6%）；

(b) 補貼金額微小，係指該項補貼從價計算時低於百分之六（6%）；以及

(c) 傾銷或受補貼之進口數量微不足道，係指該等進口數量低於進口締約國同類產品進口量總和之百分之六（6%）。

3. 申請人得隨時要求中止調查。如其於展開調查後提出中止調查之要求，主管機關應通知其餘申請人行使同意權。當不同意中止調查之申請人其產量總和占該國總產量之比率未達展開調查所需之門檻，主管機關應終止調查，並通知所有利害關係人。在任何情況下，主管機關不得逕自繼續調查。

第參篇：技術性貿易障礙

第八章　食品安全檢驗與動植物防疫檢疫措施

第 8.01 條　定義

為本章之目的，締約國雙方應採用下列協定或機構所為之定義及詞彙：

(a) 世界貿易組織協定下之食品安全檢驗與動植物防疫檢疫措施協定；
(b) 世界動物衛生組織；
(c) 國際植物保護公約；及
(d) 食品標準委員會。

第 8.02 條　總則

1. 依法負責確保本章所定食品安全檢驗與動植物防疫檢疫（以下簡稱檢驗與防疫檢疫）義務之履行之機關，應視為主管機關。

2. 締約國雙方茲以食品安全檢驗與動植物防疫檢疫措施協定為基礎，建立辦法與專業架構，以指導檢驗與防疫檢疫措施之採用及執行。

3. 締約國雙方應透過共同合作，防止疫病害蟲之傳入與散播，並增進動植物健康及食品安全，以促進貿易。

第 8.03 條　締約國雙方之權利

締約國得依據食品安全檢驗與動植物防疫檢疫措施協定：

(a) 於其境內制定、採行、維持或執行任何檢驗與防疫檢疫措施，但以保護人類、動物或植物生命及健康之需要程度為限；如有科學上之正當理由，該等措施得較國際標準、準則或建議更為嚴格；
(b) 執行檢驗與防疫檢疫措施，但以達到適當保護水準為限；及
(c) 對出口之植物、動物、其產品與副產品之檢驗與防疫檢疫之監測進行查證，以確保符合進口國所定檢驗與防疫檢疫措施之規定。

第 8.04 條　締約國雙方之義務

1. 檢驗與防疫檢疫措施之實施，對雙邊貿易不應構成隱藏性之限制，其目的或效果亦不應造成不必要的阻礙。

2. 檢驗與防疫檢疫措施應基於科學原理，其維持應有充份理由，並應依據風險評估。

3. 檢驗與防疫檢疫措施應依據國際標準、準則或建議。

4. 締約國雙方在相同或類似情況下，其檢驗與防疫檢疫措施不應造成恣意或無正當理由之歧視。

第 8.05 條　國際標準與調和

為調和檢驗與防疫檢疫措施之目的，締約國雙方之管制、檢驗及核可等程序應依據下列原則：

(a) 締約國應採用國際標準、準則或建議，作為制定其本國之檢驗與防疫檢疫措施之參考準則；

(b) 締約國如具有科學上之正當理由，得採行、執行、制定或維持與國際標準、準則或建議不同或更嚴格之保護水準之檢驗與防疫檢疫措施；

(c) 為達更高之調和程度，締約國應遵循食品安全檢驗與動植物防疫檢疫措施協定，在植物健康方面，遵循國際植物保護公約；在動物健康方面，遵循世界動物衛生組織；在食品安全及容許量方面，遵循食品標準委員會等所訂之準則；及

(d) 締約國雙方應對動物、植物、其產品及副產品以及食品安全之檢驗與防疫檢疫措施在其管制、檢驗及核可程序上，建立調和之制度。

第 8.06 條　同等效力

締約國雙方為於境內執行檢驗與防疫檢疫措施之目的，其管制、檢驗及核可等程序之實施應依據下列原則：

(a) 若締約國之一方客觀的向另一方證明其檢驗與防疫檢疫措施係依據科學資訊及風險評估，而達到締約國他方要求之適當的檢驗與防疫檢疫保護水準，則縱該等措施有異於締約國他方所採行者，該締約國他方亦應將等該措施視為與其採行者具同等效力而接受之。締約國之一方應在締約國他方要求時，提供合理管道，俾便其進行檢驗、測試或其他相關程序；且

(b) 為確立同等效力，締約國各方應協助對方進入其境內執行檢驗、測試及其他相關程序。

第 8.07 條　風險評估及適當的檢驗與防疫檢疫保護水準之決定

依據國際相關組織所訂之準則：

(a) **締約國雙方應確保其檢驗或防疫檢疫措施，係依據對保護人類之生命與健康（食品安全）及動物健康或為保護植物健康之現存風險所做之適當評估而定，並將相關國際組織所研訂之準則及風險評估技術納入考量；**

(b) **締約國雙方應以世界貿易組織所認可國際組織之準則及建議為基礎，提供必要管道，俾依現行程序查證及檢驗與防疫檢疫業務有關之管制、檢驗、核可程序及措施之執行與相關計畫，評估檢驗與防疫檢疫機關；**

(c) **締約國雙方對一貨品進行風險評估及訂定適當之保護水準時，應考慮下列因素：**

(i) **現有之科學及技術資訊，**

(ii) **現存之害蟲或疫病，**

(iii) **害蟲及疫病流行學，**

(iv) **檢驗（食品安全）與防疫檢疫措施之重要管制點分析，**

(v) **食品中物理、化學及生物性之危害，**

(vi) **相關生態及環境狀況，**

(vii) **生產程序與方法、檢驗、取樣及測試方法，**

(viii) **檢驗與防疫檢疫機關架構及組織，**

(ix) **保護、疫病流行之監督、診斷及治療等之程序以確保食品安全，**

(x) **因害蟲或疫病傳入、立足、傳播或散佈所造成之生產或銷售損失，**

(xi) **滿足進口之締約國降低風險要求之可行的檢疫措施及處理，及**

(xii) **進口之締約國在其境內防治或撲滅害蟲或疫病之費用, 及其他可降低風險方法之成本效益；**

(d) **為建立及調和適當之保護水準之目的，締約國雙方應避免採取足以造成歧視或其他隱藏性貿易限制之恣意或無正當理由之措施；**

(e) **如相關的科學證據不足以進行風險評估，締約國得依現有有關資訊，包括本章所述之相關國際組織的資訊，採用檢驗與防疫檢疫暫行措施。惟在此情況下，締約國雙方應設法取得更多必要之資訊以進行客觀之風險評估，並應在合理期限內**

檢討該等措施；為達此目的，應遵循下列程序：

(i) 採行暫行措施之進口之締約國，應於採行該措施後三十日內要求締約國他方提供必要之技術資訊以完成風險評估，而締約國他方應提供該等資訊。如締約國他方未提供所需之資訊，該暫行措施應繼續維持；如於上述期限內，進口之締約國未要求締約國他方提供資訊，該暫行措施應予撤銷，

(ii) 進口之締約國要求提供資訊，而締約國他方已提供此資訊，則進口之締約國應於上述資訊提供後六十日內，對暫行措施作出修正、撤銷或確定採行之決定。必要時，進口之締約國得延長該期限，

(iii) 進口之締約國在收到資訊後得要求締約國他方說明所提供之資訊，

(iv) 進口之締約國應允許出口之締約國提出意見，並在總結風險評估時將其意見納入考量，及

(v) 於採行或修正檢驗或防疫檢疫措施時，應立即透過依據食品安全檢驗與動植物防疫檢疫措施協定所設立之通知機關通知締約國他方；

(f) 如風險評估之結果顯示無法接受產品之進口，則應以書面通知有關作此決定之科學依據；及

(g) 如締約國之一方有理由相信締約國他方所訂定或維持之檢驗或防疫檢疫措施，對其出口造成或可能造成限制，而該措施並非依據相關國際標準、準則或建議而制訂，或該國際標準、準則或建議不存在時，得要求對方對維持該項檢驗與防疫檢疫措施之理由提出說明；維持該措施之締約國主管機關應於收到對方詢問後六十日內，提出說明。

第 8.08 條　害蟲或疫病非疫區及低流行疫區之認定

1. 締約國雙方應依國際標準、準則或建議，並考量地理條件、生態系、流行學之監測及該地區之檢驗與防疫檢疫防治措施之成效等因素，認定害蟲或疫病之非疫區及低流行疫區。

2. 締約國之一方宣稱其境內為特定害蟲或疫病之非疫區者，應向進口之締約國客觀地證明上述情況，並依其主管機關所採行之檢驗與防疫檢疫措施，確保非疫區之維持。

3. 締約國之一方如有意獲得特定害蟲或疫病非疫區之認定，應向締

約國他方提出請求及提供相關科學及技術資訊。

4. 締約國之一方收到締約國他方請求非疫區認定時，得進行檢驗、測試或其他查證程序。倘拒絕其請求，應以書面敘明該決定之技術理由。

5. 締約國雙方得進行諮商，以對認定害蟲或疫病非疫區或低流行疫區所需特定條件達成協議；有鑑於目前尚無國際標準以認定害蟲或疫病低流行疫區，締約國雙方同意在相關國際標準建立前，暫不執行低流行疫區之認定。

第 8.09 條　管制、檢驗與核可程序

1. 締約國雙方應依本章規定，遵守食品安全檢驗與動植物防疫檢疫措施協定附件 C 有關管制、檢驗與核可程序之規定，包括在食品、飲料及飼料中核可使用添加物或訂定污染物之容許量。

2. 當出口之締約國主管機關第一次要求進口之締約國主管機關對其境內之生產設施或生產程序進行查驗時，進口之締約國主管機關應於完成審閱及評價必備文件與資訊及完成進口之締約國要求之風險評估後一百日內進行查驗。前述期限倘有正當理由，例如有關產品之季節性等原因，得經雙邊協議後予以延長。進口之締約國主管機關應於查驗完成後九十日內，以書面將查驗結果通知出口之締約國。

第 8.10 條　透明化

1. 締約國擬採取或修正全國適用之檢驗或防疫檢疫措施時，應通知下列事項：

(a) 上述措施之採行及修正。並應依據食品安全檢驗與動植物防疫檢疫措施協定附件 B 之規定，提供該措施之資訊，並應實施相關之調整；

(b) 對雙方貿易具有重大影響之檢驗或防疫檢疫措施之修正或改變，應最少在該規定生效日前六十日，通知締約國他方，以便其有時間提出意見。依據食品安全檢驗與動植物防疫檢疫措施協定附件 B 之規定，如屬緊急狀況不在此限；

(c) 動物疫情之改變，如發生外來動物傳染病及世界動物衛生組織之 A 表疾病時，應在疾病確診後二十四小時內通知；

(d) 植物疫情之改變，如發生植物檢疫害蟲及疫病，或在官方防治下之檢疫害蟲及疫病傳播時，應在疫情證實後七十二小時內通知；及

(e) 疾病之爆發，經科學證據顯示係因食用進口之食品不論自然

或加工者所致。

2. 締約雙方應以食品安全檢驗與動植物防疫檢疫措施協定下設立之通知機關及查詢點作為溝通管道。如有採行緊急措施之需要，採行措施之締約國應立即以書面方式通知締約國他方，並簡要敘明採取該項措施之目的、依據及問題之性質。

3. 根據第 17.02 條（資訊中心）規定，締約國之一方對締約國他方合理之要求提供資訊，應予回覆，並依據食品安全檢驗與動植物防疫檢疫措施協定附件 B 第三項規定之原則，提供相關文件。

第 8.11 條　食品安全檢驗與動植物防疫檢疫措施委員會

1. 締約國雙方茲設立食品安全檢驗與動植物防疫檢疫措施委員會，如附件 8.11。

2. 委員會應處理與本章有關事項，及在不抵觸第 18.05 條第 2 項（委員會）之規定下，執行下列功能：

(a) 推動相關措施以培訓專業技術人員；

(b) 促進締約國雙方積極參與國際組織；及

(c) 建立並更新食品安全與動植物健康有關方面之專家資料庫，以執行第 18.07 條（專家小組）之規定。

第 8.12 條　技術合作

締約國在合意之條件及情況下，得提供對方意見、資訊及技術合作以強化其檢驗與防疫檢疫措施以及相關之活動、程序及制度。

附件 8.11　食品安全檢驗與動植物防疫檢疫措施委員會

依據第 8.11 **條第** 1 **項規定成立之食品安全檢驗與動植物防疫檢疫措施委員會應由下列單位組成：**

1. **在巴拿馬方面：為工商部（由外貿次長室代表）、農業部及衛生部，或此等單位之繼受者代表；及**

2. **在中華民國方面：為農業委員會、衛生署及經濟部，分別由動植物防疫檢疫局、食品衛生處及標準檢驗局或此等單位之繼受者代表。**

第九章　標準、度量衡及授權程序

第 9.01 條　定義

1. 為本章之目的，相關用語定義如下：

行政駁回：進口締約國之行政部門行使其權限對不符合其技術性法規、符合性評估程序或度量衡規定之貨品禁止進入其領域之行為；

風險評估：對合法目的所可能造成潛在負面影響且可能阻礙貿易之評估；

授權程序：為生產、銷售、或用於既定目的或既定條件之貨品取得登錄、許可證或其他核准等之任何強制性之行政程序；

可比較之情況：為達合法目的所提供相同安全水準及保護程度之情況；

符合性評估程序：直接或間接用以判定是否符合技術性法規或標準相關之任何程序，該程序包括取樣、試驗、檢驗、評估、證明、符合性保證、登錄、認證、認可以及前述各項之組合；

國際標準：國際標準化機構所採納且公開之一種標準、指南或建議；

國際標準化或度量衡機構：會員資格至少開放給世界貿易組織全體會員之標準化或度量衡機構；包括國際標準化組織、國際電工委員會、國際食品法典委員會、國際法定計量組織、國際放射性單位及量測委員會或其他經雙方指定之標準化或度量衡機構；

合法目的：國家安全需要、欺騙行為之預防、人類健康或安全、動物或植物生命或健康、或環境之保護；

使相容：將不同標準化機構所制定同範圍之不同標準相關措施，調整至相同水準，使此等不同標準相關措施彼此等同、相當或具有足以使貨品彼此替換使用或達成相同目的之效果；

標準：經公認機構認可並供共同且重覆使用，但不具強制性之貨品或相關製程及生產方法之規則、指南或特性之文件。該文件亦得包括或僅處理適用於貨品、製程或產製方法之專門術語、符號、包裝、標記或標示規定；

標準化措施：符合性評估之規則、技術性法規或程序；

技術性貿易障礙協定：指世界貿易組織下之技術性貿易障礙協定；及

技術性法規：規定貨品特性或其相關製程及產製方法，包括適用具

強制性之管理規定之文件；該文件亦得包括或僅處理適用於貨品、製程、或產製方法之專門術語、符號、包裝、標記或標示之規定。

2. 除前述第 1 項所定義之名詞外，締約國雙方應適用國際標準化組織／國際電工委員會指南二 1996 年版：「標準化及相關活動－一般詞彙」之用語。

第 9.02 條　總則

除遵守世界貿易組織協定之規定外, 締約國雙方應適用本章之規定。

第 9.03 條　適用範圍

1. 締約國雙方所採納之標準、授權程序及度量衡措施，以及可能直接或間接影響雙方貨品貿易之相關措施，均適用本章之規定。

2. 本章之規定不適用於食品安全檢驗及動植物防疫檢疫措施。

第 9.04 條　基本權利與義務

採行標準化措施之權利

1. 締約國均得擬定、採行、適用及維持：

(a) 符合本章規定之標準、授權程序及度量衡等措施；及

(b) 使締約國得以達成合法目的之技術性法規及符合性評估程序。

不必要之障礙

2. 締約國擬定、採行、適用及維持標準、授權程序或度量衡等措施時，不得以對締約國他方造成不必要之貿易障礙為目的或產生該等效果。

不歧視待遇

3. 締約國對其標準、授權程序及度量衡等措施應對締約國他方之貨品給予國民待遇，並給予不低於對來自任何國家同類貨品之待遇。

使用國際標準

4. 於擬定或實施標準、授權程序及度量衡等措施時，締約國應使用現存或即將完成之國際標準或其相關部分，除非該等國際標準由於氣候、地理、技術或基礎設施或經科學證實之理由等無法有效或不適於達成國家之合法目的。

第 9.05 條　風險評估

1. 為追求其合法目的，締約國於進行風險評估時，應考量下列因素：

(a) 國際標準化或度量衡機構所執行之風險評估；

(b) 現有之科學證據或技術資訊；

(c) 相關處理技術；或

(d) 貨品最終使用目的。

2. 締約國一方建立其適當保護程度，並進行風險評估時，如其措施將產生下列情形，則於該保護程度下，應避免對同類貨品作出恣意或無正當理由之措施：

(a) 對締約國他方之貨品造成恣意或無正當理由之歧視；

(b) 對締約國雙方間之貿易造成隱藏性之貿易限制；或

(c) 對於相同條件下具相同風險程度及相似利益且有相同使用目的之同類貨品造成歧視。

3. 締約國一方經要求時，應提供締約國他方其風險評估程序之文件、風險評估考慮之因素及依第 9.04 條所界定之保護程度等資訊。

第 9.06 條　相容及同等效力

1. 在不影響本章所賦予之權利下，並考量標準及度量衡方面之國際活動，締約國雙方應在不減低對人類、動植物生命健康、環境及消費者之安全或保護水準下，儘可能促使雙方之標準及度量衡等措施彼此相容。

2. 在與締約國他方合作下，如進口之締約國認為出口之締約國技術性法規可適切地達成進口方之合法目的時，該進口之締約國應接受出口之締約國所採行之技術性法規與國內技術性法規具有相當效力。

3. 進口之締約國於出口之締約國提出要求時，應以書面說明其無法依本條第 2 項規定接受出口方之技術性法規與國內技術性法規具相當效力之理由。

第 9.07 條　符合性評估程序

1. 締約國各方所擬訂、採行及適用之符合性評估程序，應使締約國他方同類貨品於利用該程序時，在可比較之情況下，享受不低於其賦予本國同類貨品或來自任何其他國家之同類貨品之待遇。

2. 關於符合性評估程序，締約國應確保：

(a) 基於不歧視原則，儘速展開及完成該等程序；

(b) 公布各項程序所需之手續及正常作業時間；或依請求，將該

資訊告知申請人；

(c) 要求主管機關於收到完整之申請文件時，應立即審查，並將評估之結果儘速以精確及完整之方式告知申請人，以供申請人於必要時採取補正措施；縱申請資料涉有瑕疵，於申請人提出請求時，主管機關仍應在可能範圍內進行符合性評估作業；如申請人提出請求，主管機關應告知申請人評估程序之進展狀況，並解釋任何可能延遲之原因；

(d) 僅要求評估符合性及估算費用所需要之資料；

(e) 對符合性評估程序或其他因該程序所取得有關締約國他方貨品之機密資料，給予與國內貨品之資料同樣方式之尊重，以保護其合法之商業利益；

(f) 在顧及申請人地點與符合性評估機構地點之差異所產生之連繫、運輸及其他成本之情形下，對來自締約國他方貨品進行符合性評估所收取之費用，相較於對本國同類貨品所收取之費用，應具合理性；

(g) 確保進行符合性評估程序所使用之場地及取樣程序，不至於對申請人或其代理人造成不必要之不便；

(h) 貨品經認定符合適用之技術性法規或標準後而修改其規格者，修改後貨品之符合性評估程序，限於確保該貨品仍符合技術性法規或標準之範圍；及

(i) 建立對符合性評估程序作業之施行所提出申訴之審查程序，並於申訴合理時，予以改正之。

3. 為促進貿易便捷化，締約國一方對於締約國他方提出就相互承認符合性評估程序結果展開諮商之請求，應給予有利之考量。

4. 在可行之範圍內，如締約國他方可以提供與自己境內符合性評估程序同樣充分之值得信賴程度且相關貨品已符合己方適用之技術性法規或標準，則締約國此方應接受在締約國他方境內所執行符合性評估程序之結果。

5. 為加強符合性評估結果可信度，在依據本條第 4 項規定接受有關符合性評估程序結果之前，締約國雙方得就評估機構之技術能力進行諮商，包括透過諸如認證等方式以確保該等機構之運作符合相關國際標準。

6. 基於雙方利益，締約國各方就認證、認可或承認，應以不低於對待己方符合性評估機構之待遇給予締約國他方符合性評估機構。

7. 締約國得利用於締約國領域內經認證之機構之能力及技術基礎架構執行符合性評估程序。

第 9.08 條　授權程序

1. 締約國各方所擬訂、採行及適用之授權程序，應使締約國他方同類貨品於利用該授權程序時，在可比較之情況下，享受不低於對待其賦予本國同類貨品或來自任何其他國家同類貨品之待遇。

2. 關於授權程序作業，締約國應確保：

(a) 基於不歧視原則，儘速展開及完成該等程序；

(b) 公布各項程序所需之手續及正常作業時間；或依請求，將該資訊告知申請人；

(c) 要求主管機關於收到完整之申請文件時，應立即審查，並將授權之結果儘速以精確及完整之方式告知申請人，以供申請人於必要時採取補正措施；縱申請資料涉有瑕疵，於申請人提出請求時，主管機關仍應在可能範圍內進行授權程序；如申請人提出請求，主管機關應告知申請人程序之進展狀況，並解釋可能延遲之原因；

(d) 僅要求授權及估算費用所需要之資料；

(e) 對授權程序或其他因該程序所取得有關締約國他方貨品之機密資料，給予與國內貨品之資料同樣方式之尊重，以保護其合法商業利益；

(f) 在顧及申請人與授權機構地點之差異所產生之連繫、運輸及其他成本之情形下，對來自締約國他方貨品進行授權程序所收取之費用，相較於對本國同類貨品所收取之費用，應具合理性；及

(g) 建立對授權程序作業之施行所提出申訴之審查程序，並於申訴合理時，予以改正之。

第 9.09 條　度量衡

締約國各方應儘可能確保依據國際度量衡局及國際法定計量組織建議之標準及量測儀器校正之書面追溯，符合本章之規定。

第 9.10 條　通知

1. 在缺乏適當之國際標準，或技術性法規及符合性評估程序草案之技術內容與相關國際標準之技術內容不一致之情況下，且上述技術性法規對締約國雙方之貿易有重大影響時，締約國應於前述技術性

法規等草案採行前至少六十日內，以書面通知締約國他方，以利締約國他方之相關團體可以在此期間內提出意見及要求進行討論；通知之締約國一方並應將此意見及討論結果納入考量。

2. 締約國一方面臨安全、衛生、環境保護或國家安全等緊急問題或威脅時，得省略提前通知之程序；但一旦採行後，仍應通知締約國他方。

3. 本條第 1 項及第 2 項內所述之通知，應遵循技術性貿易障礙協定之模式。

4. 本協定生效後三十日內，締約國雙方應相互通知其所指定負責本條款通知之單位。

5. 締約國一方應以書面通知締約國他方有關標準化之各項計畫及方案。

6. 如締約國一方對某批貨品作出行政駁回之決定，拒絕該批貨品時，該締約國應立即以書面通知貨主其作出拒絕之技術理由。

7. 當締約國一方完成本條第 5 項所提之計畫資料時，應立即將資料送交締約國他方之資訊中心。

第 9.11 條　資訊中心

1. 締約國各方均應確保在其境內設有一資訊中心，以答復所有來自締約國他方及利害關係人提出之一切合理問題及查詢，並提供有關其政府或非政府機構在其境內所採行或建議之標準、度量衡、符合性評估程序或授權程序等相關最新文件。

2. 締約國各方茲指定附件 9.11(2)所提及之機構為資訊中心。

3. 如締約國一方之資訊中心索取本條第 1 項所載之文件時，該文件應免費提供。對締約國他方之利害關係人取得文件所收取之費用，應與向本國人收取之費用相同，但得另計寄送之費用。

第 9.12 條　標準、度量衡及授權程序委員會

1. 締約國雙方茲設立標準、度量衡及授權程序委員會，如附件 9.12。

2. 該委員會處理與本章相關之事項；在不違反第 18.05 條第 2 項（委員會）之前提下，該委員會應有下列功能：

(a) 於締約國一方認為締約國他方之標準、授權程序及度量衡等措施造成技術性貿易障礙時，分析並提出解決途徑；

(b) 促使締約國雙方標準及度量衡等措施彼此相容，並優先推動

標示及包裝部分；

(c) 推動締約國雙方技術合作活動；

(d) 協助締約國雙方完成風險評估；

(e) 共同推展及加強締約國雙方標準及度量衡等措施；及

(f) 促使締約國雙方簽署相互承認協定。

第 9.13 條　技術合作

1. 締約國雙方為協助本章之執行，及強化標準及度量衡相關活動、程序、制度及措施，應推動標準及度量衡機構間之技術合作，並在可能之範圍內及相互同意之條件下，提供資訊或技術協助。

2. 締約國雙方得共同努力與其他非締約國進行技術合作。

附件 9.11(2)　資訊中心

第 9.11 **條第** 2 **項中所稱之資訊中心由下列單位擔任：**

(a) **巴拿馬為商工部標準及工業技術總局或其繼受單位；及**

(b) **中華民國為經濟部標準檢驗局或其繼受單位。**

附件 9.12　標準、度量衡及授權程序委員會

第 9.12 **條第** 1 **項中設立之標準、度量衡及授權程序委員會之組成如下：**

(a) **巴拿馬為外貿次長辦公室或繼受單位所代表之貿工部；及**

(b) **中華民國為經濟部次長辦公室或繼受單位所代表之經濟部。**

第四篇：投資、服務及相關事項
第十章　投資
第一節 投資
第 10.01 條　適用範圍
1. 本章適用於締約國關於下述事項所採行或維持之措施：
   (a) 締約國他方之投資人有關投資之一切事項；
   (b) 締約國他方投資人在其境內之投資；及
   (c) 締約國投資人在締約國他方境內之一切投資涉及第 10.07 條者。
2. 本章不適用下列情形：
   (a) 締約國採行有關金融服務之措施；
   (b) 基於公共秩序或國家安全理由，締約國一方限制締約國他方投資人在其境內進行投資所採行之措施；
   (c) 各締約國依據本協定簽訂日之有效法令規定所保留之經濟活動；締約國保留之經濟活動項目如附件三；
   (d) 諸如法令執行、矯正服務、收入保障或失業保險、社會安全服務、社會福利、公共教育、公共訓練、衛生及護幼等之政府服務或功能；
   (e) 本協定生效前產生之爭議或請求，或生效前所發生之事實；縱協定生效後始產生影響者亦同；及
   (f) 政府採購。
3. 本章適用締約國境內各地及各級政府；縱在各層級政府之法律可能存在不符合之措施，亦同。
4. 不論第 2 項第(d)款之規定，締約國投資人如經核准提供服務或進行矯正服務、收入保障或失業保險、社會安全服務、社會福利、公共教育、公共訓練、衛生及護幼等，此種投資人之投資仍應受本章規定保障。
5. 本章適用於本協定生效前及生效後，由締約國一方之投資人在締約國他方領域所進行之投資。
第 10.02 條　國民待遇
1. 在有關投資之設立、收購、擴充、管理、經營、營運、銷售或其他處置方面，在相同情況下，締約國一方對締約國他方之投資人，

應給予不低於對本國投資人之待遇。

2. 在有關投資之設立、收購、擴充、管理、經營、營運、銷售或其他處置方面，在相同情況下，締約國一方對締約國他方投資人之投資，應給予不低於對本國人之投資之待遇。

第 10.03 條　最惠國待遇

1. 在有關投資之設立、收購、擴充、管理、經營、營運、銷售或其他處置方面，在相同情況下，締約國一方對締約國他方之投資人，應給予不低於非締約國投資人之待遇。

2. 在有關投資之設立、收購、擴充、管理、經營、營運、銷售或其他處置方面，在相同情況下，締約國一方對締約國他方投資人之投資，應給予不低於非締約國投資人之投資之待遇。

第 10.04　　公平及公正之待遇

締約國一方對締約國他方投資人及其投資所賦予之待遇，應依國際法之規範，包括應賦予公平及公正之待遇及充分保障與安全之待遇。

第 10.05 條　待遇標準

締約國一方對締約國他方投資人或投資人之投資，應給予依第 10.02 條、第 10.03 條及第 10.04 條要求中較佳之待遇。

第 10.06 條　損失補償

締約國一方為因境內武裝衝突、國家緊急事件、暴動或民間抗爭，造成投資損失而採相關措施時，其對締約國他方之投資人及其投資，應給予非歧視待遇。

第 10.07 條　實績要求

1. 締約國一方不得對締約國他方投資人在其境內之投資設立、收購、擴充、管理、經營、營運，加諸或執行下列要求、承諾或負擔：

(a) 必須出口一定水準或百分比之貨品或服務；

(b) 必須達到一定水準或百分比的自製率；

(c) 優先採購、使用其領域內之貨品或服務，或採購其領域內之人之貨品或服務；或

(d) 規定進口量或進口值需佔出口量或出口值之某種比例，或佔該投資流入外匯之金額之某種比例。

本項不適用於上述規定以外之任何要求。

2. 締約國一方對締約國他方投資人在其領域內之投資，不得以其符

合下列要求，作為獲得或繼續獲得某項優惠之前提條件：

(a) 達到一定比例之自製率；

(b) 購買、使用當地生產之貨品或對之授予優惠，或向當地之生產者購買；或

(c) 以任何方式將進口量或進口值與出口量或出口值予以關聯，或使其與投資流入之外匯金額加以關聯。

本項不適用任何上述規定以外之任何其他要求。

3. 下列條文：

(a) 含本條第 1 項第(a)款、第(b)款及第(c)款以及第 2 項第(a)款及第(b)款之規定，不適用於出口推廣及援外計畫對於貨品及服務之資格要求；

(b) 含第 1 項第(b)款及第(c)款以及第 2 項第(a)款及第(b)款之規定，不適用於締約國及國營企業之採購；及

(c) 含第 2 項第(a)款及第(b)款之規定，不適用於進口締約國為符合優惠關稅或配額之必要資格，而對貨品成分所設之規定。

4. 本條第 2 項之規定不應被解釋為禁止締約國一方，以來自締約國他方之投資人遵守生產所在、提供服務、訓練或僱用工人、興建或擴充特定設施、或執行研究發展等要求，作為獲取優惠或繼續維持優惠之條件。

5. 如相關措施之實施並非以恣意或無正當理由方式為之，或對國際貿易與國際投資並不造成隱藏性限制，則前述第 1 項第(b)款或第(c)款，或第 2 項第(a)款或第(b)款不應被解釋為禁止締約國採行或維持下列之必要措施，包括保護環境措施：

(a) 確保與本協定相符之法令規章之被遵守；

(b) 保護人類、動物或植物之生命或健康；或

(c) 保護不論是否為活體之可能枯竭之天然資源。

6. 如締約國一方認締約國他方實施任一有關下列條件，對貿易流通造成負面影響，或造成締約國一方投資之重大障礙，則應由執委會審查其事項：

(a) 以其銷售與出口量或出口值或與所賺取之外匯加以關聯之方式，限制投資所生產之貨品或服務在領域內銷售；

(b) 移轉技術、製程方法或專屬知識予其領域內之人；除非該項要求或相關承諾係法院、行政法庭或競爭主管機關所設，或

為其所執行，目的在救濟違反競爭法情形，或在採行與本協定其他規定不相違背之措施；或

(c) 獨家供應其貨品或服務或勞務，予特定地區或世界市場。

7. 規定投資必須使用符合健康、安全或環境要求之科技之措施，不應被解釋為違反第 6 項第(b)款規定。為明確性之目的，第 10.02 條及第 10.03 條應適用於該項措施。

8. 如執委會發現採行前述任何要求，對貿易流通造成負面影響，或構成締約國一方投資人之投資重大障礙時，應建議取消該項措施。

第 10.08 條　高階管理人員及董事會

1. 締約國一方不得要求締約國他方投資人在該國投資之企業，任命特定國籍之個人擔任高階經理人員職位。

2. 在不損及投資人對其投資事業之掌控能力情況下，締約國一方得要求締約國他方投資人之投資之董事會，其多數董事由特定之國籍者擔任，或要求其必須居住於該締約國領域。

第 10.09 條　保留及例外

1. 第 10.02 條、第 10.03 條、第 10.07 條及第 10.08 條等條文之規定，不適用於：

(a) 任何締約當時既有之違反協定之下列措施：

(i) 附件一及附件三所列之締約國中央政府層級所採行者；或

(ii) 地方或自治政府採行者；

(b) 第(a)款所示違反協定措施之延續或即刻新修者；或

(c) 第(a)款所示違反協定措施之修正，但須修正後並未減低其符合第 10.02 條、第 10.03 條、第 10.07 條、及第 10.08 條規定之程度。

2. 第 10.02 條、第 10.03 條、第 10.07 條及第 10.08 條不適用於附件二中所列之各產業部門、次部門及活動。

3. 締約國一方不得依本協定生效後所採行，且為附件二所涵蓋之任何措施，以國籍之理由，要求締約國他方投資人將其於該措施生效時之既有投資，予以出售或處分。

4. 第 10.03 條不適用締約國協議下之待遇，或有關附件四所列之部門。

5. 第 10.02 條、第 10.03 條及第 10.08 條不適用於：

(a) 政府或國營企業之採購；及

(b) 政府或國營企業之補貼或獎助，含政府提供之貸款、保證及保險。

第 10.10 條　外匯移轉

1. 締約國一方對締約國他方投資人在其境內之投資，應許可所有與投資有關之下列外匯，自由且不受延宕之移轉：

(a) 利潤、股利、利息、資本利得、權利金、管理費、技術協助及其他費用、現物利得、及其他與來自投資之金額；

(b) 全部或部分投資出售或將投資全部或部分清算之收益；

(c) 投資人或其投資所訂契約下之支付，包含依貸款契約而為之支付；

(d) 第 10.11 條下之支付；及

(e) 本章第二節爭端處理機制下所衍生之支付。

2. 締約國應允許外匯移轉係在不受延宕下，以可自由轉換之外幣，並按交易當時之現行市場匯率進行。

3. 締約國一方不得要求其投資人將其在締約國他方領域內之投資所得、獲利、利潤或其它因投資衍生之金額，進行外匯轉移，或對不遵守移轉要求之投資人予以處罰。

4. 不論第 1 項與第 2 項之規定，締約國得在公平、非歧視且誠信之適用法律方式下，對與下列情形有關之移轉予以限制：

(a) 涉及破產、無力償付或保護債權人權利者；

(b) 涉及犯罪或其他應受處罰之行為者；

(c) 涉及要求提供外匯或其他貨幣工具移轉報告者；

(d) 涉及確保判決、仲裁判斷程序之執行者；或

(e) 涉及價證之發行或交易者。

5. 第 3 項之規定不應被解釋為禁止締約國在公平、非歧視且符合誠信方式下，就第 4 項第(a)款至第(e)款事項，為適用法律之行為。

第 10.11 條　徵收與補償

1. 除下列情形外，締約國一方不得在其境內直接或間接對締約國他方投資人之投資進行徵收或國有化，或採行相當於徵收或國有化之措施：

(a) 為公共目的，或為公共秩序及社會利益；

(b) 基於非歧視性原則；

(c) 依正當法律程序；且

(d) 依本條規定予以補償。

2. 投資徵收之補償，應依徵收發生（「徵收日」）前當時之公平市場價值為之，並不得將由於提前得知預計徵收而影響價值之情形，作為改變價值之基礎。估價標準應包括企業存續價值、資產價值（包括有形資產之申報課稅價值），以及其他決定市場公平價值之適當標準。

3. 補償不應延遲，並應可完全實現。

4. 補償金額，不得低於徵用當時受徵收之投資人在國際金融市場上，依照當時匯率之可自由轉換貨幣之額度。補償應按徵收之締約國國家銀行體制下其貨幣之商業利率，加計徵收後到補償金額給付前之利息。

5. 補償金應得依第 10.10 條之規定，自由匯出。

6. 本條不適用於符合世界貿易組織下與貿易有關之智慧財產權協定之強制授權之核給，或智慧財產權之撤銷、限制或創造。

7. 為本條之目的，具有一般適用性且非歧視性之措施，不應單純由於其對基於遲延而對債務人課以負擔，即被解釋為相當於對本章所涵蓋之債務擔保或貸款予以徵收。

第 10.12 條　特殊程序及資訊要求

1. 第 10.02 條之規定不得被解釋為禁止締約一方對締約國他方投資人之設立投資，採行或維持措施，以規定特定程序要求；該等措施，諸如要求投資人必須為締約國之居民，或要求其投資必須依照締約國法令規章加以設立；但須該等程序並未實質上減損締約國一方依據本章對締約國他方之投資或對締約國他方之投資人之投資所提供之保障。

2. 不論第 10.02 條及第 10.03 條之規定，締約國一方得要求締約國他方在其境內之投資人或其投資，提供例行性之投資資訊，以作為資訊及統計用途。該締約國應保護機密性之資訊，避免任何揭露，以免損及投資人或其投資之競爭地位。本項規定不應被解釋為禁止締約國有關公平而誠信的適用法律所獲取或揭露資訊之情形。

第 10.13 條　與其他各章之關係

1. 本章規定與其他章相牴觸時，在牴觸之範圍內，以其他章之規定

為準。

2. 如締約國一方要求締約國他方服務業者存放保證金或其他方式之財務保證，作為在其境內提供服務之條件，不因此而使跨境服務之提供，適用本章之規定。本章適用該締約國給予保證金或財務保證之待遇。

第 10.14 條　利益之否定

如非締約國之投資人擁有或控制符合第 10.39 條有關投資人之投資定義之企業者，且該企業雖依締約國法律所設立但於締約國境內並無實質商業活動；經依第 17.04 條（資訊之提供）及第 19.06 條（諮商）進行通知及諮商程序後，締約國一方得拒絕對締約國他方之投資人之企業及此種投資人之投資，給予本章規定之優惠待遇。

第 10.15 條　環保措施

1. 本章之規定不應被解釋為，禁止締約國基於確保在其領域內之投資活動符合其生態環境或環保法規要求，而採行、維持或執行與本章相符之任何適當措施。

2. 締約國雙方同認，為鼓勵投資而放寬國內健康、安全或環保要求，並非適當。基此，締約國一方不應以實際免除或減輕，或提議免除或減輕此種要求，以鼓勵投資人在其領域內設置、收購、擴展或保持其投資。締約國一方如認締約國他方提供類似鼓勵，得要求諮商。

第二節　締約國一方與締約國他方之投資人間之爭端解決

第 10.16 條　目的

在不影響締約國雙方在第十九章（爭端解決）所規定之權利與義務之情形下，本節就違反本章第一節所引起投資爭端，設立解決機制，以確保根據互惠原則，平等對待各締約國之投資人，並確立正當仲裁程序。

第 10.17 條　締約國投資人為其本身提出之請求

1. 締約國一方之投資人基於締約國他方或其直接或間接控制之企業違反其在本章下之義務，且該投資人因違反本章之行為而遭受損失或損害，得依本節規定提付仲裁。

2. 如投資人自首次獲知或應獲知所主張之違反事實及其所受之損失或損害事實之日起，已逾三年，則該投資人不得提出請求。

第 10.18 條　締約國投資人為企業提出請求

1. 締約國一方之投資人，得代表受其直接或間接擁有或控制之締約國他方之法人企業，就其請求，依本節規定提付仲裁，主張該締約國他方或其直接或間接控制之企業違反本章規定之義務；但須該投資人因而招致損失或損害。

2. 如企業自首次獲知或應獲知上述之違反事實及其所受之損失或損害之日起，已逾三年，則投資人不得代表第 1 項所稱之企業提出請求。

3. 當一投資人依本條款提出請求，而該企業之投資人或無控制權之投資人依第 10.17 條對同一事件提出請求, 且兩件或多件請求均依第 10.21 條提付仲裁時，除非仲裁庭認爭端一方利益可能因之遭受不公平對待，否則該等請求應由依第 10.27 條成立之仲裁庭一併審理。

4. 投資本身不得就其請求，依本節規定提付仲裁。

第 10.19 條　透過諮商及談判解決爭議

爭端當事者應先嘗試經由諮商及談判解決爭議。

第 10.20 條　提付仲裁意願通知書

有爭端之投資人，至少應於提付仲裁前九十日，向爭端之締約國提出書面提付仲裁意願通知書，並載明：

(a) 爭端投資人之名稱及地址，如請求係依第 10.18 條提出時，另應包括投資企業之事業類型及其地址；
(b) 違反本章之條款，及任何其他有關條款；
(c) 請求之爭議點及事實基礎；及
(d) 所尋求之救濟及所請求損害賠償之大約金額。

第 10.21 條　提付仲裁

1. 自導致請求之事件發生滿六個月後，有爭端之投資人得依據下列規定提付仲裁：

(a) 爭端解決中心公約；但須爭端締約國及投資人所屬之締約國雙方均為該公約之締約國；
(b) 爭端解決中心附屬機制規則；但須爭端締約國或投資人所屬之締約國一方，而非雙方，為爭端解決中心公約之締約國；
(c) 聯合國國際貿易法委員會仲裁規則；或
(d) 國際商會仲裁規則。

2. 除本節規定對相關仲裁規則有所修正外，各相關之仲裁程序規則應適用於依本節設置之仲裁。

第 10.22 條　提付仲裁之先決條件

1. 爭端雙方如同意依本章訴請仲裁，則視為同意專以仲裁解決其爭端，而排除其他程序。

2. 締約國之任一方均得要求先用盡其國內之行政救濟程序，作為同意依本章提付仲裁之先決條件。惟開始訴諸行政救濟程序起已滿六個月，而行政主管機關仍未能作成最終決定者，投資人得直接依據本節規定，提付仲裁。

3. 投資人僅得於下列情形下，依據第 10.17 條之規定，就其請求提付仲裁：

(a) 投資人同意依據本節規定之程序之仲裁；且

(b) 投資人及企業（後者係指投資人直接或間接擁有或控制在締約國他方之企業，其企業權益遭受損害或損失之情形）放棄就爭端之締約國違反第 10.16 條之情形，展開或繼續在任何締約國法律下之行政法庭或法院或其他爭端解決程序之權利；但不包含依據爭端締約國法令向行政法庭或法院提出不以給付賠償為目的，而係要求實施暫時性、宣示性及特殊性救濟措施之程序。

4. 爭端投資人企業僅得在下列情形下，依據第 10.18 條提付仲裁程序：

(a) 同意依據本節規定之程序之仲裁；且

(b) 放棄就爭端之締約國違反第 10.18 條之情形，展開或繼續在任何締約國法律下之行政法庭或法院或其他爭端解決程序之權利；但不包含依據爭端締約國法令向行政法庭或法院提出不以給付賠償為目的，而係要求實施暫時性、宣示性及特殊性救濟措施之程序。

5. 本條所要求之同意仲裁及放棄權利，應以書面為之，並送交爭端締約國，並應包含於就請求提付仲裁之文件中。

6. 僅在爭端締約國已剝奪爭端投資人對企業之控制權之情形下，企業無須放棄前述第 3 項第(b)款及第 4 項第(b)款之權利。

第 10.23 條　　同意仲裁

1. 各締約國同意依據本節程序與要件，將請求提付仲裁。

2. 第 1 項為之同意，及爭端投資人將請求提付仲裁，應視為已經符合下列要求：

(a) 爭端解決中心公約第二章（中心之管轄權）及其附屬機制規則有關雙方同意仲裁之書面要求；及

(b) 紐約公約第二條有關書面協議之規定。

第 10.24 條　仲裁人人數及指定方式

除根據第 10.27 條成立之仲裁庭外，且除非爭端雙方另有協議，仲裁庭應由三位仲裁人組成。由爭端雙方各指定一名仲裁人；而第三位，應作為主任仲裁人，由爭端雙方同意後共同指定。

第 10.25 條　爭端之一方並未指定仲裁人，或爭端雙方對指定主任仲裁人意見不一致時，仲裁庭之組成

1. 爭端一方如未指定仲裁人或爭端雙方無法就主任仲裁人之指定達成協議時，該仲裁人或主任仲裁人應依本節規定指定。

2. 除第 10.27 條所指者外，如自提付仲裁之日起九十日內未組成仲裁庭，則依爭端一方之請求，應由爭端解決中心秘書長、國際商會秘書長或爭端雙方同意之國際組織適當官員（以下簡稱秘書長）指定尚未指定之仲裁人，但不包括主任仲裁人（主任仲裁人應依第 3 項指定）。在任何情況之下，不得有仲裁人多數同屬於締約國任何一方國民之情形。

3. 在確定主任仲裁人選非締約國任何一方之國民之情形下，秘書長應由第 4 項所列名單中，指定主任仲裁人。如於名單中無法指定適當之主任仲裁人，則秘書長得於爭端解決中心之仲裁人名單中指定之，惟其亦不得為締約國任何一方之國民。

4. 於本協定生效之日，締約國雙方應設置並維持一份六位仲裁人選之名單，作為可能之主任仲裁人選；其人選不得為締約國任一方國民，必需符合本協定第 10.21 條之規定，並對國際法及投資事務富有經驗。仲裁人名單之人選應由締約國雙方合意選定，不論國籍為何，任期均為二年，並得依締約國之合意展延之。如人選死亡或辭選，締約國雙方應經由合意，選定接替人選，以迄原人選未完之任期為止。

第 10.26 條　對仲裁人之同意指定

為爭端解決中心公約第三十九條與附屬機制規則 C 表第七條規定之目的, 且不影響基於本協定第 10.25 條第 3 項之規定或基於國籍以外之其他理由對仲裁人選提出異議之情形下：

(a) 爭端之締約國茲同意在爭端解決中心公約及附屬機制規則下所指定之仲裁庭成員；

(b) 僅在爭端投資人以書面方式同意仲裁庭個別仲裁人之指定之前提下, 第 10.17 條所稱之爭端投資人得依爭端解決中心公約或爭端解決中心附屬機制規則，將其請求提付仲裁，或繼續其仲裁程序；且

(c) 僅在爭端投資人及企業以書面方式同意仲裁庭個別仲裁人之指定之前提下, 第 10.18 條第 1 項所稱之爭端投資人得依爭端解決中心公約或爭端解決中心附屬機制規則，將其請求提付仲裁，或繼續其仲裁程序。

第 10.27 條　合併

1. 除本節另作修訂者外，本條之下所成立之仲裁庭，應依聯合國國際貿易法委員會仲裁規定設立，並依照該規則進行其程序。

2. 依本條設立之仲裁庭認為，依第 10.21 條提付仲裁之請求具有法律上或事實上之共通性，該仲裁庭基於公平及有效解決該等請求之目的，於聽取爭端雙方陳述後，得命：

(a) 對此等請求之全部或一部一併行使管轄權，且一併審理與決定；或

(b) 於仲裁庭認為其判決可協助解決其他請求時，對其中一項或數項請求行使管轄，且一併審理與決定。

3. 爭端之一方欲獲取第 2 項所述之命令，應請求秘書長設立一仲裁庭，並於其申請中註明：

(a) 命令對象之爭端國或爭端投資人之名稱；

(b) 所請求命令之性質；及

(c) 所請求命令之根據。

4. 訴請命令之爭端者一方應將申請書複本送交命令對象之爭端締約國或爭端投資人。

5. 在收到上述申請書起六十日內，秘書長應成立一個有三位仲裁人之仲裁庭。秘書長應由第 10.25(4)條所列之名單中指定主任仲裁人。如秘書長認無此種仲裁人得以出任，則其應由爭端解決中心仲裁人名單中指定他國國籍人為主任仲裁人。秘書長應由第 10.25(4)條所列之名單中指定另外二位仲裁人；如名單中無人得以出任，則由爭端解決中心仲裁人名單中指定，如該名單中無人得以出任，由秘書長自行指定。其中一人應為爭端締約國之國民，而另一人應是投資爭

端者同國之國民。

6. 如仲裁庭已依據本條成立，則已經依第 10.17 條或第 10.18 條提付仲裁之投資爭端者一方，如尚未在第 3 項之申請中被納入，得向該仲裁庭以書面申請，將其包含於依第 2 項規定作成的命令之中，該申請書中應註明：

(a) 爭端之投資人一方之企業名稱及地址，以及其業務型態；

(b) 所請求命令之性質；及

(c) 所請求命令之根據。

7. 第 6 項所述之爭端投資人，應將其申請書複本送交列名於依第 3 項所為申請之爭端各方。

8. 依據第 10.21 條成立之仲裁庭，對依據本條成立之仲裁庭行使管轄權之請求或其任何部分，無管轄權。

9. 在爭端一方之請求下，根據本條成立之仲裁庭，於依據第 2 項所作成之判決前，得命暫停依照第 10.21 條成立之仲裁庭之審理程序，迄是否合併審理之決定作成為止；除非該仲裁庭已先決議暫停審理程序。

10. 爭端締約國應於其收到下列文件後十五日內，將其複本送交秘書處：

(a) 依據爭端解決中心公約第三十六條第一項作成之仲裁申請書；

(b) 依據爭端解決中心附屬機制規則 C 表第二條作成之仲裁通知；

(c) 依據聯合國國際貿易法委員會仲裁規定所作之仲裁通知；或

(d) 依據國際商會仲裁規則作成之仲裁請求。

11. 爭端國應將依據本條第 3 項所作申請書之複本，於下列期限內送交秘書處：

(a) 如係由爭端投資人提出申請，在收到該申請書之十五日內；或

(b) 如係由爭端締約國提出申請，在作成申請之十五日內。

12. 爭端締約國於收到依據本條第 6 項所作之申請書後，應於十五日內將其複本送交秘書處。

13. 對第 10 項、第 11 項及第 12 項所述之文件，秘書處應作成公開

紀錄。

第 10.28 條　通知

爭端締約國應送交予締約國他方下列文件：

1. **提付仲裁之書面通知；該通知須於該請求被提出後之三十日內為之；及**

2. **仲裁中所提出之所有答辯檔案之複本。**

第 10.29 條　締約國之參與

締約國得於書面通知爭端各方後，向仲裁庭提出解釋本協定之問題。

第 10.30 條　文件

1. **締約國在自付成本情況下，有權自爭端之締約國獲得：**

   (a) **已依照本節向仲裁庭提出之證據複本；及**

   (b) **爭端各方之書面辯論複本。**

2. **締約國對於依據第 1 項所收到之資料，應如同爭端締約國以機密件處理。**

第 10.31 條　仲裁地

除爭端雙方另有協議者外，依照本節規定成立之仲裁庭，應於紐約公約之締約國領土內進行仲裁；選擇方式依據下列規定：

(a) **如該仲裁係依據爭端解決中心附屬機制規則，則仲裁地點之選擇亦依該附屬機制規則；或依爭端解決中心公約；**

(b) **如該仲裁係依據聯合國國際貿易法委員會仲裁規則，則仲裁地點之選擇亦依該仲裁規則；或**

(c) **如該仲裁係依國際商會仲裁規則，則仲裁地點之選擇，亦依該仲裁規則。**

第 10.32 條　準據法

1. **根據本節規定成立之仲裁庭，應依據本協定及適當之國際法規則決定各項爭論問題。**

2. **執委會對於本協定某條款所作之解釋，對於依據本節規定成立之仲裁庭，具有約束力。**

第 10.33 條　附件解釋

1. **當爭端之締約國主張其被指稱違反本協定之措施，屬於附件所涵蓋之保留或例外範圍時，仲裁庭應要求執委會解釋此問題。執委會**

應於六十日內以書面向仲裁庭提出其解釋。

2. 除第 10.32 條第 2 項之拘束力外，執委會依第 1 項向仲裁庭提出之解釋，對依本節成立之仲裁庭，亦具有約束力。如執委會未於六十日內提出解釋，則仲裁庭應自行決定系爭問題。

第 10.34 條　專家報告

在不影響依照相關之仲裁規則指定專家之情形下，仲裁庭得於爭端一方之請求時，或自行主動，指定一或多位專家，對與爭端有關之任何事實層面之問題，以書面向其提出報告。

第 10.35 條　臨時措施

依本節設立之仲裁庭或締約一方得依內國法，向法院提出要求或申請採取臨時措施，以保全爭端一方權利，或確保仲裁庭有效實現管轄權。仲裁庭不得命扣押，或禁止採行被主張違反第 10.17 條或第 10.18 條之措施。

第 10.36 條　最終判斷

1. 如依本節規定成立之仲裁庭，對一締約國作出不利之最終判斷時，該仲裁庭僅得判命：

(a) 金錢賠償及適當之利息；或

(b) 歸還財產；於此情形，判斷中應規定爭端締約國得支付金錢賠償並加計適當之利息，以代替財產之歸還。

仲裁庭並得依據相關仲裁規則，對仲裁費用加以判定。

2. 在第 1 項規定之前提下，如一請求係依第 10.18(1)條提出：

(a) 命歸還財產之判斷中，應規定該財產應歸還予企業；或

(b) 命金錢賠償及適當之利息之判斷中，應規定將其總額給付予企業。

3. 仲裁判斷應載明，該判斷決並不損及任何人依相關內國法之救濟制度下，所應享之權利。

第 10.37 條　仲裁判斷之確定性及其強制執行

1. 仲裁庭所作成之仲裁判斷。僅對爭端雙方具有約束力，且其拘束力僅以判斷之個案為限。

2. 在第 3 項規定及仲裁判斷仍依相關程序受審查之前提下，爭端各方應受仲裁判斷之拘束，並遵守判斷所示，不稍延遲。

3. 於符合下列情況前，爭端之一方不得就仲裁判斷尋求強制執行：

(a) 依爭端解決中心公約所作成之判斷：

(i) 由作成判決之日起，經一百二十日，而無任何一方要求以更改或撤銷該判斷，或

(ii) 解釋、更改或撤銷之程序已完結；及

(b) 依據爭端解決中心附屬機制規則或聯合國國際貿易法委員會仲裁規則作成之判斷：

(i) 由作成判斷之日起，經九十天，而無任何一方發動相關程序，以更改、擱置或撤銷該判斷，或

(ii) 法院已駁回或同意更改、擱置，或撤銷該判斷，且無進一步之上訴。

4. 各締約國應在其領域內執行仲裁判斷。

5. 如締約國並未遵守最終判斷，執委會應依爭端之投資人所屬之締約國之請求，依據第 19.09 條（成立仲裁小組之請求）成立仲裁小組。請求之締約國得於此程序中要求：

(a) 認定未遵守最終判斷係與其在協定下之義務不符；及

(b) 建議該爭端之締約國遵守最終判斷。

6. 不問是否進行第 5 項之程序，爭端投資人均得依紐約公約或爭端解決中心公約，尋求強制執行仲裁判斷。

7. 依本節提出仲裁之請求，應視為紐約公約第一條因商業關係或交易所產生者。

第 10.38 條　一般規定

將請求提付仲裁之時間認定

1. 符合下列情形之一時，應認其請求已經依照本節規定提付仲裁：

(a) 秘書長已收到依據爭端解決中心公約第三十六條第一項作成之請求；

(b) 秘書長已收到依據爭端解決中心附屬機制規則 C 表第二條作成之仲裁通知；

(c) 爭端之締約國已收到依據聯合國國際貿易法委員會仲裁規則所作之仲裁通知；或

(d) 國際商會商會秘書處已經收到依國際商會仲裁規則第四條所為之仲裁通知。

通知及其他文件之之遞交

2. **通知及其他文件之之遞交, 應向附件** 10.38(2)**所列各爭端國指定地點為之。**

保險或保證合約之收入

3. **在本節之下所進行之仲裁，締約國不得以爭端之投資人依照保險或保證契約，已收到或將收到其所稱損害全部或部份之賠償金或其他補償，作為抗辯、反訴或抵消債務等之理由。**

判斷之公布

4. **判斷僅在爭端各方一致書面同意情形下，方可公布。**

第三節 定義

第 10.39 條　　定義

為本章之目的，相關用語定義如下：

爭端解決中心附屬機制規則：國際投資爭端解決中心於一九七八年所建立之附屬機制規則；

請求：指爭端投資人依據第二節對締約國所作之要求；

爭端投資人：依據本章第二節作成請求之投資人；

爭端雙方：指有爭端之投資人及爭端締約國；

爭端締約國：指依本章第二節被請求之締約國；

爭端一方：指有爭端之投資人或爭端締約國；

企業：指依照第二章所定義之企業及企業之分支機構；

締約國之企業：指依一締約國之法律設立或組織之企業及其位於該締約國且於其領域進行商業活動之分公司；

國際商會：總部在巴黎之國際商會；

爭端解決中心：國際投資爭端解決中心；

ICSID 公約：指一九六五年三月十八日於華盛頓簽訂之「與其他國國民投資爭端解決協定」；

投資：指以獲得經濟利益或其他商業為目的所取得或使用、或以資源移轉而取得、或由投資人再投資之任何性質之財產或權利，包括：

(a) **企業、企業之股權、企業之資本之股權其所有人得分享該公司收入或利潤者。企業之債權證券及對企業之貸款亦為投**

資，但必須：

(i) 該企業為投資人之關係企業；或

(ii) 該債權證券或貸款之到期日至少有三年期限；

(b) 對企業在清算時有權參與財產分配之利益；惟其利益不得為基於第(a)款所排除之債權證券或貸款所產生；

(c) 為獲取經濟利益或其他商業目標而取得之不動產或其他有形或無形財產（包含智慧財產權），及任何其他權利（如抵押、質權、收益權及其他類似權利）；

(d) 因於締約國領土內投入資本或其他資源，以發展經濟活動所衍生之股份或利益，特別是依下列契約者：

(i) 投資人在該締約國領土內投入財產之契約（包括特許權及營造與統包契約）；或

(ii) 實質上依賴企業生產、收入或利潤而計算報酬之契約；

但投資並不包括：

－國家或國營企業之支付義務或所授予之信用；

－完全由下列情形產生之金錢請求：

(i) 締約國國民或其領域內之企業為將貨品或服務銷售予締約國他方領域內之企業所訂之商業契約；或

(ii) 因商業交易所授予之信用，其到期日少於三年者，例如貿易融資；但第(a)款規定所涵蓋之貸款不在其內；

－任何其他未涉有上述第(a)款至第(d)款所示之利益者；

締約國之投資人：指一締約國或其國營企業或該國之國民或企業，正在締約國他方領域內進行投資，或已投資者；

紐約公約：指一九五八年六月十日於紐約簽定之聯合國外國仲裁判決之承認及執行公約；

秘書長：爭端解決中心或國際商會之秘書長；

移轉：指國際匯款及付款；

仲裁庭：指依據第 10.21 條及第 10.27 條所成立之仲裁庭；及

聯合國國際貿易法委員會仲裁規定：指於一九七六年十二月十五日，由聯合國大會批准之聯合國國際貿易法委員會仲裁規則。

附件 10.38(2)　通知及其他文件之之遞交

1. **為第** 10.38(2)**條之目的，遞送通知及其他文件之地點：**

(a) **就巴拿馬：**

貿工部外貿次長或其繼受單位

Dirección Nacional de Negociaciones Comerciales Internacionales

Vía Ricardo J. Alfaro, Plaza Edison, Piso #3

Panamá, República de Panamá

(b) **就中華民國：**

經濟部台北市福州路十五號

2. **締約國一方應就其指定遞送通知及其他文件處所之任何改變，通知締約國他方。**

第十一章　跨邊境服務貿易

第 11.01 條　定義

為本章之目的，相關用語定義如下：

跨邊境提供服務或跨邊境服務貿易：指所提供之服務係：

(a) 自締約國一方領域內提供至締約國他方領域內；

(b) 在締約國一方領域內向締約國他方之消費者提供服務；或

(c) 締約國一方領域內之服務提供者透過其在締約國他方領域內之自然人呈現所提供之服務，但不包括在締約國一方領域內以第 10.39（定義）所定義之投資之方式所提供之服務；

企業：如第二章（總定義）對「企業」之定義；

締約國一方之企業：依據締約國一方法律所設立或組織之企業、以及在該國領域內之分支機構，並在其內從事商業活動者；

數量限制：係非歧視性措施，而對下列各項採行限制者：

(a) 對服務提供者之數量給予限制，而不論係以配額、獨占、或依經濟需求作為準據之形式，或以任何其他數量方式為之者；或

(b) 對任何服務提供者之經營給予限制，而不論係以配額或依經濟需求作為準據之形式，或以任何其他數量方式為之者；

執行政府功能所提供之服務：所有由政府機構所提供，而非以商業條件及非與一家或多家服務提供者競爭之跨邊境服務；及

締約國一方之服務提供者：締約國一方之人，並提供或有意提供跨邊境服務者。

第 11.02 條　適用範圍

1. 本章適用於締約國一方對締約國他方服務提供者有關跨邊境服務所採取或維持之措施，包括與下列事項有關之措施：

(a) 服務之生產、分配、行銷、販售及遞送；

(b) 跨邊境服務之購買、使用或付款；

(c) 與跨邊境服務之提供有關之分配與運送制度之接近及使用；

(d) 網路與電信公共服務之接近及使用；

(e) 締約國他方的跨邊境服務提供者在其領域內之設立據點；及

(f) 提供擔保或其他財務保證作為提供跨邊境服務之條件。

2. 為本章之目的，締約國一方所採行或維持之措施，包括非政府組織或機構受締約國授權，而執行管制、管理或其他政府性質之功能所採行或維持之措施。

3. 本章不適用下列事項：

(a) 締約國或國營企業所給予之補貼或獎助；包括政府支助之貸款、擔保及保險；

(b) 航空服務；包括國內及國際、定期及不定期之航空運輸，以及輔助航空服務之相關服務。但不包括下列項目：

(i) 航空器未服勤期間之修理及維護服務；

(ii) 空運服務之銷售與市場行銷；及

(iii) 電腦訂位系統服務；

(c) 政府服務或政府功能，諸如法令執行、矯正服務、收入安全或失業保險或社會安全服務、社會福利、公共教育、公共訓練、衛生及兒童照護；

(d) 跨邊境金融服務；及

(e) 締約國一方或國營企業執行之政府採購。

4. 本章任一條文均不應被解釋為締約國一方對締約國他方國民有意進入其工作市場或在其領域內獲取永久工作機會者，負有任何義務；或被解釋為對該國民之進入工作市場或獲取工作，已經賦予任何權利。

第 11.03 條　國民待遇

1. 締約國一方給予締約國他方之跨邊境服務及服務提供者之待遇，在同類情況下，不得低於給予其本國之服務或服務提供者。

2. 在本條之下之特定承諾，不得被解釋為要求任一締締約國補償因相關服務或服務提供者係來自外國所造成之先天競爭劣勢。

第 11.04 條　最惠國待遇

締約國一方給予締約國他方之跨邊境服務及服務提供者之待遇，在同類情況下，不得低於其給予任何其他非締約國服務或服務提供者之待遇。

第 11.05 條　待遇之標準

締約國一方對締約國他方之跨邊境服務及服務提供者，應給予依第 11.03 及 11.04 條要求中之較佳待遇。

第 11.06 條　當地據點呈現

締約國任一方均不得要求締約國他方之從事跨邊境服務提供者，在其領域內設置代表辦事處或任何形式之企業，或在其領域內設置居所，作為提供服務之條件。

第 11.07 條　許可、授權、執照及證書之核發

為確保締約國一方對締約國他方之國民核給許可、授權、執照或證書所採行或維持之措施，不至於構成對跨邊境服務之不必要障礙，締約國任一方應確保此種措施：

(a) **基於客觀及透明之標準，諸如提供跨邊境服務之能力與資格之標準；**

(b) **不超過確保跨邊境服務品質所必要之要求；及**

(c) **不構成跨邊境服務隱藏性限制。**

第 11.08 條　保留

1.**第** 11.03 **條、第** 11.04 **條及第** 11.06 **條均不適用於下列項目：**

(a) **由下列主體採行之任何既有不符合規定之措施：**

(i) **附件** l **之清單所列之締約國中央政府層級；**

(ii) **地方或自治政府；**

(b) **第**(a)**款所示違反協定措施之延續或即刻新修者；或**

(c) **第**(a)**款所示違反協定措施之修正，但須修正後並未減低其符合第** 11.03 **條、第** 11.04 **條及第** 11.06 **條規定之程度。**

2.**第** 11.03 **條、第** 11.04 **條及第** 11.06 **條均不適用於締約國一方對附件二清單所列之產業部門、次部門或活動所採行或維持之措施。**

第 11.09 條　數量限制

1. **各締約國應將現行之數量限制列入附件五之清單。**

2. **締約國一方應於本協定生效後，將其所採行（不包括地方政府階層所採行）之任何數量限制，通知締約國他方，並應依第** 1 **項所示，將該等限制列入附件五。**

3. **締約國雙方應定期，至少兩年一次，盡力協商，致力於開放或廢除：**

(a) **第** 1 **項所示之締約國現有之數量限制；或**

(b) **本協定生效後締約國所採行之數量限制。**

第 11.10 條　利益之否定

如締約國依其有效之法律，認定某一服務係由非締約國之人所擁有或控制之企業所提供，而該非締約國之人在締約國他方並無實質之商業活動，經依第 17.04 **條文（資訊之提供）及** 19.06 **條（諮商）之規定進行事先通知及諮商程序後，締約國一方得拒絕對締約國他方之服務提供者，給予本章規定之利益。**

第 11.11 條　未來自由化

締約國應藉由執委會未來召開之諮商，在不同服務部門，進一步深化自由化，以消除第 11.08 **條第**(1)**項及第**(2)**項所列之限制。**

第 11.12 條　程序

雙方應制訂程序，以利：

(a) **締約國一方就下列事項進行通知，並列入相關附件：**

(i) **對第** 11.08 **條第**(1)**項及第**(2)**項所示措施之修正；及**

(ii) **依據第** 11.09 **條所提之數量限制；及**

(b) **針對保留或數量限制，進行諮商。**

第 11.13 條　機密資訊之公開

如機密資訊之公開將造成法令履行障礙，或違反公眾利益，或將損害國營或私人企業之合法商業利益等，本章任一條文均不應被解釋為對締約國課以提供該機密資訊之義務。

第 11.14 條　投資暨跨邊境服務貿易委員會

1. **締約國雙方茲設立投資暨跨邊境服務貿易委員會，如附件** 11.14。
2. **委員會應審理本章及第十章（投資）相關事務, 且在不損及第** 18.05 **條第**(2)**項（委員會）規定之情形下，應具備如下功能：**

(a) **監督第十章（投資）及第十一章（跨邊境服務貿易）之執行與管理；**

(b) **討論締約國一方所提有關投資及跨邊境服務貿易事務；**

(c) **分析在其他國際場合中所討論之議題；**

(d) **促進締約國雙方間之資訊交換，及合作提供投資及跨邊境服務貿易之諮詢；及**

(e) **為締約國雙方共同利益之事項，成立工作小組或召集專家小組。**

3.**委員會於必要時，或於締約國任一方要求時，應召開會議。如權責機關認為適當，其他單位代表亦得與會。**

附件 11.14　投資暨跨邊境服務貿易委員會

依據第 11.14 **條所設立之投資暨跨邊境服務貿易委員會，由下列單位組成：**

(a) **巴拿馬方面：工商部，由對外貿易次長室或其繼受單位代表；及**

(b) **中華民國方面：經濟部，由國際貿易局或其繼受單位代表。**

第十二章　金融服務業

第 12.01 條　定義

為本章之目的，相關用語定義如下：

跨境金融服務提供或跨境金融服務貿易：指所提供之金融服務係：

(a) **自締約國一方領域內提供至締約國他方領域內；**

(b) **在締約國一方領域內向締約國他方之消費者提供；**

(c) **締約國一方領域內之服務提供者透過其在締約國他方領域內之自然人呈現所提供之服務；**

爭端投資人：指依第 12.19 **條及第十章（投資）第二節將其請求提付仲裁之投資人；**

企業：依第二章 （總定義）對「企業」之定義；

金融機構：依金融機構所在國法律核准從事金融服務業務並受其監管之任何金融媒介或其他企業；

締約國他方金融機構：在締約國一方領域內依法設立而由締約國他方之人所擁有或控制之金融機構，包括分支機構；

金融服務：係指具有金融性質之服務，包括銀行、保險、再保險、證券、期貨，及與金融服務相關或其輔助性之服務；

投資：指以獲得經濟利益或其他商業目的所取得或使用或以資源移轉而取得、或由投資人再投資之任何性質之財產或權利，包括：

(a) **企業、企業之股權、企業之資本之股權其所有人得分享該企業收入或利潤者。企業之債權證券及對企業之貸款亦為投資，但必須：**

(i) **該企業為投資人之關係企業；或**

(ii) **該債權證券或貸款之到期日至少有三年期限；**

(b) **在企業清算時有權參與財產分配之權益；惟該權益不得為基於第**(a)**款所排除之債權證券或貸款所產生；**

(c) **為獲取經濟利益或其他商業目標而取得或使用之不動產或其他有形或無形財產（包括智慧財產權），及任何其他權利（如抵押權、質權、收益權及其他相類似之權利）；**

(d) **因於締約國領域內投入資本或其他資源，以發展經濟活動所衍生之股權或利益，特別是依下列契約者：**

(i) **投資人在該締約國領域內投入財產之契約（包括特許權及**

營造與統包契約）；或

(ii) 實質上依賴企業生產、收入或利潤而計算報酬之契約；

(e) 跨境金融服務提供人授予企業之貸款或持有企業之債權證券，惟不包括對金融機構之貸款及持有金融機構所發行之債權證券；

但投資並不包括：

—國家或國營企業之支付義務或所授予之信用；

—完全由下列情形產生之金錢請求：

(i) 締約國國民或其領域內之企業為將貨品或服務銷售予締約國他方領域內之企業所訂之商業契約；或

(ii) 因商業交易所授予之信用，其到期日少於三年者；例如貿易融資；但第(a)款規定所涵蓋之貸款不在其內；

—任何其他未涉有上述第(a)款至第(e)款所示之金錢請求權者；

—對金融機構之貸款及金融機構發行之債權證券；但不包括締約國為監管目的將其領域內對金融機構之貸款或由金融機構發行之債權證券視為資本之情形；

締約國投資人之投資：締約國之投資人擁有或直接控制之投資。如係涉及企業，所謂投資人擁有之投資，係指持有該公司百分之五十（50%）以上股份利益。所謂締約國投資人控制之投資，係指投資人有權：

(a) 指派多數董事；或

(b) 以其他合法方式管理公司營運；

締約國之投資人：指一締約國或其國營企業或締約國之國民或企業，有意或正在締約國他方領域內進行投資，或已投資者。實現投資之意願，得以使投資具體化之法律行為，或正在分派所需資源以實現投資等，加以證明；

新種金融服務：在締約國領域內尚未提供而在締約國他方已提供之金融服務，包括新傳送方式之金融服務或尚未在締約國領域內銷售之金融產品；

締約國跨境金融服務提供者：在締約國領域內獲准從事提供金融服務之業務，並有意從事或實際從事跨境金融服務之人；

締約國金融服務提供者：在締約國他方領域內從事提供金融服務業務之締約國方之人；

公務機構：締約國之中央銀行或貨幣主管機關，或締約國所控制或擁有之具有公共性而無商業功能之金融機構；

監理機關：對金融服務提供者或金融機構執行監督權之政府機關；及

自律團體：係指任何非政府機構，包括證券或期貨交易所或交易市場、結算機構或其他組織或協會，基於自己權限或基於委託，對金融服務提供者或金融機構實施監理或監督者。

第 12.02 條　適用範圍

1. **本章適用於締約國一方就下列事項所採行或維持之措施：**

   (a) **締約國他方金融機構；**

   (b) **締約國他方之投資人，以及該投資人在締約國一方領域內就金融機構所為之投資；及**

   (c) **跨境金融服務貿易。**

2. **本章之規定不應被解釋為禁止締約國，或其公務機構，做為下列各款活動之唯一執行者或提供者：**

   (a) **貨幣主管機關或其他公務機構，為執行貨幣或外匯政策目的之活動；**

   (b) **構成公職退休計畫或強制性社會安全制度之一部分之活動或服務；或**

   (c) **為締約國或其公務機構之收支，或由其保證，或運用其財政資源所從事之其他活動或服務。**

3. **除另有明確引用其他章之規定外，本章規定優先於其他章之規定。**

4. **第** 10.11 **條（徵收及補償）之規定，構成本章規定之一部分。**

第 12.03 條　自律團體

如締約國要求締約國他方之金融機構或跨境金融服務提供者在該國領域內提供金融服務時，必須加入自律團體成為會員，或參與該團體，該締約國應確保自律團體亦遵守本章之義務。

第 12.04 條　設立權

1. **締約國雙方應允許締約國他方之投資人於該國以法律許可之設立及經營形式，設立金融機構。**

2. **任一締約國得就金融機構設立之條款與條件制訂符合第** 12.06 **條之規定。**

第 12.05 條　跨境貿易

1. **除明定於附件六 B 部分之締約國清單外，締約國不得採行任何措施，以限制締約國他方之跨境金融服務提供者從事其於本協定生效時已允許之任何形式之跨境金融服務貿易。**

2. **締約國應准許居住於其領域內之人或其無論居住於何地之國民，向締約國他方領域內之該國跨境金融服務提供者，購取金融服務。上述義務並非要求締約國必須允許該等提供者在其領域內經營業務或招攬業務。締約國得為本項義務之目的，對「招攬業務」及「經營業務」作成定義。**

3. **在不損及跨境金融服務貿易之審慎規則之其他方法之前提下，締約國一方得要求就締約國他方之跨境金融服務提供者及其金融工具，予以登記。**

第 12.06 條　國民待遇

1. **在有關締約國領域內類似金融機構及類似金融機構之投資之設立、收購、擴充、管理、經營、操作以及銷售或其他處置方面，締約國一方對締約國他方之投資人，應給予不低於對本國投資者之待遇。**

2. **在有關締約國領域內金融機構及投資之設立、收購、擴充、管理、經營、操作以及銷售或其他處置方面，締約國一方對於締約國他方之金融機構及投資人之投資，應給予不低於對本國類似金融機構及投資人之投資之待遇。**

3. **在受第** 12.05 **條約束之情形下，如締約國允許跨境金融服務之提供，就此類服務，締約國一方對於締約國他方之跨境金融服務提供者，應給予不低於其賦予國內類似金融服務提供者之待遇。**

4. **締約國一方對締約國他方相類似之金融機構及跨境金融服務提供者所採取之措施，如係提供平等之競爭機會，則不論該措施與其在相同之情況下提供給其本國金融機構或金融服務提供者之措施是否相同，視為符合前述三項之國民待遇原則。**

5. **在與其本國金融機構或金融服務提供者相較之下，如締約國一方所採取之措施係損及締約國他方相類似之金融機構及跨境金融服務提供者提供服務之能力時，視為並未提供平等之競爭機會。**

第 12.07 條　最惠國待遇

締約國一方對於締約國他方之投資人、金融機構、投資人對金融機

構之投資、以及跨境金融服務提供者，於類似情況下，應給予不低於其提供予非締約國投資人、金融機構、投資人對金融機構之投資、以及跨境金融服務提供者之待遇。

第 12.08 條　承認與協調

1. 如締約國一方採行本章所規定之措施，該締約國得承認締約國他方或非締約國之「審慎措施」；該承認得：

(a) 片面為之；

(b) 經由協調或其他方式為之；或

(c) 基於與締約國他方或其他非締約國之協定而為之。

2. 締約國一方如依照第 1 項承認「審慎措施」，應給予締約國他方適當機會證明其符合具有相同法令、及法令之監督與執行，以及有在締約國間分享資訊之程序之情形。

3. 如締約國一方依照第 1 項第(c)款承認「審慎措施」，且有第 2 項所規定之情形存在，該締約國應給予締約國他方適當機會，以談判加入該協定或簽訂類似的協定。

4. 本條規定不應被解釋為由締約國一方適用締約國他方檢視金融體系或審慎措施之強制程序。

第 12.09 條　例外

1. 本章規定不應被解釋為禁止締約國採行或維持如下之審慎措施：

(a) 為保護基金管理人、投資人、存款人、金融市場參與人、保單持有人、保單索賠人、金融機構或跨境金融服務提供者對之負有信託義務之人；

(b) 維護金融機構或跨境金融服務提供者之安全性、健全性、完整性或財務責任；及

(c) 確保締約國金融系統之完整性及穩定性。

2. 本章之規定不適用於公務機構為執行貨幣及相關信用政策或匯率政策時所採取之非歧視性且為一般適用之措施。本項規定不影響有關第十章（投資）或第 12.17 條所涵蓋之措施，涉及投資實績要求之義務。

3. 第 12.06 條不適用於締約國對金融機構授予專屬權利，以提供第 12.02 條第 2 項第(b)款所示之金融服務。

4. 不論第 12.17 條第 1 項、第 2 項及第 3 項之規定，締約國仍得透

過有關維護金融機構或跨境金融服務提供者之安全性、健全性、完整性及財務責任之公正、非歧視性措施之適用，限制或禁止金融機構或跨境金融服務提供者匯款予其關係企業或有關係之人。但本項規定不影響本協定其他允許締約國限制匯款之規定。

第 12.10 條　透明化

除第 17.03 條（公布）之規定外，締約國尚應承諾下列事項：

1. 締約國之監理機關應使利害關係人得以獲得為完成提供金融服務之申請之所有相關資訊。

2. 締約國之監理機關應依申請人之要求，提供其申請案之審核情形；如需該申請人提供額外資料時，應立即通知，不得無故拖延。

3. 締約國一方之監理機關應於一百二十日內，對締約國他方之金融機構投資人、金融機構、或跨境金融服務提供者之完整申請案件作出行政決定，並立即通知申請人。所謂完整申請案係指已舉行公聽會，且所有申請所需之資料皆已備齊。如無法於一百二十日內作成決定時，監理機關應立即通知申請人，不得無故拖延，並設法於通知後六十日內作出決定。

4. 本章規定並不要求締約國揭露或允許他人取得下列資訊：

   (a) 有關金融機構或跨境金融服務提供者之個別客戶之財務或帳戶資料；或

   (b) 任何機密資訊，其公開將會阻礙法律之執行或違反公共利益或損害特定公司之合法商業利益者。

第 12.11 條　金融服務委員會

1. 締約國雙方茲成立金融服務委員會，如附件 12.11。

2. 委員會應處理本章相關事務，且在不損及第 18.05 條第 2 項規定之情形下，其應具下列功能：

   (a) 監督本章及其進一步申述內容之執行；

   (b) 探討締約國所提議有關於金融服務之議題；

   (c) 參與第 12.18 條及第 12.19 條之爭端解決程序；及

   (d) 適時促進監理機構間資訊交流，合作提出對審慎法規之建議，並設法調和法規及其他政策之規範架構。

3. 委員會應於必要時或經締約國任何一方之要求，召開會議，評估本章之執行情形。

第 12.12 條　諮商

1. **在不影響第** 19.06 **條（諮商）規定之前提下，締約國一方得要求就本協定所發生而影響金融服務之事件，與締約國他方進行諮商。締約國之他方應對此項要求予以認真之考量。提出諮商之一方應在委員會會議中將諮商之結論向委員會提出報告。**

2. **本條之諮商，應納入附件** 12.11 **所列機關之官員。**

3. **締約國一方得要求締約國他方之監理機關參與本條之諮商，以討論締約國他方所採取可能影響要求諮詢之國家之金融機構或跨境金融服務提供者營運之一般適用措施。**

4. **本條規定不應被解釋為要求依第** 3 **項參加諮商之監理機構揭露或採取任何足以妨礙個別法規、監理、管理或執行事件之資訊或行動。**

5. **締約國一方為監理在締約國他方領域內之金融機構或跨境金融服務提供者之目的，得向締約國他方領域內之監理機關要求提供資訊。**

第 12.13 條　新種金融服務及資料處理

1. **締約國一方應允許締約國他方之金融機構提供與其依法同意國內金融機構承作類型相類似之新種金融服務。締約國得決定提供此服務之機構以及法人類型，並要求該等服務之提供應申請許可。如須事前獲得許可，則對於許可之申請，應在合理的期間內作出處置；並僅能基於審慎理由, 且在不違反締約國內國法規以及第** 12.06 **條及第** 12.07 **條規定之情形下，拒絕申請。**

2. **締約國他方之金融機構若因例行性業務活動有處理資訊之需要，締約國一方應准許其藉任何經許可之方式，對領域內、外傳送資訊。**

3. **締約國茲承諾尊重在其領域內處理之資訊，及源於締約國他方領域內金融機構之資訊之機密性。**

第 12.14 條　高階管理人員及董事會

1. **締約國一方不得要求締約國他方之金融機構聘任特定國籍人士為高階主管或其他重要員工。**

2. **締約國一方不得要求締約國他方金融機構之董事會或管理委員會成員為該國國民、居民或兼具該二條件者。**

第 12.15 條　保留及特定承諾

1. **第** 12.04 **條至第** 12.07 **條以及第** 12.13 **條、第** 12.14 **條之規定不適用於：**

(a) 締約國填列於附錄六 A 部分附表中，現存而不符合本協約規定之措施；

(b) 前款所述措施之延續或即刻新修者；或

(c) 第(a)款所示違反協定措施之修正，但與修正前相較，須修正後並未減低其符合第 12.04 條至第 12.07 條以及第 12.13 條、第 12.14 條規定之程度者。

2. 第 12.04 條至第 12.07 條以及第 12.13 條、第 12.14 條之規定不適用於締約國所採行或維持附件六 B 部分所列而不符合本協定規定之措施。

3. 附件六 C 部分構成各締約國之特定承諾。

4. 締約國針對第十章（投資）以及第十一章（跨邊境服務貿易）就當地呈現、國民待遇、最惠國待遇、高階管理人員及董事會與管理委員會等所提出之保留，如其措施、產業部門、次部門或活動，係本協定所涵蓋，則亦構成第 12.04 條至第 12.07 條以及第 12.13 條、第 12.14 條之保留。

第 12.16 條　利益之否定

如締約國一方認定某一服務係由非締約國之人所擁有或控制之企業所提供，而該企業在締約國他方並無實質之商業活動，經依第 12.10 條以及第 12.12 條規定進行書面通知及諮商程序後, 締約國得拒絕對締約國他方之金融服務提供者或跨境金融服務提供者，給予本章規定之全部或一部利益。

第 12.17 條　外匯移轉

1. 締約國應許可締約國他方之投資人在其領域內進行投資者，均得自由且不受延宕進行與投資相關之匯款。此種匯款包括：

(a) 利潤，股息，利息，資本利得，特許權付款，管理費、技術協助及其他費用，現物利得及投資衍生之其他收入；

(b) 出售或清算全部或部分投資之所得；

(c) 投資人或其投資基於契約之支付，包括依貸款契約之支付；

(d) 根據第 10.11 條（徵收及補償）所為之支付；及

(e) 締約國一方與締約國他方之投資人間依本章以及第十章第二節之爭端解決程序所導致之支付。

2. 締約國應允許外匯移轉係在不受延宕下，以可自由轉換之外幣，並按交易當時現行市場匯率進行。

3. 締約國一方不得要求其投資人將其在締約國他方領域內之投資或其他活動之所得、獲利、利潤或其它因投資衍生之金額，進行外匯移轉，或對不遵守移轉要求之投資人予以處罰。

4. 不論第 1 項與第 2 項之規定，締約國得在公平、非歧視且誠信之適用法律方式下，對與下列情形有關之移轉予以限制：

(a) 涉及破產、無力償付或保護債權人權利者；

(b) 涉及犯罪或其他應受處罰之行為者；

(c) 涉及未能符合提供外匯或其他貨幣工具之移轉報告之要求者；

(d) 涉及確保判決或仲裁判斷程序之執行者；或

(e) 涉及確保關於證券之發行、交易以及營運之法令之執行者。

5. 第 3 項之規定不應被解釋為禁止締約國在公平且非歧視方式下，就第 4 項事項，為適用法律之行為。

第 12.18 條　締約國間之爭端解決

1. 本協定第十九章（爭端解決）之規定，除本條另有規定外，亦適用於本章之爭端解決。

2. 金融服務委員會應以共識，設置成員名單最多十八位，由具有處理本章各項爭端仲裁之能力及意願者組成，其中包括來自締約國各五位。成員應符合本協定第十九章（爭端解決）設定之資格，並具備豐富之金融業或金融規範實務經驗。

3. 經爭端國雙方同意，仲裁小組成員得不由前項成員名單中遴選，但該成員仍須符合前項資格限制。仲裁小組主席必須自前項成員名單中推選。

4. 在爭端中，如仲裁小組發現任何某一措施違反本章義務，而暫停利益之程序正在依第十九章（爭端解決）之規定進行時，若該措施之影響：

(a) 僅止於金融服務部門，控訴之締約國僅得暫停該部門之利益；

(b) 及於金融服務部門以及任何其他產業部門，則控訴之締約國得暫停與該措施影響所及程度相當之金融服務業利益；或

(c) 僅及於金融服務部門以外之其他產業部門，控訴之締約國不得暫停金融服務業利益。

第 12.19 條　締約國一方與締約國他方投資人間金融服務投資爭端解決

1. **第十章（投資）第二節之規定構成本專章之一部分。**

2. **如締約國他方之投資人依據第十章第二節第** 10.17 **條（締約國投資人為其本身提出之請求）或第** 10.18 **條（締約國投資人為企業提出請求），對締約國提付仲裁，而爭端締約國引用第** 12.09 **條時，仲裁庭應依其要求，以書面將之轉致委員會，以便其作成決定。在未接獲委員會依據本條規定做成決定前，仲裁庭不得繼續其程序。**

3. **對於第** 2 **項所轉致之事項，委員會應決定第** 12.09 **條是否可以作為對投資人請求之有效抗辯，及其可以做為抗辯之程度。委員會應將其決定送交仲裁庭及執委會。此決定對仲裁庭具有拘束力。**

4. **如委員會未於收到依據第** 2 **項所轉致之事項後六十日之內做成決定，爭端締約國或爭端投資人所屬之締約國，得依據第** 19.09 **條（成立仲裁小組之請求）之規定，請求成立仲裁小組。仲裁小組應依第** 12.18 **條之規定成立。小組應將其最終報告，送交委員會及仲裁庭。該報告對仲裁庭具有拘束力。**

5. **如未於前項六十日之期限屆滿日起算之十日內請求成立仲裁小組，仲裁庭得逕行決定該事項。**

附件 12.11　金融服務委員會

依據第十二章第十一條成立之金融服務委員會，應由下列單位組成：

(a) **在巴拿馬方面，為商工部外貿次長辦公室或其繼受單位；並得諮詢相關主管機關（包括銀行、保險、在保險之監督機關與國家證券委員會）；及**

(b) **在中華民國方面，為經濟部國貿局或其繼受單位；並得諮詢相關主管機關。**

第十三章　電信

第 13.01 條　定義

為本章之目的，下列用詞應瞭解如下：

授權之設備：根據締約國一方符合性評估程序所授權介接於公眾電信傳輸網之終端或其他設備；

符合性評估程序：如第 9.01 **條（定義）所定義之「符合性評估程序」，並包括附件** 13.01(A)**所規定之程序；**

增值或加值服務：使用電腦處理下列應用之電信服務：

(a) **處理客戶所傳送之表格、內容、編碼、通訊協定或其他類似之傳輸資訊；**

(b) **提供客戶附加、不同或加以重整之資訊；或**

(c) **涉及儲存資料之客戶交互作用；**

企業內部通信：依據附件 13.01(B)**，係指企業透過電信進行：**

(a) **企業內部或與其子公司、分公司、關係公司間之內部通信；子公司、分公司、或關係公司由各締約國定義之；或**

(b) **在非商業基礎上與公司內部基本經濟活動有關且有持續契約關係之人之通信；**

但不包括對上述以外之人提供電信服務；

主要供應者或主導經營者：指在特定電信服務市場，藉由控制必要之基礎設施或利用其市場地位，具重大影響電信服務參與條件能力（就價格及供應觀點而言）之供應者；

獨占事業：在締約國法律允許下，依其規定所維持或指定，以在締約國境內相關市場，專屬提供電信網路或公共服務之事業，包括財團或政府單位；

網路終端點：指公眾電信傳輸網在用戶終端之最後界限；

私有電信網路：在受附件 13.01(B)**規範之前提下，專用於企業內部通信或特定人員間之電信傳輸網；**

通訊協定：基於信號或資料傳輸之目的，規範二個機構間資訊交換之一系列規則及格式；

公眾電信傳輸網路：允許在各指定之網路終端點間通信之公眾電信基礎設施；

公眾電信傳輸服務：締約國以明文之要求或實際上為公眾提供之任何電信傳輸服務，包括電報、電話、電傳電報及資料傳遞；此通常包含兩點或多點間即時傳輸用戶資訊，但不改變用戶端對端之資訊傳遞方式及內容；

相關標準措施：如第 9.01 **條（定義）所界定之「相關標準措施」；**

電信：指利用有線、無線、光方式或其他電磁系統傳輸、播送、接收各種符號、信號、文字、影像、聲音及其他任何性質之訊息；

電信服務：指用實體線路、無線電、光方式或其他電磁系統，提供信號傳輸與接收之服務；但不包括有線電視、廣播電臺或其他以電磁傳輸之電視及廣播節目；及

終端設備：任何具備以電磁媒介處理、接收、交換、發送或傳遞信號之類比或數位設備；且該設備係利用無線或有線之方式連接公眾電信傳輸網之終端點。

第 13.02 條　適用範圍

1. 本章適用於：

(a) **在受附件** 13.01(A)**規範之前提下，任一締約國為開放其公眾電信傳輸網路或服務，或提供締約國他方人員使用此項網路或服務，包括訂定價格、開放及使用其公眾電信傳輸網路、經營私有網路作為企業內部通信，所採行或維持之措施；**

(b) **締約國對締約國他方人員在其境內或跨境所提供之增值或加值服務所採行或維持之措施；及**

(c) **介接終端設備或其他設備於公眾電信傳輸網路之相關標準措施。**

2. 本章不適用於任一締約國對有線電視、電臺廣播或電視節目播放所採行或維持之措施，但為確保廣播電臺及有線電視系統經營者可介接及使用公眾電信傳輸網路及服務之情形除外。

3. 本章規定不應被解釋為：

(a) **要求任一締約國授權締約國他方之人設立、建設、購買、租賃、經營或提供電信傳輸網路或電信傳輸服務；**

(b) **要求任一締約國本身或要求任一締約國強迫任何人設立、建設、購買、租賃、經營或提供非供公眾使用之電信傳輸網路或電信傳輸服務；**

(c) **締約國不得禁止私有電信網路經營者使用其網路向第三者提**

供公眾電信傳輸網路或服務；或

(d) 要求任一締約國強制從事有線電視、電臺廣播或電視節目播放之人，供應該項播放之設施，作為公眾電信傳輸網路之用。

第 13.03 條　公眾電信傳輸網路及服務之介接及使用

1. 為本條之目的，「不歧視」係指所賦予之待遇，在類似情況下，不低於賦予同類公眾電信傳輸網路之客戶或使用者之條款與條件。

2. 任一締約國應確保締約國他方之人，在合理及不歧視之條款與條件（包括本條其他規定所列者）下，為進行其商業活動，得在其境內或跨境接取及使用公眾電信傳輸網路或服務，包括出租專線電路。

3. 依據第 7 項與第 8 項及附件 13.01(B)，任一締約國應確保此等人得：

(a) 購買或租用並介接於公眾電信傳輸網路連接之終端設備或其他設備；

(b) 於締約國境內或跨境將其租用或自有之電路與公眾電信傳輸網路連接，包括利用直接撥接方式與客戶或使用者連線，或依據附件 13.01(B)在與對方相互同意條件下與對方自有或租用之電路連線；

(c) 執行交換、發送信號及處理功能；及

(d) 依照各締約國之技術規劃，得依其選擇使用運作之通訊協定。

4. 在不影響其適用法令下，締約國應確保公眾電信傳輸服務價格，直接反應與提供服務相關之經濟成本。本項規定不應被解釋為允許締約國於公眾電信傳輸服務間，進行交叉補貼。

5. 在附件 13.01(B)之下，任一締約國應確保締約國他方之人員得於其領域內或跨邊境使用公眾電信傳輸網路或服務進行資訊傳送，包括企業內部通信及在任一締約國境內取得已建置儲存於機器內之資料庫資訊。

6. 除第 20.02 條（一般例外）之規定外，本章不應被解釋為禁止締約國採行或執行下列必要措施：

(a) 確保訊息之安全性及機密性；或

(b) 保護公眾電信傳輸網路或服務用戶之隱私權。

7. 除第 13.05 條之規定外，任一締約國除下列必要情況外，應確保不對公眾電信傳輸網路之接取與使用，設置限制條件：

(a) 維護提供公眾電信傳輸網路或服務者之公共服務責任，尤其

是提供一般民眾使用其網路及服務之能力；或

(b) 保護公眾電信傳輸網路或服務之技術完整性。

8. 如對於公眾電信傳輸網路或服務之接取及使用之條件，符合第 7 項之規定，則其條件得包括：

(a) 限制該項服務之轉售或共用；

(b) 要求使用特定技術介面，包括介面通訊協定，以連接該項網路或服務；

(c) 限制與出租專線電路或自有電路，或與其他人員所租用或自有之電路相互連接，而此種電路係用於供應公眾電信傳輸網路或服務者；及

(d) 採行或維持有關發照、許可、特許、登記或通知等之程序，但須符合透明化原則，且申請手續亦須快速審理。

第 13.04 條　提供增值或加值服務之條件

1. 任一締約國應確保：

(a) 關於增值或加值服務所採取或維持之任何發照、許可、特許、登記或通知程序應具透明性，並符合不歧視原則，此等申請案之處理應迅速審理；且

(b) 上述申請程序所需之資料應符合締約國有關提供服務之現行法令，包括證明申請者可提供服務之財務償付能力或評估申請人所擁有之終端機或其他設備是否符合締約國所採用之標準或技術規定。

2. 在不影響締約國法令之前提下，任一締約國不應要求提供增值或加值服務之服務提供者必須：

(a) 普遍提供民眾此類服務；

(b) 依成本調整費率；

(c) 申報費率或價格；

(d) 將其網路與任一特定客戶或網路互連；或

(e) 除公眾電信傳輸網路之互連之規範外，另遵循任何互連特殊標準或技術規範。

3. 不論第 2 項第(c)款之規定，締約國於下列情形得要求服務提供者申報價格：

(a) 當一提供服務者被締約國依其法律規定認為該服務業者有反競爭行為並予以糾正時；或

(b) 適用第 13.06 條之獨占事業、主要供應者、既有經營者。

第 13.05 條　相關標準措施

1. 任一締約國應確保對公眾電信傳輸網路連線之終端機或其他設備所採行或維持之措施，包括使用測試以及測量儀器進行符合性評估程序所採取之措施，限於下列之必要情況：

(a) 防止對公眾電信傳輸網路造成技術上之傷害；

(b) 防止對公眾電信傳輸服務之技術干擾或降低其服務品質；

(c) 防止電磁波干擾，及確保與其他電磁頻譜使用的相容性；

(d) 防止帳務設備機能失常；

(e) 確保使用者之安全及接取公眾電信傳輸網路或服務；或

(f) 確保電磁波頻譜使用效率。

2. 締約國得要求連接到公眾電信網路未經授權之終端設備或其他電信設備，依照本條第 1 項準則認可。

3. 各締約國應確保其公眾電信傳輸網路之網路終端點，係基於合理與透明化之基礎定義之。

4. 具有保護裝置之用戶端設備已依本條第 1 項規定審驗合格者，任一締約國不得要求另行審驗其後端所連接的設備。

5. 任一締約國應：

(a) 確保其符合性評估程序之透明化並符合不歧視性原則，並確保申請案儘速審查；

(b) 允許符合技術資格之機構依據締約國之符合性評估程序，對與公眾電信傳輸網路連線之終端機或其他設備進行測試；惟任一締約國有權審查測試結果之精確性及完整性；及

(c) 關於授權特定人士在締約國相關符合性評估機構前擔任電信設備供應商之代理，確保其所採行或維持之措施應符合「不歧視」原則。

6. 當條件允許下，任一締約國應採行必要規定，作為符合性評估程序的一部分，以接收在締約國他方境內之實驗室或測試所依據標準措施及程序所進行之測試結果。

第 13.06 條　獨占或反競爭行為

1. 任一締約國維持或指定一獨占事業或主要提供者或既有業者以提供公眾電信傳輸網路或服務，且該獨占事業以直接或透過其關係公

司之方式，在增值或加值服務或與其他電信有關之服務或商品範圍內進行競爭，該締約國應確保此一獨占事業、主要提供者或既有業者不利用其在市場上之獨占地位，以直接或透過其關係公司之方式，從事反競爭行為，而對締約國他方之服務提供者造成不利之影響。此等行為得包括接取公眾電信傳輸網路或服務之交叉補貼、掠奪行為以及歧視性規定。

2. 為防止上述違反競爭行為發生，任一締約國應致力於符合或維持合於本條第 1 項規定之有效措施，諸如：

(a) 會計規定；

(b) 結構性分割之規定；

(c) 確保獨占事業、主要提供者、或既有業者應給予其競爭者在開放及使用其公眾電信網路或服務，不低於給予其本身或其關係公司之條件之規範；或

(d) 確保適時公布公眾電信傳輸網路及其介面之技術變更措施之規範。

第 13.07 條　透明化

除第 17.03 條（公布）外，各締約國應公布開放及使用公眾電信傳輸網路或服務之措施；相關措施包括：

(a) 服務費率、價格及其他條件；

(b) 網路或服務技術介面之規格說明；

(c) 負責訂頒電信網路開放及使用相關標準措施之主管機構資料；

(d) 網路連線之終端機或其他設備之適用條件；及

(e) 所有通知、許可、登記、證明書、許可證或特許之相關規定。

第 13.08 條　與其他章之關係

倘本章之規定與他章之條款相牴觸，在牴觸之範圍內優先適用本章之規定。

第 13.09 條　與其他國際組織及協定之關係

締約國咸認國際標準對全球電信網路或服務互通及相容之重要性；並承諾藉由相關國際機構，包括國際電信聯盟及國際標準組織之運作，推動此種標準。

第 13.10 條　技術合作與其他諮詢

1. **為鼓勵互通電信傳輸服務基礎建設之發展，締約國雙方應進行技術資訊之交換、政府間訓練計畫之發展以及其他相關活動之合作。為執行此一義務，締約國雙方應加強現有之交流計畫。**

2. **締約國雙方應就所有電信服務貿易進一步貿易自由化之可行性，包括公眾電信傳輸網路及服務，進行諮商。**

附件 13.01(A)　符合性評估程序

為本章之目的，符合性評估程序包括：

巴拿馬電信設備符合性評估程序包括：

(a) 1996 年 2 月 8 日巴拿馬第 31 號電信法；

(b) 1997 年 4 月 9 日第 73 號關於電信法規之行政命令；

(c) 1997 年 10 月 28 日第 JD-119 號決議，根據此一決議巴拿馬主管機關禁止輸入不符合「國家頻率分配計畫」之電話或無線電信通訊設備；

(d) 1998 年 8 月 11 日第 JD-952 號決議，根據此一決議巴拿馬主管機關採行測試使用電磁頻譜之新科技設備之程序規定；及

(e) 2000 年 1 月 3 日第 JD-1785 號決議，此一決議定在巴拿馬境內引進無線通訊電話或電信設備之登記及授權程序。

中華民國電信設備符合性評估程序包括：

(a) 2003年5月21日電信法；

(b) 2000年6月28日電信終端設備技術規範及審驗辦法；

(c) 2002年8月30日電信管制器材審驗及認證辦法；

(d) 2002年10月23日低功率電波輻射性電機管理辦法；

(e) 2000年9月14日電信管制射頻器材管理辦法；

(f) 2003年3月6日第三代行動通信業務管理規則；

(g) 2003年3月6日一九〇〇兆赫數位式低功率無線電話業務管理規則；

(h) 2003年3月6日固定通信業務管理規則；

(i) 2003年3月6日衛星通信業務管理規則；

(j) 2003年3月6日行動通信業務管理規則；及

(k) 2000年10月11日業餘無線電管理辦法。

附件 13.01(B)　私有網路之互連(私有電路)

1. **在巴拿馬及中華民國，公司內部之私有網路不得與公眾電信網路連接，且縱係免費性質，亦不得提供電信服務給非該企業之子公司、分公司、或關係公司，或非其所擁有或掌控之第三者。**

2. **於巴拿馬或中華民國現行法定條件改變，而准許供企業內部通信之私有電信網可與公眾電信網互連，且准許提供與該公司經濟活動有重要性及有持續契約關係之第三者時，本附件第 1 項規定對巴拿馬或中華民國即不再生效。**

第十四章　商務人士暫准進入

第 14.01 條　　定義

1. 為本章之目的，相關用語定義如下：

商務活動：以獲取市場利潤為目的之合法商業活動；但不包括在締約國領域受僱及提供服務以獲得薪資或酬勞之活動；
商務人士：從事商品貿易、提供服務或進行投資活動之締約國國民；
國民：如第二章（一般定義）所定義，但不包括永久居留或終局性居留者；
勞動証明：由行政主管機關制定一定程序，以確定締約國國民臨時進入締約國他方領域，是否取代當地國民工作機會或明顯損傷當地工作條件；
慣例：指締約國移民當局以往所執行經常且重覆性之實務作法；及
暫准進入：締約國商務人士進入締約國他方，而無意永久居留者。

2. 為附錄 14.04 之目的，相關用語定義如下：
決策功能：組織內之功能，而被授予具如下基本責任之人者：
(a) 指導組織、部門或運作之行政管理；
(b) 建立組織、部門或運作之政策與目標；或
(c) 僅接受更高階層主管、董事會、指導委員會或股東之監督與命令。

管理功能：組織內之功能，而被授予具如下責任之人者：
(a) 管理組織或組織內之基本運作；
(b) 監督並控管其他專業員工、顧問或行政人員之工作；
(c) 具有僱用、解僱、建議之權力，以及直接轄管之相關人事事務，並在組織中擔任監督工作或有關其職務權能之行使；或
(d) 依其權責執行其所轄管之日常運作之裁量。

須具專業知識之功能：涉及商品、服務、研究、設備、技術、組織管理或利益管理、其他國際市場應用，或涉及組織過程及程序更進階之專業知識或經驗者。

第 14.02 條　　一般原則

本章反應締約國間優惠貿易關係，在互惠並建立透明化規則及程序下提供暫准進入之便利，並反應保障邊境安全、雙方締約國內勞工永續就業的需要。

第 14.03 條　一般義務

1. 各締約國應依上述第 14.02 條之規定，採行與本章有關之措施，

並特別應迅速執行措施，以避免本協定下之商品或服務貿易、或投資活動受到不當延誤或損害。

2. 為執行本章之規定，締約國應致力於發展及採取共同之標準、定義與解釋。

第 14.04 條　暫准進入之許可

1. 對於已符合其他有關公共衛生、公共安全、公共秩序與國家安全措施之商務人士，每一締約國應依本章之規範及附件 14.04 與附件 14.04(1)之規定，准予暫准進入。准予該商務人士停留之期間將依締約國法令及相關規定核予。

2. 如商務人士之暫准進入將造成下列情況之負面影響，締約國得拒絕此種人士暫准進入：

(a) 在僱佣地（或擬僱佣之地）進行之勞工爭議解決；或

(b) 所僱佣之人涉及此種爭議。

3. 如締約國依第 2 項拒絕暫准進入，該締約國應：

(a) 以書面將拒絕之理由通知該商務人士；且

(b) 立即以書面附具理由，通知其商務人士被拒絕暫准進入之締約國。

4. 各締約國處理申請暫准進入之規費，應限制在與所提供服務之成本相當之範圍內。

5. 本章所示暫准進入許可，並不取代核准暫准進入之締約國對從事專業工作或活動特定有效法規之要求。

第 14.05 條　資訊提供

1. 除 17.03 條（公告）規定之外，每一締約國應：

(a) 提供資訊，使另一締約國得以瞭解該國有關本章規定之相關措施；並

(b) 於本協定生效後至遲一年內，依本章暫准進入之規定，在各締約國內準備、公布並提供說明性資料，使締約國他方之商務人士得以知悉。

2. 各締約國應蒐集、保存並提供締約國他方，已核發移民文件的商務人士前准予暫准進入該國之資料。此資料應包括各類別之批准資料。

第 14.06 條　爭端解決

1. 除符合下列情形外，締約國一方不得因締約國他方拒絕依本章規定暫准進入，或就某一第 14.03 條下之特定案例，依第 19.06 條（諮商）之規定，發動其程序：

(a) 該案已成為一種慣例；且

(b) 當事人對此案已用盡所有可用之行政複審程序。

2. 如主管機關在提出行政複審要求後六個月內仍未作成最後決定時，且此延誤非關當事人之過誤者，視為符合第 1 項第(b)款所稱已用盡所有可用之行政複審程序。

第 14.07 條　　與其他各章之關係

除本章、第一章（原則性條款）、第二章（總定義）、第十八章（協定之管理）、第廿一章（最終條款），及第 17.02 條（資訊中心）、第 17.03 條（公布）、第 17.04 條（資訊之提供）及第 17.06 條（採取具一般性適用措施之行政程序）等規定外，本協定其他之規定並不對締約國就其移民措施課以任何義務。

附件 14.04　商務人士暫准進入

A 節－商務考察者

1. 各締約國應對擬從事附件 14.04(A)(1) 所述商業活動，於其符合現行簽證、移民及就業措施時，且具備以下文件之商務人士，即給予暫准進入之許可並發給文件：

(a) 締約國國籍證明；

(b) 從事商務考察活動之證明及述明入境目的之文件；及實際從事者為具有國際性之商務活動，且不尋求進入當地勞動市場之證明。

2. 如提出下列證明，各締約國應認定商務人士已滿足第 1 項第(b)款之要求：

(a) 所擬進行之商務活動之主要收入來源，係來自批准暫准進入締約國領域之外；且

(b) 該商務人士主要營業地點與大部分收益之地點均在於批准暫准進入之締約國領域之外。

為此項之目的，批准暫准進入許可之締約國通常應接受有關主要營業地點與大部分收益地點之聲明。如締約國要求額外證明，則需依法辦理。

3. 各締約國對於商務人士擬從事附錄 14.04(A)(1) 所列以外之商務之暫准進入，應給予不低於附錄 14.04(A)(3) 所規定之既有措施之待遇。

4. 締約國不得:

(a) 要求事前核准程序、請求、勞動証明檢測或其他類似手續，作為第 1 項或第 3 項批准暫准進入之條件；或

(b) 增設或維持第 1 項或第 3 項暫准進入之任何數量限制。

5. 不論第 4 項之規定，締約國仍得要求依本節申請暫准進入之商務人士，先行取得簽證或類似證件。締約國應考慮避免或取消要求簽證或類似規定之可行性。

B 節－貿易者及投資者

1. 各締約國應對從事監督、決策或需專業知識之商務人士，於其符合現行適用於暫准進入之移民措施時，許可暫准進入並發給文件，但該商務人員必須係尋求：

(a) 主要在兩締約國間完成相當數量之商品或服務貿易；或

(b) 建立、開發、管理、提供諮詢或關鍵技術服務予該商務人士個人或其企業已經應承諾或正在承諾之相當大金額之投資。

2. 締約國不得:

(a)要求有關勞動證明檢測或其他類似手續，作為批准第 1 項暫准進入之條件；或

(b)增設或維持第 1 項暫准進入之任何數量限制。

3. 不論第 2 項之規定，締約國仍得要求依本節申請暫准進入之商務人士，先行取得簽證或類似證件。締約國應考慮避免或取消要求簽證或類似規定之可行性。

C 節－公司內部調動人員

1. 各締約國應對公司所僱佣之商務人士，擬對該公司、其子公司或關係公司，提供管理、決策或專業知識之功能者，於其符合現行適用於暫准進入之移民措施時，許可暫准進入並發給文件。締約國得要求該等人士在提出申請暫准進入前連續為該公司聘用一年之證明。

2. 締約國不得:

(a)要求有關勞動證明檢測或其他類似手續，作為批准第 1 項暫准進入之條件；或

(b)增設或維持第 1 項暫准進入之任何數量限制。

3. 不論第 2 項之規定，締約國仍得要求依本節申請暫准進入之商務人士，先行取得簽證或類似證件。締約國應考慮避免或取消要求簽證或類似規定之可行性。

附件 14.04(1)　特定國家對商務人士暫准進入之措施

巴拿馬：

1. **附件** 14.04 **所函括之商務人士進入巴拿馬從事商務應被視為有利於該國之活動。**

2. **附件** 14.04 **所函括之商務人士進入巴拿馬從事的任何活動，應持有暫時居留資格，並得在維持其資格下取得加簽。除非符合移民法** (1960 **年** 6 **月** 30 **日** 16 **號法令)及其修正規定，及** 1970 **年** 12 **月** 17 **日行政命令** 363 **號之規定，上述人士不得請求永久居留或變更移民身份。**

中華民國：

1. **商務人士應於入境前取得停留或居留簽證，該簽證至多一年，多次停留期，限九十日。商務人員持有居留簽證者，得於其工作許可有效之情形下，繼續居留。除非符合入出國移民法之規定，否則上述人士不得請求永久居留。**

2. **商務人士如係台灣地區與大陸地區人民關係條例暨其施行細則規範之大陸地區人民，則應依該條例及細則之規定，取得入境許可。**

附錄 14.04(A)(1) **商務考察者**

研究與設計

—進行獨立研究，或為在另一締約國設置之企業進行研究之技術、科技及統計研究人員。

採購

—為在另一締約國設置之企業，負責商業營運之採購與生產之經理階層人員。

行銷

—進行獨立研究或分析，或為在另一締約國設置之企業而進行研究或分析之市場調查人員與分析人員。

—參加商展之促銷人員。

銷售

—為在另一締約國設置之企業，就有關商品或服務交易，接單或洽談契約之銷售代表及代理；惟其本身須不交付商品或提供服務。

—為在另一締約國設置之企業採買之採購人員。

售後服務

—具履行出賣人契約義務之專業知識之裝設、修護與保養人員，依照銷售商業或工業設備或機器（包括電腦軟體）（該設備或機器必須由擬入境之締約國領域外所購得）所附帶之擔保條款或服務契約，在該擔保條款或服務契約期限內，執行服務，或訓練人員以執行服務者。

一般性服務

—提供跨國境商務諮詢服務人員。

—為在另一締約國設置之企業，負責經營之管理及監督人員。

—為在另一締約國設置之企業，負責經營之財務人員。

—提供客戶諮詢或協助或參加展覽之宣傳及公關人員。

—出席或參加商展，或為來自於另一締約國旅行團執行旅遊業務之觀光業人員（含旅行社、導遊或旅遊之經營者）。

附錄 14.04(A)(3)　現行移民法規

巴拿馬：

1960 年 6 月 30 日移民法 16 號法令及其修正條文，公布於 1960 年 7 月 5 日 14,167 號政府公報；1970 年 12 月 17 日 363 號行政命令，公布於 1970 年 12 月 24 日 16,758 號政府公報。

中華民國：

入出國移民法 (1999 年 5 月 21 日第 8800119740 號令公布)；外國護照簽證條例（1999 年 6 月 2 日公布）暨其施行細則(2000 年 5 月 31 日公布)；就業服務法 (1992 年 5 月 8 日公布，2002 年 1 月 21 日修訂；就業服務法實行細則，勞委會 2001 年 10 月 31 日修訂)。

第五篇：競爭政策

第十五章　競爭政策、獨占與國營企業

第一節　競爭政策

第 15.01 條　目的

本章目的在確保貿易自由化之利益不因反競爭活動而減損，並在促進締約國主管機關間之合作與協調。

第 15.02 條　合作

1. 締約國同認採行執法機制時，合作與協調之重要性；其合作與協調，包括通知、諮商，以及在不違反機密性之法律義務下，相互交流自由貿易區內執行競爭法與競爭政策之相關資訊。

2. 為達此一目的，締約國應採行或維持禁止反競爭貿易行為；並在確認此等措施有助於達成本協定所設定目標之情形下，依據該措施採行適當之執行機制。

第二節　獨占與國營企業

第 15.03 條　獨占與國營企業

1. 本協定之規定並不禁止締約國於其法令許可之情形下，指定或維持獨占或國營企業。

2. 在締約國法令允許之情形下，如該締約國有意指定獨占或國營企業，且如此一指定可能影響另一締約國人之利益時，此締約國應：

(a) 盡可能事先以書面文件通知締約國他方此項指定之事實；並

(b) 於指定獨占之同時，致力於將獨占之營運條件納入，俾將因該指定獨占所造成本協定利益遭剝奪或減損降至最低甚或消除。

3. 如締約國之法律允許其指定或維持獨占或國營企業，則其應確保其所指定或維持之獨占或國營企業遵守下列事項：

(a) 如締約國就獨占之貨品或服務，對獨占或國營企業賦予諸如核發進出口簽証、核准商業交易、採行配額、收取費用等之管制、管理或其他政府權限，則該獨占或國營企業之行為，應符合締約國在本協定中之義務；

(b) 就獨占貨品或服務在相關市場之購買或銷售，對締約國他方

投資者之投資，以及商品及服務供應者，應給予不歧視待遇；且

(c) 不得利用其獨占地位，直接或間接採行反競爭措施，而不利於締約國他方投資者之投資。

4. 第 3 項之規定不適用於政府部門為施政目的而採購商品或服務，其目的非為商業性轉售或為使用於為商業性銷售目的之商品之生產或服務之供應之情形。

第六篇：智慧財產權

第十六章　智慧財產權

第一節　一般規定

第 16.01 條　總則

締約國茲同意與貿易有關之智慧財產權協定及下列與智慧財產相關之國際公約，應規範及適用於本協定所衍生之一切與智慧財產權有關之事項：

(a) 一九六七年保護工業財產權之巴黎公約；

(b) 一九七一年保護文學與藝術作品之伯恩公約；

(c)　保護表演人、錄音物製作人及廣播機構之羅馬公約；

(d) 保護錄音物製作人對抗未經授權重製其錄音物之日內瓦公約；

(e) 植物新品種保護國際聯盟協定或一九七八年或一九九一年修正公約；依不同國家決定以何者為準；

(f) 一九九六年世界智慧財產權組織著作權條約；及

(g) 一九九六年世界智慧財產權組織表演及錄音物條約。

第二節　智慧財產權之保護

第 16.02 條　一般義務

1. 締約國一方應對締約國他方之國民，就本章所稱之智慧財產權，提供適當之保護與執行機制，並確保旨在保護該等權利之措施不致對合法貿易構成障礙。

2. 締約國得依其國內法規對智慧財產權提供較本章更廣泛之保護，惟不得與本章規定牴觸。

第 16.03 條　著作權及其相關權利之耗盡

1、締約國同意採行著作權及其相關權利之耗盡原則，亦即著作權及其相關權利之權利人，對於經由該權利人自己或由其他已獲授權之第三人在該國合法引進市場合法產品在該國之自由貿易，不得阻礙；惟該產品及其盒套或包裝須未經任何修改或變更。

2、締約國應於本協定生效後一年內，將此原則納入國內立法。

第 16.04 條　地理標示之保護

1、締約國一方應承認並保護締約國他方在本條規定下之地理標示。

2、除非該商品在原產地國已依據其適用之地理標示法規合法提出申請並獲准註冊外，締約國一方不得允許進口、製造或販售使用受締約國他方保護的地理標示之商品。

3、第 1 項及第 2 項款之規定僅對受要求保護之締約國相關法律保護之地理標示，且其定義符合與貿易有關智慧財產權協定第三節者，產生效力。為取得保護，締約國一方應就符合前揭地理標示通知締約國他方；該項通知之地理標示，應即受保護。

4、前述規定不妨害締約國承認非締約國合法所有之同音地理標示。

Seco 之原產地名稱

5、中華民國應承認 「Seco」之原產地名稱，限於指原產於巴拿馬以甘蔗為原料之烈酒。爰此，除非係根據巴拿馬相關法規及技術規章與標準所產製者，否則中華民國應不允許是項貨品之進口、生產或販售。

6、本章第三節（協定之執行）之規定及與貿易有關之智慧財產權協定第廿三條第一項之規定，應適用「Seco」之原產地名稱。

第 16.05 條　傳統知識之保護

1. 締約國應藉由特設之登記、推廣及行銷制度，就原住民族可用於商業用途之創作之集體智慧財產及傳統知識權利予以保護，俾凸顯原住民族及地方社群的社會文化價值，並令其享有社會正義。

2. 締約國應承認原住民族及地方社群之習慣、傳統、信仰、精神性靈、宗教、宇宙觀、民俗、藝術表現、傳統知識及其他任何傳統性發表方式，均為其文化財產。

3. 除非其專屬使用之申請係由原住民族及地方社群或透過經授權之第三者所提出，否則文化財產不得因未獲授權之第三者利用智慧財產制度，而成為專屬使用之標的。

第 16.06 條　民俗創作之保護

締約國應確保原住民族及地方社群之民俗創作與表現及民間傳統文化藝術均受到有效之保護。

第 16.07 條　基因資源之使用與智慧財產的關係

1. 締約國應保護基因資源之利用，以及包含在此等基因資源中之原

住民族及地方社群之生物資源利用所發展出之傳統知識之利用，以避免生物多樣性之無差別使用，並確保締約國將會參與基因資源所衍生之利益。

2. 締約國應確保公平且公正地參與基因資源及傳統知識及民俗所衍生之利益。

3. 締約國應確保對工業財產之保護，得以保障其生物及基因財產。爰此，倘一項發明為基於前述財產或傳統知識之素材而取得者，則專利授予之前提條件，為是項素材係依照國內及國際之規範而取得。

第 16.08 條　植物新品種保護

1. 締約國應透過其領域內相關法令所設之特別登記制度，並透過締約國雙方將來應發展之相互承認機制，承認並確保所謂之「品種權」，以保護來自於植物品種之權利。

2. 給予植物品種權人之權利為一智慧財產權，屬權利持有者所專有，他人須經其授權始得對受保護之品種進行開發利用。

3. 品種權應得買賣、轉讓及繼承。是項權利之持有者得授權第三者開發利用受保護品種。

4. 品種權涵蓋所有植物種類，並應適用於任何植物及種子，且適用於任何可供重製及繁殖之任何部份。如品種具備新穎性、可區別性、一致性及穩定性者，應授予品種權。

5. 授予品種權人之保護期限，於巴拿馬為二十年，於中華民國為十五年，皆自審定公告日起算。對於藤蔓、林木、果樹及觀賞植物，以及其根莖，保護期限，於巴拿馬為二十五年，於中華民國為十五年。保護期滿之品種即歸公眾擁有。

第三節　執行

第 16.09 條　適用

1、締約國雙方重申其在與貿易有關之智慧財產權協定之執行程序所規定之權利及義務。

2、締約雙方咸認諸如傳統知識、民俗、基因資源、地理標示、植物新品種等智慧財權保護之重要，且為知識經濟時代提昇競爭力及維持經濟發展之重要因素。雙方爰同意尚未成為第 16.01 條所列之多邊協定會員之締約國，將致力於未來適時尋求加入該等協定。

第 16.10 條　智慧財產權之執行

締約國應於其法律中訂定有效之行政、民事與刑事程序，以適切保護智慧財產權。所有前述程序並應考慮原告、被告間之正當法律程序。

第 16.11 條　邊境執行措施

為保護智慧財產權，締約國應立法訂定邊境措施，賦予海關檢查及留置可疑貨品之權力，以暫停或阻止貨品之自由流通。

第 16.12 條　透明化

締約國應將有關之法令規章及處置通知依本協定設立之智慧財產權委員會。一般適用性質之最終司法裁決及行政決定決議，應予以公告；如其公告並不可行時，應使公眾得以獲得此等資料，使締約國政府及權利人熟悉其內容。

第 16.13 條　智慧財產委員會

1**、締約國雙方茲設立智慧財產委員會，如附件** 16.13**；其功能在討論及檢視依本協定衍生之智慧財產議題。**

2**、智慧財產委員會下設智慧財產權專家小組，由締約國雙方之智慧財產局派出三位智慧財產權專家組成；委員會或專家小組應每年或於締約國任何一方要求時召開會議，但仍依締約國雙方協議為之。會議地點應輪流在各締約國舉行。**

第 16.14 條　技術合作

締約國應就智慧財產權事項，特別是就新近發展之智慧財產權相關問題，於締約國雙方及在世界貿易組織架構下，設立技術合作機制，以進行合作。

附件 16.13　智慧財產委員會

依據第 16.13 **條所設立之智慧財產委員會，由下列單位組成：**

(a) **就巴拿馬而言，為工商部，由貿易次長室或其繼受單位代表；及**

(b) **就中華民國而言，為經濟部，由智慧財產局或其繼受單位代表。**

第柒篇 行政與機構安排

第十七章　透明性

第 17.01 條　定義

為本章之目的，「具一般適用性質之行政裁決」係指行政機關所為之裁決或解釋，適用其範圍內之所有相關情況下之人員及事件，並屬行為規範之建立者；但不適用於下列情形：

(a) 在特定案件中，適用於締約國他方之人員、商品或服務，而在行政程序下所作為之決議或裁決；或

(b) 為決定有關特定行為或實務而為之裁決。

第 17.02 條　資訊中心

1. 締約國雙方應指定一機關作為資訊中心，以利締約國一方就本協定之事務與締約國他方進行聯繫。

2. 於締約國一方提出請求時，締約國他方之資訊中心應告知該事項之承辦機關或官員，並提供協助，以利溝通。

第 17.03 條　公布

締約國應確保其與本協定有關之法律、規章、行政程序與具一般性適用之行政命令，儘速公布，以使締約國他方及其他任何有意知悉者，得以熟悉其內容。

第 17.04 條　資訊之提供

1. 締約國一方就其所有現行措施，於將來可能對締約國他方在本協定之權益有重大影響或已經發生影響時，應儘可能通知對方。

2. 於締約國他方提出要求時，締約國一方應提供資訊，並立即回應與現行措施有關之問題。

3. 依本條規定就現行措施提供任何資訊或通知，不應對該措施符合協定與否有任何影響。

第 17.05 條　聽證、合法性與正當程序之保證

締約國之任一方就第 17.03 條所稱之措施進行司法及行政程序時，應確保遵守第 17.06 條及第 17.07 條有關聽證、合法性與正當程序之規定。

第 17.06 條　採取具一般性適用措施之行政程序

為以一致、公正且合理之方式，執行與本協定有關且具一般性適用

之措施，締約國一方在處理第 17.03 條項有關措施之行政程序時，就特別係涉及締約國他方人員、貨品或服務有關之案件時，應確保：

(a) 於締約國他方之人員受其行政程序之直接影響時，應根據內國法規，儘可能於事件發生之初即以合理之方式告知，包括此事件之屬性、依法發動程序之主管機關、及爭議問題之一般說明；

(b) 於時間、法律程序之性質及大眾利益許可之情形下，應在行政行為確定前，給予上述人員合理之機會，以陳述其事實及支持其立場之論述；且

(c) 其程序須符合其法律。

第 17.07 條　複審與上訴

1. 締約國應根據其各自法律設法庭、司法程序或行政程序，以快速且即時審查與改正與本協定有關之最終行政行為。此等法庭應公正，並獨立於行政執法機關之外，且不得與該事件之結果有實質之利害關係。

2. 締約國應確保，在前述之法庭之前或在程序之中，該程序之當事者享有下列權利：

(a) 提出相關證據及辯護之合理機會；及

(b) 要求任何決定均係以當事人所提答辯與證據為基礎。

3. 在受各締約國法律所規定之上訴或複審限制之前提下，締約國應確保其上訴所為之決定，將為主管機關所執行。

第 17.08 條　聯繫與通知

除另有不同之規定外，任何給予締約國之通知，應以秘書處內該締約國之部門收到日，視為已經收到。

第十八章　協定之管理

第一節　執行委員會、次執行委員會及秘書處

第 18.01 條　協定執行委員會

1. 締約國雙方茲設立協定執行委員會（以下簡稱「執委會」）；執委會係由附件 18.01 所述之官員或由其所指派之人員組成。

2. 執委會之職掌如下：

(a) 監督本協定規定之實現及正確執行；

(b) 評估本協定之執行成果；

(c) 監視各項發展，並在其認為必要時，建請締約國雙方就協定內容予以修正；

(d) 依第十九章（爭端解決）之規定，解決由於本協定之解釋或適用所產生之任何爭議；

(e) 監督在本協定之下且依據第 18.05 條第 3 項規定所設立之相關委員會之工作；及

(f) 考慮任何其他可能影響本協定執行或締約國雙方所委託執委會之事項。

3. 執委會得：

(a) 為執行本協定之需要，成立特設或常設委員會或專家小組並賦予其任務；

(b) 為達成本協定之目標，修訂如下事項：

(i) 附件 3.04（關稅調降表）所述締約國之一方之關稅調降表，俾將先前排除在關稅調降表之外之一項或多項貨品，納入調降表；

(ii) 附件 3.04（關稅調降表）所訂之期限，俾加速推動關稅調降計劃；

(iii) 附件 4.03（特定產品原產地規則）所定之原產地規定；

(iv) 統一規定；

(v) 第十章（投資）之附件一、二、三及四；

(vi) 第十一章（跨邊境服務貿易）之附件一、二、五；及

(vii) 第十二章附件六（金融服務業）；

(c) 向非官方之個人或團體尋求意見；

(d) 制定並通過為執行本協定所需之規則；及

(e) 採行締約國雙方同意之其他行動，俾實現其功能。

4. 締約國應依據其內國法規，執行第 3 項第(b)款所規定之修正。

5. 執委會得制訂其本身之規則及程序；執委會之決定均採共識決。

6. 執委會每年最少固定召開一次會議，並於其中任一締約國請求時，召開臨時會。會議地點應輪流在各締約國舉行。

第 18.02 條　協定次執委會

1. 締約國雙方茲設立協定次執委會，由附件 18.02 所述之官員或由其所指派之人員組成。

2. 次執委會具有下列功能：

(a) 準備並檢視於本協定架構下，擬訂決策所需之技術文件；

(b) 追蹤執委會所作之決議事項；

(c) 在不損及第 18.01 條第 2 項之前提下，次執委會得監督本協定下且依據第 18.05 條第 3 項所成立之所有委員會、次委員會及專家小組之工作；及

(d) 對可能影響本協定之功能且為執委會所指派之任何其他事項，進行檢視。

3. 執委會得制定規則與程序，俾供協定次執委會適當運作。

第 18.03 條　秘書處

1. 執委會應設置並督導秘書處；秘書處包括各締約國部門。

2. 各締約國：

(a) 應設置常設性辦公處所或指定官員，以代表秘書處之該締約國部門，並將其地址、電話及有關秘書處國家部門之所在，通知執委會；

(b) 應負責：

(i) 該部門之運作及所需費用；及

(ii) 支付依本協定附件 18.03 所指定之仲裁人及其助理，以及專家之報酬及費用；及

(c) 應指派該國秘書一人，負責行政業務。

3. 秘書處具有下列功能：

(a) 協助執委會及次執委會；

(b) 對依據第十九章（爭端解決）及第 19.13 條（標準程序規則）

所設立之仲裁小組，提供行政支援；

(c) 依據執委會之指示，對本協定架構下所成立之委員會，次委員會及專家小組給予工作上之支援；

(d) 依據第 17.08 條（聯繫與通知）之規定，負責聯繫與照會之工作；及

(e) 執委會交辦之其他事項。

第二節 委員會、次委員會及專家小組

第 18.04 條 總則

1. 本節相關規定，應補充適用於在本協定架構下所成立之委員會、次委員會及專家小組。

2. 各委員會、次委員會及專家小組，應由締約國之代表組成，其所有決議事項皆採共識決。

第 18.05 條 委員會

1. 除附件 18.04 所述者外，執委會並得設立其他委員會。

2. 各委員會職掌如下：

(a) 監督本協定各章與彼等有關業務之執行情形；

(b) 就締約國一方所主張另一締約國採行之措施，有違背其在本協定所作承諾之事項，加以審理；

(c) 要求相關單位提出技術性報告，並採取必要行動解決問題；

(d) 依其本身職掌，就對執委會所提有關本協定中各章條文之修訂、修改或增訂案，進行評估並提建議；

(e) 對締約國一方所採行之措施，認為有不符本協定之規定，或可能導致附件 19.03（剝奪與減損）所示之剝奪或減損利益之情事時，向執委會提出修正案；及

(f) 執行執委會依據本協定或本協定所衍生之其他文件所交辦之事項。

3. 執委會及次執委會應監督依本協定所設立各委員會之業務。

4. 各委員會得自行訂定相關規則及程序，並應依締約國或執委會之要求，召開會議。

第 18.06 條 次委員會

1. 為委託行使相關功能，委員會得設立常設性質之次委員會，以便執行授權範圍內之相關工作，並監督其工作。每一個次委員會之職

能應與指派其工作之委員會相同。

2. 各個次委員會應將其執行工作情形，向其所屬委員會提出報告。

3. 次委員會之相關規定及程序，得由相關委員會制訂之。次委員會應於締約國雙方之任一方或其所歸屬委員會之要求下，舉行會議。

第 18.07 條　專家小組

1. 不論第 18.01 條第 3 項第(a)款之規定，為執行業務需要時，委員會或次委員會得以專案方式設置專家小組，俾從事技術性研究；專家小組之工作，應受其委員會或次委員會監督。專家小組須在規定條件與時間內，嚴格執行其被交付之任務，並向其所歸屬之委員會或次委員會提出工作報告。

2. 專家小組之有關規定及程序，得由其所歸屬委員會或次委員會訂定之。

附件 18.01　協定執委會之成員

依條文第 18.01 第一項所設立之協定執委會係由下列首長組成：

(a)　巴拿馬方面，由工商部長或其繼任者；及

(b) 中華民國方面，由經濟部長或其繼任者。

附件 18.02　協定次執委會之成員

依據第 18.02 條所設立之協定次執委會，係由下列首長所組成：

(a)　巴拿馬方面，工商部外貿談判司長或其繼任者；及

(b) 中華民國方面，經濟部國際貿易局長或其繼任者。

附件 18.03　報酬及支應款項

1. **執委會對應支付予仲裁人及其助理以及專家之報酬與費用支出，應訂立額度。**

2. **應支付予仲裁人及其助理以及專家有關之交通費、住宿費及仲裁小組之一般支出等，應由締約國雙方平均分攤。**

3. **各仲裁人及其助理以及專家應隨時記載並提出其所耗費之時間及相關支出等最終財務帳目；仲裁小組對一般支出，亦應保存相同紀錄及總支出報告。**

附件 18.04　委員會

貨品貿易委員會（第 3.16 **條）**

食品安全檢驗與動植物防疫檢疫措施委員會（第 8.11 **條）**

標準、度量衡及授權程序委員會（第 9.12 **條）**

投資暨跨邊境服務貿易委員會（第 11.14 **條）**

金融服務委員會（第 12.11 **條）**

智慧財產委員會（第 16.13 **條）**

第十九章　爭端解決

第一節 爭端解決

第 19.01 條　定義

為本章之目的，相關用語定義如下：

控訴國：係指提出控訴之締約國；

諮商國：係指依據第 19.06 條提出諮商之任一締約國；

被控訴國：係指被控訴之締約國；及

爭端國：係指控訴國或被控訴國。

第 19.02 條　總則

1. 締約國雙方應就本協定之解釋與適用盡力達成共識，並透過合作及諮商，以就可能影響本協定運作之事項，獲得相互滿意之解決方式。

2. 對於依本章所提出之爭端之解決方案，應符合本協定規範，並不得剝奪或減損締約國雙方依據本協定所享有之權益，或阻礙本協定目標之達成。

3. 依本章規定提起之爭端案件，如經締約國雙方達成相互滿意之解決協議，應於達成該協議後十五日內將其內容通知執委會。

第 19.03 條　適用範圍

除本協定另有規定外，本章程序應適用於：

(a) 防止或解決締約國雙方關於本協定之適用或解釋之爭端；或

(b) 締約國一方認締約國他方所採行之措施違反或可能違反本協定之規範或可能造成附件 19.03 所稱之利益剝奪或減損之情形。

第 19.04 條　爭端解決場所之選擇

1. 爭端如同時涉及本協定及世界貿易組織協定或在世界貿易組織體系下談判成立之協定，控訴國得在各該協定中，擇一進行爭端解決程序。

2. 如締約國一方已依據本協定第 19.09 條請求成立仲裁小組，或已依據世界貿易組織協定爭端解決規則與程序瞭解書第六條請求成立爭端解決小組，即依其所選定之小組解決爭端，而排除其他爭端解決機制之適用。

第 19.05 條　緊急案件

1. 締約國雙方及仲裁小組就本條第 2 項及第 3 項所指之緊急情形，應盡力加速程序之進行。

2. 在爭端係涉及易腐農產品、魚類及易腐性魚製品之情形：

(a) 如依第 19.06 條所進行之諮商, 未能於提出諮商請求時起十五日內解決，諮商國得以書面請求召開執委會；且

(b) 如其爭端於執委會召集後十五日內未解決，或執委會未於諮商國請求召開後十五日內召開者，諮商國得以書面請求成立仲裁小組。

3. 締約國雙方就前項所列以外之緊急情形，應盡可能將第 19.07 條有關要求召開執委會及第 19.09 條要求成立仲裁小組所需之時間予以減半。

第 19.06 條　諮商

1. 締約國一方就締約國他方所實際採行之措施或任何其他可能影響本協定有關第 19.03 條運作之事項，得以書面提出諮商要求。

2. 要求諮商之締約國應將諮商請求文件提交予他造之專責單位。

3. 締約國雙方應盡一切努力，就依本條文或本協定其他有關諮商之條文所進行之諮商，達成相互滿意之解決協議。為達此目的，締約國雙方應：

(a) 提供充分之資訊，以供檢視所實際採行之措施或其他事項，如何影響本協定運作；且

(b) 對諮商過程中所交換之機密資訊，以提供該資訊之締約國處理機密資訊之相同方式，予以處理。

程序之發動

第 19.07 條　執委會之介入

1. 諮商國得於下列情形，以書面請求召開執委會：

(a) 除締約國雙方對於期限另有合意外, 如依第 19.06 條所進行之諮商，其爭端未於提出諮商請求後三十日內解決者；或

(b) 締約國於收到諮商請求後，未於十日內回應者。

2. 諮商國於第 1 項所稱之請求，應載明其所主張之系爭措施或其他問題，並載明所涉及之本協定條文。

3. 執委會受第 1 項之請求召開時，除另有決定外，應於請求提出後

十日內召開。執委會為達成雙方滿意之解決方式，得：

(a)必要時得傳喚技術專家說明或組成專家小組；

(b)進行斡旋、調停及調解或其他替代之爭端解決方式；或

(c)提出建議。

4. 執委會除另有決定外，應就同一措施引起之數項爭端程序合併審理；另執委會就數項措施引起之數項爭端程序，如認為適當時，得合併審理之。

第 19.08 條　斡旋、調解及調停

1. 斡旋、調解及調停等程序係以自願為基礎，並基於締約國雙方之合意而展開。

2. 有關斡旋、調解及調停之程序，以及締約國雙方在該等程序中所採取之立場，應予保密，且不影響締約國任一方在其他進一步爭端解決程序中之權利。

3. 締約國任一方均得隨時請求斡旋、調解及調停。各該程序得隨時開始及終止。

仲裁小組之程序

第 19.09 條　成立仲裁小組之請求

1. 如爭端未能於下列期限內解決時，曾依第 19.07 條請求執委會介入之締約國一方得以書面向締約國他方請求成立仲裁小組：

(a) 執委會召集後三十日或執委會受召集之請求後，未於三十日內召集者；

(b) 執委會已召集, 且已依第 19.07 條第 4 項合併最近爭端程序後三十日；或

(c) 締約國雙方同意之其他期限。

2. 前項請求應以書面為之，並敘明是否曾進行諮商、執委會是否曾召集、執委會是否曾採取行動、及請求方提出控訴之理由，包括系爭措施之確認及提出控訴之法律依據。

3. 執委會於控訴國方向他造負責單位提出書面請求後十五日內，應依照本協定第 19.12 條成立仲裁小組。

4. 除締約國雙方另有合意外，仲裁小組即應成立，並應依本章之規定運作。

第 19.10 條　仲裁小組成員名冊

1. 本協定正式實施時，締約國雙方應建立二十人以下之適格仲裁人名冊。前述名冊應包括「締約國雙方仲裁人名單」與「非締約國仲裁人名單」。締約國雙方可各自提出五名其本國籍之仲裁人以組成「締約國雙方仲裁人名單」及各自提出五名非其本國籍之仲裁人以組成「非締約國仲裁人名單」。

2. 仲裁人名冊每三年得予變更乙次。但執委會得依締約國一方之請求，於期限屆至前變更名冊。

3. 仲裁人名冊中之所有成員均須符合第 19.11 條所定之資格要件。

第 19.11 條　仲裁人之資格

1. 仲裁人均應具備下列資格：

(a) 具有法律、國際貿易、與本協定相關事務或涉及國際貿易協定之爭端解決之專業知識或經驗；

(b) 具備客觀、廉潔、可信任及良好判斷力；

(c) 具有獨立性，不受爭端一方之影響及指示；且

(d) 遵守執委會所制訂之行為規範。

2. 曾經依第 19.07 條第 3 項參與爭端程序之人，不得於同一爭端中擔任仲裁人。

第 19.12 條　仲裁小組之組成

1. 締約國雙方應依下列規定組成仲裁小組：

(a) 小組由三名成員組成；

(b) 在請求成立小組後十五日內，締約國雙方應致力達成該小組主席人選之共識；

(c) 主席人選無法於上述期間內以合意選定時，應由「非締約國仲裁人名單」中抽籤決定之；

(d) 締約國雙方於主席人選決定後十五日內，應自「締約國雙方仲裁人名單」中各挑選一名仲裁人；該仲裁人得為其本國籍人；及

(e) 締約國一方未選擇仲裁人時，其人選應由「締約國雙方仲裁人名單」中，就屬於該國籍之仲裁人中抽籤決定之。

2. 締約國一方認為仲裁人違反行為規範時，締約國雙方應進行諮商，並決定是否排除該仲裁人；如締約國同意排除該仲裁人，則新仲裁人應依本條規定重新選任。

第 19.13 條　標準程序規則

1. **執委會應於本協定生效時，根據以下原則訂定標準程序規則：**

   (a) **該規則應確保締約國雙方於仲裁小組審理時有到庭陳述意見之權利，以及以書面提出詰問或反駁之機會；及**

   (b) **仲裁小組之審理、評議、初步報告及締約國雙方提出之書面及意見，均應保密。**

2. **執委會得修改標準程序規則。**

3. **除締約國雙方另有合意外，仲裁小組應依標準程序規則進行審理。**

4. **除締約國雙方另有合意外，對仲裁小組授權審理之範圍為：**

「依據本協定之規定，且依要求執委會召開會議之請求中所設定之條款，就提出之爭端事件，進行審理，並依據第 19.15 **條及第** 19.16 **條提出報告。」**

5. **如控訴國提出之案件係涉及附件** 19.03 **所示之利益剝奪與減損時，前項之授權審理範圍應予載明。**

6. **如締約國一方請求仲裁小組認定，締約國他方因採行某項不符本協定之措施，導致負面之貿易影響，或造成附件** 19.03 **所示之利益剝奪或減損之程度時，仲裁小組之授權審理範圍應予載明。**

第 19.14 條　資訊與技術諮詢

仲裁小組得依締約國一方之請求或依職權，依標準程序規則所定之條件，向其認為適當之個人或機構蒐集資訊及尋求建議。

第 19.15 條　初步報告

1. **除爭端之締約國雙方另有合意外，仲裁小組應依據締約國雙方提出之論點與意見，並根據依前條所蒐集之資訊提出初步報告。**

2. **除締約國雙方另有合意外，仲裁小組應於其最後一名仲裁人選定後九十日內向締約國雙方提出初步報告，其內容應包括：**

   (a) **認定之事實，包括依第** 19.13 **條第** 6 **項認定之事實；**

   (b) **認定系爭措施是否違反或可能違反本協定，或該措施是否有附件** 19.03 **所示之利益受剝奪或減損之情形，或作成授權範圍所要求之其他決定；**

   (c) **如有解決本爭端之建議；及**

   (d) **如依照第** 19.17 **條第** 2 **項及第** 3 **項所定之報告執行期間。**

3. **仲裁人於無法形成共識之情形，得以書面提出其個別之意見。**

4. 締約國雙方得於仲裁小組提出初步報告後十四日內，以書面表示意見。

5. 仲裁小組於審酌依前項提出之書面意見後，得依職權或締約國一方之請求

(a) 要求締約國雙方提出評論；

(b) 重新考量初步報告；及

(c) 採取任何適當之措施。

第 19.16 條　最終報告

1. 除締約國雙方就時間另有合意外，仲裁小組應於提出初步報告後三十日內，通知締約國雙方其基於多數決作成之最終報告；該通知並應包括無法形成共識時個別仲裁人提出之個別意見。

2. 仲裁小組不得洩漏其成員於初步報告及最終報告中，係採取多數意見或少數意見。

3. 除締約國雙方另有合意外，最終報告應於通知締約國雙方後十五日後公布。

第 19.17 條　最終報告之執行

1. 最終報告對締約國雙方設定其要求之內容及執行之期限，應有強制力。除締約國雙方就執行期限另有合意外，執行最終報告之期限，不得逾最終報告通知締約國雙方後六個月。

2. 如仲裁小組之最終報告認定系爭措施與本協定之規定不合，被控訴國應停止或撤銷該措施。仲裁小組應於考量該案件在事實上與法律上之複雜性及最終報告之性質後，訂定執行期限；該項期限不得逾一百八十日。

3. 如仲裁小組之最終報告認系爭措施係造成附件 19.03 所稱之利益剝奪與減損時，小組應認定剝奪或減損之程度，並得提出其認為締約國雙方均能滿意之建議。仲裁小組於考量該案在事實上與法律上之複雜性及最終報告之性質後，應訂執行期限以達成締約國雙方相互滿意之解決；該項期限不得逾一百八十日。

4. 前二項履行期限屆至後五日內，被控訴國應通知仲裁小組及另一締約國其為履行最終報告所採取之措施。前二項履行期限屆至後三十日內，小組應認定被控訴國是否已履行義務。如小組認被控訴國未履行義務時，控訴國得依據第 19.18 條之規定暫停優惠。

第 19.18 條　暫停優惠

1. 仲裁小組如作出下列決定之一，控訴國得在與其利益受損程度相當範圍內，暫停被控訴國依本協定所應獲得之優惠：

(a) 被控訴國所採取之措施經認定違反本協定之規定，且被控訴國未能於仲裁小組所訂之期限內履行最後報告所定之義務；或

(b) 被控訴國所採取之措施造成附件 19.03 所稱之利益剝奪或減損，且爭端之締約國雙方未能於仲裁小組所訂之期限內達成相互滿意之協議。

2. 前開暫停優惠之期間，得持續至被控訴國已依最終報告履行其義務，或締約國雙方達成相互滿意之協議為止。被控訴國如認已履行最終報告之義務，但控訴國並未回復其暫停措施前之優惠時，被控訴國得依據本條第 4 項之規定，請求成立仲裁小組以認定其是否確已履行義務。

3. 在考量暫停何種優惠時，應依下列規定：

(a) 控訴國應優先暫停者，為受被控訴國所採行違反本協定之措施所影響之相同產業之優惠，或其他爭議事件而造成附件 19.03 所稱利益剝奪或減損之相同產業之優惠；及

(b) 如控訴國認暫停同一產業下之優惠並不可行或無效果時，得暫停非同一產業之優惠。

4. 依據本條暫停優惠後，依締約國一方之請求，締約國雙方應成立仲裁小組，以認定被控訴國是否已遵守仲裁報告，或控訴國所實施之暫停優惠措施是否過當。該仲裁小組應儘可能由熟悉該爭端之原仲裁人組成。

5. 前項仲裁小組應依據標準程序規則進行其程序；除締約國雙方對期限另有合意外，仲裁小組應於選定最後一名仲裁人後六十日內提出最終報告。如該仲裁小組係由熟悉爭議之原案件之仲裁人組成，則其應於締約國一方提出仲裁請求後三十日內提出最終報告。

第二節　內國程序及私人商務爭端解決

第 19.19 條　內國司法及行政程序下之協定解釋

1. 執委會應就下列情況，儘速提出適當但不具拘束力之解釋或意見：

   (a) 任一締約國認在締約國他方之司法或行政程序下產生本協定之解釋或適用問題，有由執委會提供解釋意見之價值；或

   (b) 締約國一方於其內國之司法或行政程序中，就本協定之解釋或適用，請求執委會表示意見。

2. 締約國應將執委會之解釋或意見，依當地之程序，於其司法或行政程序中提出。

3. 如執委會就解釋或意見無法達成一致之見解時，締約國任何一方均得各自依當地之程序，於司法或行政程序中提出其自己之意見。

第 19.20 條　私人權利

締約國任何一方均不得因締約國他方所採行之措施違反本協定，而於其內國法賦予任何人對該締約國他方起訴之權利。

第 19.21 條　私人間爭端解決之替代方式

1. 締約國應致力推動、協助以仲裁及其他替代方式，解決締約國雙方領域內發生之私人間國際商務爭端。

2. 為第 1 項之目的，締約國各方，應確實遵守其已加入之國際仲裁協定，並確保仲裁判斷得以獲得承認與執行。

3. 執委會得成立私人間商務爭端諮詢小組，由具有國際商務爭端解決專業知識或經驗者組成之。該小組如經成立，應提出有關仲裁成立、利用與效率，以及其他爭端解決程序之總括性報告與建議。

附件 19.03　剝奪與減損

1. 締約國一方採行之措施雖未違反本協定，但他方認為其合理預期之利益於下列規定之下遭受剝奪或減損時，仍得將之訴諸本章之爭端解決機制：

(a) 第二篇（貨品貿易）；

(b) 第三篇（技術性貿易障礙）；或

(c) 第十一章（跨邊境服務貿易）。

2. 系爭措施如係涉及第 20.02 條（一般例外）之規定，締約國不得援引：

(a) 前項第(a)款或第(b)款；但限於該利益係原係來自第貳篇（貨品貿易）及第參篇（技術性貿易障礙）之跨邊境服務貿易；或

(b) 前項第(c)款。

3. 為認定剝奪與減損之各項因素，締約國雙方得參考一九九四年關稅暨貿易總協定第二十三條第一項第(b)款所發展之法理。

第二十章　例外

第 20.01 條　定義

為本章之目的，相關用語定義如下：

國際貨幣基金：即國際貨幣基金組織；

國際資本交易：依國際貨幣基金協定對「國際資本交易」之定義；

國際經常交易收支：依國際貨幣基金協定對「國際經常交易收支」定義；

租稅協定：避免雙重課稅之協定或其它國際租稅協定；及

移轉：國際性交易與相關之國際移轉與支付。

第 20.02 條　一般例外

1. 為下列各篇章之目的，一九九四年關稅暨貿易總協定第廿條及其附註納入為本協定之一部份：

(a) 第貳篇（商品貿易〉，但其中有關服務或投資之規定除外；
(b) 第參篇（技術性貿易障礙〉，但其中有關服務或投資之規定除外；及
(c) 第伍篇（競爭政策）中適用於貨品之規定。

2. 為下列各篇章之目的，服務貿易總協定第十四條中第(a)款、第(b)款及第(c)款納入為本協定之一部份：

(a) 第貳篇（商品貿易〉中適用於服務之規定；
(b) 第參篇（技術性貿易障礙〉中適用於服務之規定；
(c) 第十章　（投資）；
(d) 第十一章　（跨邊境服務貿易）；
(e) 第十二章　（金融服務業）；
(f) 第十三章　（電信服務）；
(g) 第十四章　（商務人士暫准進入）；及
(h) 第十五章　（競爭政策、獨占及國營企業）中適用於服務之規定。

第 20.03 條　國家安全

本協定之任何條款不應被解釋為：

(a) 要求任何締約國提供或允許取得在散佈後足以違反其基本安全利益之資訊；

(b) **阻止締約國採取任何其認為保護基本安全利益之必要措施，而與下列情形有關者：**

(i) **有關武器裝備、軍火、執行戰爭物資之運送，以及有關直接或間接提供給軍事機關或安全單位之貨品、原料、服務及技術之運送與交易；**

(ii) **戰爭時期或其他國際局勢緊張狀況下所採行之措施；或**

(iii) **有關執行禁止核子武器或其它核子爆炸物擴散之國家政策或國際協定者；或**

(c) **禁止締約國採行其為實現聯合國憲章下維持國際和平及安全之義務之措施。**

第 20.04 條　收支平衡

1. **本協定不應被解釋為禁止締約國於其收支平衡發生嚴重困難或有受嚴重困難之虞時，採取或維持限制資金移轉之措施，但其限制措施須符合本條規定。採行措施之締約國應依一九九四年關稅暨貿易總協定第十二條及一九九四年關稅暨貿易總協定收支平衡條款瞭解書所定之條件為之。**

2. **締約國一方應於採行第** 1 **項措施後三十日內，通知締約國他方。如締約國雙方皆為國際貨幣基金會員時，則另須遵守下列第** 3 **項之程序。**

3. **締約國一方採行符合本條規定且符合該締約國之國際義務之措施後，應儘快採取下列行動：**

(a) **將其經常帳交易限制，提交予國際貨幣基金，以便其依照國際貨幣基金協定第八條規定審查；**

(b) **與國際貨幣基金，就造成困難之基本經濟問題，進行誠信之諮商；及**

(c) **採行與諮商結果一致之經濟政策。**

4. **本條之下所採取或維持之措施應：**

(a) **避免對締約國他方之商業、經濟、財政等利益受到不必要之傷害；**

(b) **不超過為處理收支平衡困難或威脅之必要程度；**

(c) **屬暫時之性質，且隨收支平衡之改善而逐漸撤除；**

(d) **與本條第** 3 **項第**(c)**款一致，且符合國際貨幣基金協定之規定；且**

(e) 以國民待遇及最惠國待遇之基礎為之，並以其中較有利者為準。

5. 締約國得於本條之下，優先就其經濟計畫中重要之服務部門，採行或維持措施；除非其措施符合第 3 項第(c)款及國際貨幣基金協定第八條第三項之規定，否則締約國之採行措施不得為保護特定之產業。

6. 對資金移轉限制：

(a) 如係針對國際經常交易，則其應與國際貨幣基金協定第八條第三項相符；

(b) 如係針對國際資本交易，則其應國際貨幣基金協定第六條之規定，且其措施採行，應與依第 3 項第(a)款所採行之國際經常交易有關；且

(c) 不得以收取額外關稅、配額、許可證或其他類似形式之措施為之。

第 20.05 條　資訊揭露

如資訊之揭露將妨礙法律之執行，或違反憲法、公共利益或有關保護個人隱私、財務狀況、金融機構之銀行個人帳戶資料之法律，則本協定之規定不應被解釋為要求締約國提供或允許他人獲得相關資訊。

第 20.06 條　租稅

1. 除本條明文規定外，本協定不適用於租稅措施。

2. 本協定之任何規定均不影響締約國任何一方在任何租稅條約下之權利與義務。倘任何此類租稅條約與本協定衝突時，在衝突之範圍內，應優先適用此類租稅條約。

3. 不論第 2 項之規定：

(a) 第 3.03 條（國民待遇）及本協定涉及補充或執行該條之其他規定，應依照一九九四年關稅暨貿易總協定第三條所示之範圍，適用於租稅措施；且

(b) 第 3.14 條（出口稅）應適用於租稅措施。

4. 為本條之目的，租稅措施不包括：

(a) 第 2.01 條（整體適用之定義）所定義之關稅；

(b) 該定義所列第(b)款、第(c)款及第(d)款之例外措施。

5. **在受第** 2 **項限制之前提下，**

(a) **第** 11.03 **條（國民待遇）及第** 12.06 **條（國民待遇）應適用於針對企業有關購買或消費特定服務發生之所得、資本收入或可課稅資本所採行之租稅措施；**

(b) **第** 10.02 **條（國民待遇）、第** 10.03 **條（最惠國待遇）、第** 11.03 **條（國民待遇）、第** 11.04 **條（最惠國待遇）、第** 12.06 **條（國民待遇）及第** 12.07 **條（最惠國待遇），應適用於有關公司所得、公司資本收入或可課稅之資本以及財產、繼承及贈與等租稅以外之租稅措施。**

但本條規定：

(i) **就有關締約國一方為執行予租稅條約所給予之優惠，不適用於最惠國待遇之義務；**

(ii) **不適用於現有給予居民與非居民差別待遇之租稅措施；**

(iii) **不適用於上述第**(d)**款所規定租稅措施之修改措施，但其修改不得減低其符合本條規定之程度；或**

(iv) **不適用於任何確保租稅之公平而有效之課徵及徵收之新租稅措施；但其不得恣意歧視締約國雙方之人員、貨品或服務，亦不得有附件** 19.03**（剝奪與減損）所稱之恣意剝奪或減損該等條文所賦予之利益之情形。**

第二十一章　最終條款

第 21.01 條　修訂

1. 本協定之任何修訂均需經締約國雙方之同意。

2. 經締約國雙方協議所為之修訂，應於締約國各方相關法定程序核准後生效，並構成本協定之一部分。

第 21.02 條　保留

締約國任一方不得於批准本協定時，對本協定之任何部分予以保留或為解釋性之宣示。

第 21.03 條　效力

1. 本協定不限制有效期限，並於巴拿馬及中華民國交換其批准文件，以証明已完成所有必要之法定程序及手續之日起，第三十日開始，於締約國間生效。

2. 為使本協定於巴拿馬及中華民國間生效，批准文件中應載明已就涵蓋下列內容完成法定程序及手續：

(a)　有關巴拿馬及中華民國之關稅調降表之附件 3.04（關稅調降表）；

(b)　適用於巴拿馬與中華民國間之附件 4.03 第 C 節（特定原產地規則）；

(c)　適用於巴拿馬及中華民國間投資之相關保留及限制之第十章（投資）附件一、二、三及四；

(d)　適用於巴拿馬及中華民國間跨邊境服務之相關保留及限制之第十一章（跨邊境服務貿易）附件一、二及五；

(e)　適用於巴拿馬及中華民國間金融服務之相關保留及限制之第十二章（金融服務）附件六；

(f)　附件 3.11(6)（進出口限制）；及

(g)　締約國雙方同意之其他事項。

3. 依據第 2 項簽署之議定書，應納入為本協定之一部分。

第 21.04 條　附件

本協定各附件均構成協定之一部分。

第 21.05 條　終止

1. 締約國得終止本協定。

2. **終止之聲明於通知另一締約國後一百八十日開始生效，惟締約國雙方得依協議另訂終止之生效日。**

第 21.06 條　正式版本

中、英及西文版本之皆為此協定之正式版本；惟在協定釋義有抵觸時，以英文版本為準。

茲證明簽署人係經各自政府正式授權簽署本協定。

本協定中、西、英文版本各二份，於中華民國九十二年八月二十一日，即西元二〇〇三年八月二十一日在臺北簽署。

陳　水　扁	**莫 絲 柯 索**
中 華 民 國 總 統	**巴拿馬共和國總統**

FREE TRADE AGREEMENT
BETWEEN
THE REPUBLIC OF CHINA
AND
THE REPUBLIC OF PANAMA

PREAMBLE

The Government of the Republic of China (hereinafter referred to as "the ROC") and the Government of the Republic of Panama (hereinafter referred to as "Panama"), resolved to:

STRENGTHEN the traditional bonds of friendship and the spirit of cooperation among their people;

RECOGNIZE each nation's strategic and geographic position within its respective regional market;

ACHIEVE a better balance in their trade relationship;

CREATE an expanded and secure market for goods and services produced in their own territories;

RECOGNIZE the difference in the levels of development and in the size of their economies and the need to create opportunities for economic development;

AVOID distortions to bilateral trade;

ESTABLISH clear and mutually beneficial rules governing their trade in goods and services, as well as the promotion and protecion of investments in their territories;

RESPECT their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO), as well as other bilateral and multilateral cooperation instruments;

ENHANCE the competitiveness of their firms in global markets;

CREATE employment opportunities and improve living standards of their people in their respective territories;

PROMOTE economic development in a manner consistent with environmental protection, conservation, and sustainable development;

PRESERVE their ability to safeguard the public welfare; and

PROMOTE the dynamic participation of different economic groups, particularly from the private sector, in order to strengthen the trade relations between both nations;

HAVE AGREED as follows:

PART ONE
GENERAL ASPECTS

CHAPTER 1
INITIAL PROVISIONS

Article 1.01 Establishment of the Free Trade Area

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

Article 1.02 Enforcement

Each Party shall ensure the adoption of all necessary measures in accordance with its constitutional rules in order to comply with the provisions of this Agreement in its territory and in all levels of its government.

Article 1.03 Relation to Other International Agreements

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

2. In the event of any inconsistency between the provisions of this Agreement and the provisions of the agreements referred to in paragraph 1, the provisions of this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

3. In the event of any inconsistency between this Agreement and the specific trade obligations set forth in:

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

(b) the Montreal Protocol on Substances that Deplete the Ozone Layer done at Montreal, September 16, 1987, as amended June 29, 1990; or

(c) the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal, done at Basel, March 22, 1989,

these obligations shall prevail to the extent of the inconsistency, provided that where a

Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

Article 1.04 Successor Agreement

Any reference in this Agreement to any other treaty or international agreement shall be made in the same terms to its successor treaty or international agreement to which the Parties are party.

CHAPTER 2
GENERAL DEFINITIONS

Article 2.01 Definitions of General Application

For purposes of this Agreement, except as otherwise provided for in another Chapter, the following terms shall be understood as:

chapter: the first two digits of the Harmonized System;

Commission: the Administrative Commission of the Agreement established pursuant to Article 18.01 (Administrative Commission of the Agreement);

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

(a) charge equivalent to an internal tax imposed consistently with Article III: 2 of GATT 1994;

(b) antidumping or countervailing duty that is applied pursuant to a Party's legislation and applied consistently with Chapter 7 (Unfair Trade Practices);

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

(d) premium offered or collected on or in connection with an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

Customs Valuation Agreement: the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, including its interpretative notes which forms part of the WTO Agreement;

days: calendar days, including Saturdays, Sundays and holidays;

enterprise: any legal entity constituted or organized under the applicable laws of a Party, whether or not for profit, and whether privately-owned or governmentally-owned, including any company, corporation, foundation, trust, partnership, sole proprietorship, joint venture or other association;

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

GATS: the General Agreement on Trade in Services, which forms part of the WTO Agreement;

GATT 1994: the General Agreement on Tariffs and Trade 1994, which forms part of the WTO Agreement;

goods: any material, substance, product or part;

goods of a Party: domestic products as understood in GATT 1994, or goods granted with this characterization by the Parties, including goods originating in that Party. Goods of a Party may incorporate materials from non-Parties;

Harmonized System: the "Harmonized Commodity Description and Coding System" as in effect, including its general rules of interpretation and the legal notes of its sections, chapters, headings and subheadings, as adopted and implemented by the Parties in their respective laws;

heading: the first four digits of the Harmonized System;

measures: any law, regulation, procedure, requirement, provision, or practice among other measures;

national: a natural person in accordance with Annex 2.01;

originating goods: goods that qualify as originating under the rules set out in Chapter 4 (Rules of Origin)**;**

person: a natural person or an enterprise;

person of a Party: a national or an enterprise of a Party;

Party: the Republic of Panama or the Republic of China;

producer: a person who manufactures, produces, processes or assembles a good; or who cultivates, grows, breeds, mines, extracts, harvests, fishes, traps, gathers, collects, hunts or captures a good;

Secretariat: "Secretariat" as established in accordance with Article 18.03 (Secretariat);

state enterprise: an enterprise that is owned or controlled by a Party through ownership interests;

subheading: the first six digits of the Harmonized System;

tariff reduction schedule: "tariff reduction schedule" as established in accordance with Annex 3.04 (Tariff Reduction Schedule);

territory: the terrestrial, maritime and air space of each Party as well as its exclusive economic zone and its continental shelf over which it exercises its sovereign rights and jurisdiction according to its domestic legislation and international law;

TRIPS: the Agreement on Trade-Related Aspects of Intellectual Property Rights, which forms part of the WTO Agreement;

Uniform Regulations: "Uniform Regulations" as established in accordance with Article 5.12 (Uniform Regulations); and

WTO Agreement: the Marrakesh Agreement Establishing the World Trade Organization (WTO) on April 15, 1994.

ANNEX 2.01
COUNTRY-SPECIFIC DEFINITIONS

For purposes of this Agreement, unless otherwise specified in other Chapters, it shall be understood as:

National:

in the case of Panama:

(a) a Panamanian national by birth according to Article 9 of the Constitution of the Republic of Panama;

(b) a Panamanian national by naturalization according to Article 10 of the Constitution of the Republic of Panama; or

(c) a Panamanian national by adoption according to Article 11 of the Constitution of the Republic of Panama; and

in the case of the ROC:

a person who has the nationality of the Republic of China by birth or naturalization according to Article 3 of the Constitution and Article 2 of the Nationality Law of the Republic of China.

PART TWO
TRADE IN GOODS

CHAPTER 3
NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A-Definitions and Scope of Application

Article 3.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

advertising films: recorded visual media, with or without soundtracks, consisting essentially of images which demonstrate the nature or the function of the goods or services offered for sale or for lease by any person established or resident in the territory of a Party, provided that the films are suitable for its exhibitions to potential customers, and are not for the broadcasting to the general public, and provided that they are imported in packets in which each contains no more than one copy of each film and do not form part of a larger shipment;

agricultural goods: the goods classified in the following chapters, headings or sub-headings of the Harmonized System, according to the 1996 revision:

(Note: the descriptions are provided for reference)

Tariff Classification		**Description**
Chapters	01 to 24	less fish and fish products
Subheading	2905.43	Mannitol
Subheading	2905.44	Sorbitol
Heading	33.01	essential oils
Headings	35.01 to 35.05	albuminoidal substances, modified starches, glues
Subheading	3809.10	finishing agents
Subheading	3824.60	sorbitol other than that of subheading No. 2905.44
Headings	41.01 to 41.03	hides and skins

Heading	43.01	raw fur skins
Headings	50.01 to 50.03	raw silk and silk waste
Headings	51.01 to 51.03	wool and animal hair
Headings	52.01 to 52.03	raw cotton, cotton waste and cotton carded or combed
Heading	53.01	raw flax
Heading	53.02	raw hemp

commercial samples of negligible value or of non-commercial value: commercial samples (individually or in the aggregated shipment) valued no more than one US dollar or the equivalent amount counted in whatever currency of the Parties, or marked, torn, perforated or treated in the way which are unsuitable for sales or for any way except of sample use;

consumed:

(a) actually consumed; or

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

goods for exhibition or demonstration: including components, auxiliary devices and accessories;

goods imported for the purposes of sports: the sports equipment used in sports contests, events or training in the territory of the Party into whose territory such goods are imported, provided the goods are finished products;

printed advertising materials: the pamphlets, printings, leaflets, trade catalogs, yearbooks published by trade associations, materials and posters of tourism promotions which are used to promote, publicize, or advertise goods or services, are distributed free of charge, and are classified in Chapter 49 of the Harmonized System;

repairs or alterations: activities which do not include operations or processes that destroy the basic characteristics of a good or create a new or commercially different good. For this purpose, it shall be understood that an operation or process that forms part of the production or assembly of an unfinished good and transform it into a finished good does not mean a repair or alteration of the unfinished good;

subsidies to exports of agriculture goods: those are related to:

(a) the provision by governments or their agencies of direct subsidies, including payments-in-kind, to a firm, to an industry, to producers of an agricultural good, to a cooperative or other association of such producers, or to a marketing board, contingent on export performance;

(b) the sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural goods at a price lower than the comparable price charged for the like product to buyers in the domestic market;

(c) payments on the export of an agricultural good that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural goods concerned or on agricultural goods from which the exported product is derived;

(d) the provision of subsidies to reduce the costs of marketing exports of agricultural goods (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight;

(e) internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favorable than for domestic shipments; or

(f) subsidies on agricultural goods contingent on their incorporation in exported products; and

temporary admission of goods: the temporary admission of goods or the temporary import of goods.

Article 3.02 Scope of Application

This Chapter applies to the trade in goods between the Parties, except as otherwise provided in this Agreement.

Section B- National Treatment

Article 3.03 National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes, which are incorporated into and made part of this Agreement.

2. For purposes of paragraph 1, each Party shall grant the goods of the other Party the treatment no less favorable than the most favorable treatment granted by this Party to the like, directly competitive or substitutable goods of its national origin.

Section C – Tariffs

Article 3.04 Tariff Reduction Schedule

1. Upon the entry into force of this Agreement, the Parties commit themselves to ensuring access to their respective markets by means of elimination of customs duties, on the trade of originating goods according to the tariff reduction schedule described in Annex 3.04, unless otherwise provided therein.

2. Except as otherwise provided in this Agreement, the purpose of this Article is not to prevent a Party from maintaining or increasing a customs tariff as may be allowed by the WTO Agreement or any other agreement which forms part of the WTO.

3. Paragraph 1 does not prohibit a Party from increasing a customs tariff to a level not higher than that established in its respective tariff reduction schedule if previously this tariff had been unilaterally reduced to a level lower than that established in the tariff reduction schedule. During the tariff reduction process the Parties shall undertake to apply in their trade in originating goods the lowest tariff obtained by comparing the level established in accordance with its respective tariff reduction schedule and the level in force according to Article I of GATT 1994.

4. At the request of any Party, the Parties shall carry out consultations to consider the possibility of accelerating the phasing out of customs tariffs under the tariff reduction schedules.

5. Notwithstanding the provisions of paragraphs 1 through 4, a Party may maintain, adopt or modify any tariff on goods excluded from the tariff reduction schedule as provided in Annex 3.04.

Article 3.05 Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission to import from the territory of the other Party for:

(a) professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter 14 (Temporary Entry for Business Persons);

(b) equipment for the press or for radio or television broadcasting and cinematographic equipment;

(c) goods imported for sports purposes or goods intended for display or demonstration; and

(d) commercial samples and advertising films.

2. Except as otherwise provided in this Agreement, neither Party may impose any condition upon the duty-free temporary admission of a good referred to in paragraph 1(a), (b) or (c), other than the requirement that such a good:

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

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

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

(d) be accompanied by a bond in an amount no greater than 110 percent of the charges that would otherwise be owed on entry or final importation, or by another form of security, releasable on exportation of the good, except that a bond for customs duties shall not be required for the original goods;

(e) be easily identifiable when exported;

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

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

3. Except as otherwise provided in this Agreement, neither Party may impose any condition upon the duty-free temporary admission of a good referred to in paragraph 1(d), other than the requirement that such a good:

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

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

(c) be easily identifiable when exported;

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

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

4. Where a good temporarily admitted duty-free under paragraph 1 do not fulfill whatever conditions that a Party imposes under paragraph 2 or 3 that Party may impose:

(a) customs tariff and other charges which are levied on the import; and

(b) any criminal, civil or administrative penalties as may be appropriate under the circumstances.

Article 3.06 Duty-Free Entry of Certain Commercial Samples of Negligible Value or of Non-Commercial Value and Printed Advertising Materials

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

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

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

Article 3.07 Goods Re-Entered after Repair or Alteration

1. Neither Party may apply a customs tariff to a good that re-enters its territory after that good has been exported from its territory to the territory of the other Party for repair or alteration.

2. Neither Party may apply a customs duty to a good imported temporarily from the territory of the other Party for repair or alteration.

3. The terms "re-entered its territory" referred to in paragraph 1, and "imported temporarily" referred to in paragraph 2, shall be understood under the respective laws of the Parties.

Article 3.08 Customs Valuation

Upon the entry into force of this Agreement, the principles of customs valuation applied to regulating trade between the Parties shall be that established in the Customs Valuation Agreement, including its annexes. Besides, the Parties shall not determine the customs value of the goods based on the officially established minimum value.

Section D- Non-Tariff Measures

Article 3.09 Domestic Supports

1. The Parties recognize that domestic support measures may be of crucial importance to their agriculture sectors, but it may also distort trade and affect production. In this sense the Parties shall apply domestic supports in accordance with the Agreement on Agriculture of the WTO, and any other successor agreements to which the Parties are party. Where a Party decides to support its agriculture producers, it shall endeavor to work toward the domestic support policy that:

(a) has minimal or no trade distorting or production effects; or

(b) is in accordance with its respective commitments in the WTO.

2. In order to ensure the transparency of the support policy to agriculture, the Parties agree to carry out continuous and permanent analysis of such policy. For these purposes, the acquired information shall be used as principal reference in these respective annual notifications to the WTO Committee on Agriculture, and the copies of the notifications may be exchanged upon the request of a Party. Without prejudice to the aforementioned, each Party may request the other Party for additional information and explanations. Such request shall be responded immediately. The information and the resulting evaluations may be subject to consultations, at the request of the other Party, in the Committee on Trade in Goods.

Article 3.10 Export Subsidies

1. The Parties share the objective of the elimination of export subsidies for agricultural and non-agricultural products as required under the WTO Agreement, and upon the entry into force of this Agreement, shall cooperate to achieve such objectives.

2. The Parties are also committed not to re-introducing any export subsidies notwithstanding the result of future multilateral negotiations on the Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture.

Article 3.11 Import and Export Restrictions

1. The Parties agree to eliminate non-tariff barriers immediately, with exception of the Parties' rights in accordance with Article XX and XXI of GATT 1994, and those regulated in Chapter 8 (Sanitary and Phytosanitary Measures) and Chapter 9 (Standard, Metrology-related Measures and Authorization Procedures)

2. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any goods of the other Party or on the exportation or sale for export of any goods destined for the territory of the other Party, except in accordance with Article XI of GATT 1994, including its interpretative notes, and to this end Article XI of GATT 1994 and its interpretative notes, are incorporated into and form part of this Agreement.

3. In any circumstances in which any other form of restriction is prohibited, the Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 2 prohibit export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation or exportation of goods from or to a non-Party, nothing in this Agreement shall:

(a) be construed to prevent the Party from limiting or prohibiting the importation of goods of that non-Party from the territory of the other Party; or

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

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

6. Paragraphs 1 through 4 shall not apply to the measures set in Annex 3.11(6).

Article 3.12 Customs Processing Fees and Consular Fees

1. After two years of the entry into force of this Agreement, neither Party shall apply an existing customs processing fee, nor shall adopt new customs processing fees on originating goods.

2. Upon the entry into force of this Agreement, neither Party shall collect consular fees or charges, nor shall require consular transactions on originating goods.

Article 3.13 Country of Origin Marking

1. Each Party shall apply to the goods of the other Party, while appropriate, its laws related to country of origin marking, according to Article IX of GATT 1994. For this purpose, Article IX of GATT 1994 is incorporated into and forms part of this Agreement.

2. Each Party shall accord to the goods from the other Party a treatment no less favorable than that it accords to the goods from a non-Party, regarding the application of rules on marks of origin, according to Article IX of GATT 1994.

3. Each Party shall ensure that the establishment and implementation of their laws on country of origin marking does not have the purpose or effect of creating unnecessary barriers to trade between the Parties.

Article 3.14 Export Taxes

Neither Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on any such good when destined for local consumption.

Article 3.15 Measures under Intergovernmental Agreements

Before adopting a measure under any intergovernmental agreement on goods, pursuant to subparagraph (h) of Article XX of GATT 1994, that may affect the trade in basic commodities between the Parties, a Party shall consult with the other Party to prevent the nullification or impairment of a concession granted by the Party according to Article 3.04.

Article 3.16 Committee on Trade in Goods

1. The Parties hereby establish the Committee on Trade in Goods, as set out in Annex 3.16.

2. The Committee shall consider matters relevant to this Chapter, Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures), and Uniform Regulations.

3. Without prejudice to the provisions of Article 18.05(2) (Committees), the Committee shall have the following functions:

(a) to submit to the Commission for its consideration of the matters that impede the access of goods to the territory of the Parties, especially the implementation of non-tariff measures; and

(b) to promote trade in goods between the Parties through consultations and studies intended to modify the period established in Annex 3.04, in order to accelerate the tariff reduction.

ANNEX 3.11(6)

IMPORT AND EXPORT RESTRICTIONS

Section A - Panama Measures

Notwithstanding Articles 3.03 and 3.11, Panama may adopt prohibitions or restrictions on imports of the products described in the following customs tariff codes of Panama:

HS 96 Code	Description
1301.90.20	Resin of cannabis and other narcotics
1302.11.10	Saps and extracts of opium
1302.11.90	The others (of opium)
1302.19.20	Extracts and dyeing of cannabis
1302.19.30	Concentrated of doze, and other narcotics
2903.46.10	Bomoclorodifluorometano
2903.46.20	Bromotrifluorometano
2903.46.30	Dibromotetrafluoroetanos
3601.00.00	Propellent powders
3602.00.00	Prepared explosives; other than propellent powders
4004.00.00 ex	Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained
4012.10 ex	**Retreated tires**
4012.20 ex	Pneumatic tires
4907.00.52	Lottery tickets official in circulation
6201—6217 ex	Used clothing
6401—6402 ex	Used shoes
8701—8716 ex	Used vehicles
8710.00.00	Tanks and other fighting vehicles fitted with weapons
8906.00.10	Warships
8908.00.10	Vessel for war

9301.00.00	Military weapons, other than revolvers, pistols knifes
9305.90.10	Weapons of war
9306.30.10	For weapons of war and its parts
9306.90.10	Other war supplies, missiles, grenades and its parts
9307.00.10	Swords, cutlasses for military use
9504.10.11	Other providing prizes (video games)
9504.30.10	Other providing prizes (games)
9504.90.11	Used for money and can be paid as prizes

Notwithstanding Articles 3.03 and 3.11, Panama will adopt or maintain measures related to the exports of woods of whatever species of natural forests, according to the Executive Decree No. 57, June 5, 2002.

Section B - The ROC Measures

Notwithstanding Articles 3.03 and 3.11, the ROC may adopt prohibitions or restrictions on imports of the products described in the following customs tariff codes of the ROC:

1. Commodities subject to import prohibition

CCC Code	Description
0208.90.20ex	Meat of dogs, fresh, chilled or frozen
0303.79.99ex	Puffer fish, frozen
0305.30.90ex	Ball puffer fillets, dried, salted or in brine, but not smoked; Puffer fish, dried
0602.90.10ex	Mushroom spawn, containing narcotics (the composition of which is as set forth by the Executive Yuan in accordance with Article 2.3 of the "Statute for Narcotics Hazard Control")
1207.99.20ex	Other Huo Ma Jen (Cannabis Fructus)
1404.90.99ex	Mushroom products, containing narcotics (the composition of which is as set forth by the Executive Yuan in accordance with Article 2.3 of the "Statute for Narcotics Ha zard Control".)
1604.19.90ex	Ball puffer fish, whole or in pieces, but not minced, prepared or preserved, frozen;Other ball puffer fish, whole or in pieces, but not minced, prepared or preserved
2710.00.51ex	Blending oils containing 70% or more by weight of petroleum products (containing polychlorobiphenyls)
2710.00.91ex	Oil, electric transformer, containing polychlorobiphenyls, polychlorinated naphthalene chloronaphthalen, polychlorinated terphrnyls or hexachloro benzene, perchlorobenzene
2710.00.93ex	Condenser oil, electric, containing polychlorobiphenyls, polychlorinated naphthalene chloronaphthalen, polychlorinated terphrnyls or hexachloro benzene, perchloro benzene
2830.90.00ex	Trinickel disulfide
2903.14	Carbon tetrachloride
2903.19.10ex	Trichloroethane
2903.41	Trichlorofluoromethane
2903.42	Dichlorodifluoromethane
2903.43	Trichlorotrifluoroethane

2903.44	Dichlorotetrafluoroethane and Chloropentafluoroethane
CCC Code	Description
2903.45.00ex	Chlorotrifluoromethane (CFC-13) ; Pentachlorofluoroethane (CFC-111); Tetrachlorodifluoroethane (CFC-112); Heptachlorofluoropropane (CFC-211); Hexachlorodifluoropropane (CFC-212); Pentachlorotrifluoropropane (CFC-213); Tetrachlorotetrafluoropropane (CFC-214); Trichloropentafluoropropane (CFC-215); Dichlorohexafluoropropane (CFC-216); Chloroheptafluoropropane (CFC-217)
2903.46	Bromochlorodifluoromethane, bromotrifluoromethane and dibromotetrafluoroethanes
2903.49.00	1,2-Dibromo-3-Chloropropane (DBCP)
2903.51	1, 2, 3, 4, 5, 6-Hexachlorocyclohexane
2903.62.20ex	Hexachlorobenzene;Ddt [1,1,1-trichloro-2,2-bis (p-chlorophenyl ethane)]
2904.20.00ex	P-nitrobiphenyl
2908.10.10ex	Pentachlorophenol (PCP) and its salts
2908.10.90ex	2,4,5-trichlorophenol
2909.19.90ex	Dichloromethyl ether;Chloromethyl methyl ether
2921.44.00ex	4-amino diphenyl;4-amino diphenyl hcl
2921.45.00ex	2-naphthylamine (beta-naphthylamine);2-naphthylamine (beta-naphthylamine) acetate;2-naphthylamine (beta-naphthylamine) hcl
2929.90.00ex	Alpha-bromobenzyl cyanide (benzeneacetonitrile, bromo)
2931.00.30ex	Organo-mercury compounds
3301.90.11ex	Extracted oleoresins of opium
3403.19.90ex	Lubricating preparations, containing polychlorinated biphenyls, polychlorinated naphthalene, chloronaphthalene, polychlorinated terphenyls or hexachloro benzene, perchlorobenzene, (as basic constituents,70% or more by weight of petroleum oils or of oils obtained from bituminous minerals are classified in heading No. 2710)
3404.90.90ex	Waxes composed of polychloro-biphenyls or polychloronaphthalenes
3604.10	Fireworks, toy;Fireworks other than toy

3604.90.90ex	Other pyrotechnic articles
3813.00.00ex	Preparations and charges for fire-extinguishers, containing bromotrifluoromethane (halon-1301), bromochlorodifluoromethane (halon-1211)or dibromotetrafluoroethane (halon-2402)

CCC Code	Description
3824.90.23ex	Condenser oil not of mineral oil origin, (containing polychlorinated biphenyls, polychlorinated naphthalene, chloronaphthalene, polychlorinated terphenyls or hexachloro benzene, perchlorobenzene)
3824.90.99ex	Polychlorobiphenyls
8112.91.21ex	Mixed metal scrap
8424.10.00ex	Fire-extinguishers, containing bromotrifluoromethane (halon-1301), bromochlorodifluoromethane (halon-1211)or dibromotetrafluoroethane (halon-2402)
8548.10.10ex	Waste lead-acid accumulators and spent lead-acid accumulators

Notwithstanding Articles 3.03 and 3.11, the ROC may adopt prohibitions or restrictions on exports of the products described in the following customs tariff codes of the ROC:

2. Commodities subject to export prohibition

CCC Code	Description
0208.90.20ex	Meat of dogs, fresh, chilled or frozen
0301.91.00	Live trout (Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhy aguabonita, Oncorhynchus gilae, Oncorhynchus apache and Oncorhynchus chrysogaster)
0302.11.00	Trout (Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache and Oncorhynchus chrysogaster), fresh or chilled
0302.12.10	Pacific salmon (Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou and Oncorhynchus rhodurus), fresh or chilled
0302.12.20	Atlantic salmon (Salmo salar) and Danube salmon (Hucho hucho), fresh or chilled
0302.19.00ex	Other salmonidae, fresh or chilled
0303.10.00	Pacific salmon (Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou and Oncorhynchus rhodurus), frozen, excluding livers and roes

0303.21.00	Trout (Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache and Oncorhynchus chrysogaster), frozen
0303.22.00	Atlantic salmon (Salmo salar) and Danube salmon (Hucho hucho), frozen

CCC Code	Description
0303.29.00ex	Other salmonidae, frozen
0304.10.50ex	Trout fillets and its meat (whether or not minced), fresh or chilled
0304.10.90ex	Salmon fillets and its meat (whether or not minced), fresh or chilled
0304.20.20ex	Salmon fillets, frozen
0304.20.30ex	Trouts, fillets, frozen
0305.30.90ex	Salmon and trouts fillets, dried, salted or in brine, but not smoked
0305.41.00	Pacific salmon (Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou and Oncorhynchus rhodurus), Atlantic salmon (Salmo salar) and Danube salmon (Hucho hucho), smoked
0305.49.30ex	Trout, smoked
0305.69.10ex	Fish, salmon, salted or in brine
0602.10.90ex	Sugar-cane, unrooted cuttings and slips

CCC Code	Description
0602.90.10ex	Mushroom spawn, containing narcotics (the composition of which is as set forth in article 2.3 of Executive Yuan "Statute for Narcotics Hazard Control".)
0602.90.91ex	Other bamboo planting stock
1212.92.00ex	Sugar cane, for sugar extraction
1404.90.99ex	Mushroom products, containing narcotics (the composition of which is as set forth in article 2.3 of Executive Yuan "Statute for Narcotics Hazard Control".)
1604.11.00ex	Salmon, whole or in piece, but not minced, prepared or preserved, frozen;Salmon, whole or in pieces, but not minced, prepared or preserved, canned;Other salmon, whole or in pieces, but not minced, prepared or preserved
1604.19.90ex	Trouts, whole or in pieces, but not minced, prepared or preserved, frozen;Trouts, whole or in pieces, but not minced, prepared or preserved, canned;Other trouts, whole or in pieces, but not minced, prepared or preserved
2903.51.00ex	1, 2, 3, 4, 5, 6-Hexachlorocyclohexane
2921.44.00ex	4-amino diphenyl;4-amino diphenyl hcl
2921.45.00ex	2-naphthylamine (beta-naphthylamine);2-naphthylamine (beta-naphthylamine) acetate;2-naphthylamine (beta-naphthylamine) hcl
8710.00.00	Tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons;Parts of tanks and other armoured fighting vehicles, motorised
8906.00.10ex	Warships
9301.00.00	Military weapons, other than revolvers, pistols and the arms of heading No. 93.07
9705.00.00	Collections and collectors' pieces of weapon;Other collections and collectors pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest
9706.00.00	Other antiques of an age exceeding one hundred years

ANNEX 3.16

COMMITTEE ON TRADE IN GOODS

The Committee on Trade in Goods under Article 3.16 shall be composed of:

(a) in the case of Panama, the Ministry of Trade and Industries, represented by the Vice-ministry of Foreign Trade or its successor; and

(b) in the case of ROC, the Ministry of Economic Affairs, represented by the Bureau of Foreign Trade or its successor.

CHAPTER 4
RULES OF ORIGIN

Article 4.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

CIF: the value of imported goods including the costs of insurance and freight to the port or place in the importing country;

FOB: free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

fungible goods: goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical and which are impossible to tell apart from visual examination alone;

generally accepted accounting principles: principles applied in the territories of each Party which give a substantial and authorised support to the registration of income, costs, expenditures, assets and liabilities related to the information and preparation of financial statements. These indicators, practical rules and procedures used generally in accounting can become a comprehensive guide with general applicability;

goods wholly obtained or produced entirely in a Party:

(a) mineral goods extracted or taken in the territory of that Party;

(b) plants and plant products harvested, picked or gathered in the territory of that Party;

(c) live animals born and raised in the territory of that Party;

(d) goods obtained by hunting, trapping, fishing, gathering or capturing in the territory of that Party;

(e) goods obtained from live animals in the territory of that Party;

(f) fish, shellfish and other marine life taken outside the territorial sea of the Parties by fishing vessels registered or recorded with that Party and owned by a person of that Party and flying its flag, or by rented fishing vessels of a company established in the territory of that Party;

(g) goods obtained or produced on board factory ships from the goods referred to in subparagraph (f) provided such factory ships are registered

or recorded with that Party and flying its flag, or on rented board factory ships of a company established in the territory of that Party;

(h) goods taken by that Party or a person of that Party from the seabed or beneath the seabed outside the territorial sea of that Party, provided that Party has rights to exploit such seabed;

(i) waste and scrap derived from manufacturing or processing operations or from consumption in the territory of that Party and fit only for disposal or for the recovery of raw materials;

(j) articles collected in the territory of that Party which can no longer perform their original purpose in its territory, nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials; or

(k) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (j) above;

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

(a) fuel, energy, catalysts and solvents;

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

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

(d) tools, dies and molds;

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

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

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

material: a good that is used in the production of another good including ingredients, parts, components, subassemblies and goods that were physically incorporated into another good or were subject to a process in the production of another good;

producer: a "producer" according to Article 2.01 (Definitions of General Application);

production: methods of obtaining goods including manufacturing, producing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting, and capturing;

transaction value of a good: the price actually paid or payable for a good related to the transaction done by the producer of the good, according to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with the principle of paragraphs 1, 3 and 4 of its Article 8, regardless whether the good is sold for export. For purposes of this definition, the seller referred to in the Customs Valuation Agreement shall be the producer of the good;

transaction value of a material: the price actually paid or payable for a material related to the transaction done by the producer of the good, according to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with paragraphs 1, 3 and 4 of its Article 8, regardless whether the material be sold for export. For purposes of this definition the seller referred to in the Customs Valuation Agreement shall be the supplier of the material, and the buyer referred to in the Customs Valuation Agreement shall be the producer of the good; and

value: the value of a good or a material according to the rules of the Customs Valuation Agreement.

Article 4.02 Application Instruments and Interpretation

1. For purposes of this Chapter:

   (a) The Harmonized System shall be the basis for the tariff classification of goods; and

   (b) The principles and rules of the Customs Valuation Agreement shall be applied to determine the value of a good or material.

2. For purposes of this Chapter, when applying the Customs Valuation Agreement to determine the origin of a good:

   (a) the principles and rules of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances as would apply to international transactions; and

(b) the provisions of this Chapter shall prevail over the provisions of the Customs Valuation Agreement to the extent of any inconsistency.

Article 4.03 Originating Goods

1. Except as otherwise provided in this Chapter, a good shall be regarded as originating in the territory of a Party where:

(a) the good is wholly obtained or produced entirely in the territory of that Party;

(b) the good is produced entirely in the territory of one or both Parties exclusively from originating materials according to this Chapter;

(c) the good is produced in the territory of one or both Parties from non-originating materials that complying with the change in tariff classification, regional value content or other requirements, according to the specifications stated in Annex 4.03, and the good satisfies all the other applicable requirements of this Chapter; or

(d) the good is produced in the territory of one or both of the Parties but one or more of the non-originating materials that are used in the production of the good does not undergo a change in tariff classification due to:

(i) the good was imported into the territory of a Party in an unassembled or a disassembled form and was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the Harmonized System,

(ii) the tariff heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings, or

(iii) the tariff subheading for the good provides for and specifically describes both the good itself and its parts;

provided that the regional value content of the good, determined in accordance with Article 4.07 is not less than thirty five (35%) percent and the good satisfies the other provisions applicable in this Chapter, unless the applicable rule of Annex 4.03, under which the good is classified, specified a different requirement of regional value content, in which case such requirement has to be met.

The rules provided for in this subparagraph do not apply to the goods in Chapters 61 through 63 of the Harmonized System.

2. If a good of a Party satisfies the rules of origin specified in Annex 4.03, there is no need to require additional compliance with the regional value content established in paragraph 1(d).

3. For purposes of this Chapter, the production of a good from non-originating materials that satisfies a change in tariff classification and other requirements, as set out in Annex 4.03, shall be done entirely in the territory of one or both Parties, and the good has to satisfy any applicable regional value-content requirement in the territory of one or both Parties.

4. Notwithstanding other provisions of this Article, goods shall not be considered originating, if they are exclusively the outcome of the operations set out in Article 4.04 and carried out in the territory of the Parties that gives their final form for marketing, where non-originating materials are used in such operations, unless the specific rules of origin of Annex 4.03 state the opposite.

Article 4.04 Minimal Operations or Processes

The minimal operations or processes that by themselves or in combination do not confer origin to a good are:

(a) operations necessary for the preservation of goods during the transportation or storage (including airing, ventilation, drying, refrigeration, freezing, elimination of damaged part, application of oil, antirust paint or protective coating, placing in salt, sulphur dioxide or other aqueous solution);

(b) simple operations consisting of cleaning, washing, sieving, sifting or straining, selection, classification or grading, culling; peeling, shelling or striping, grain removal, pitting, pressing or crushing, soaking, elimination of dust or of spoiled, sorting, division of consignments in bulk, grouping in packages, placing of marks, labels or distinctive signs on products and their packages, packing, unpacking or repackaging;

(c) combination or mixing operations of goods which have not resulted in any important difference in the characteristics of the goods before and after such combination or mixing;

(d) simple joining or assembling of parts of products to make a complete good, formation of set or assortments of goods;

(e) simple diluting operations or ionization and salting, which have not changed the nature of the goods; and

(f) slaughter of animals.

Article 4.05 Indirect Materials

Indirect materials shall be considered to be originating materials regardless of their place of manufacturing or production and the value of these materials shall be the costs as indicated in the accounting records of the producer of the good.

Article 4.06 Accumulation

1. A Party may only accumulate origin with goods originating from the territories of the Parties.

2. Originating materials or originating goods from the territory of a Party, incorporated into a good in the territory of the other Party shall be considered originating from the territory of the latter.

3. For purposes of determining whether a good is an originating good, the producer of such good may accumulate its production with that of other producer or producers in the territory of one or both Parties, of materials incorporated into the good, so that the production of these materials is considered as done by such producer, provided that the good satisfies the requirements of Article 4.03.

Article 4.07 Regional Value Content

1. The regional value content of goods shall be calculated according to the following method:

RVC = **[(TV - VNM) / TV] * 100**

Where:

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

TV: is the transaction value of the good adjusted to a FOB basis, unless as stated in paragraph 2. In the event that there does not exist or it is not possible to determine the value in accordance with the principles and rules of Article 1 of the Customs Valuation Agreement, then this shall be calculated according to the principles and rules of Articles 2 through 7 of that Agreement; and

VNM: is the transaction value of non-originating materials adjusted to a CIF basis, unless stated in the paragraph 5. In the event that there does not exist or it is not possible to determine the value according to the principles and provisions of Article 1 of the Custom Valuation Agreement, this shall be calculated in accordance with the principles and provisions of Articles 2 through 7 of that Agreement.

2. When the producer of a good does not export directly, the value shall be adjusted to the point where the buyer receives the good in the territory where the producer is located.

3. When the origin is determined by the method of regional value content, the percentage required is specified in Annex 4.03.

4. All the records of costs considered for the calculation of regional value content shall be registered and maintained according to the generally accepted accounting principles applicable in the territory of the Party from where the good is produced.

5. When a producer of a good acquires a non-originating material in the territory of the Party where it is located, the value of non-originating material shall not include freight, insurance, packing costs and any other cost incurred in the transportation of material from the warehouse of the supplier to the place of the producer.

6. For purposes of calculating the regional value content, the value of the non-originating material used in the production of a good shall not include the value of the non-originating materials used in the production of the originating material acquired and used in the production of that good.

Article 4.08 ***De Minimis***

1. A good shall be considered to be an originating good if the value of all non-originating materials used in the production of that good that do not satisfy the requirement of change in tariff classification set out in Annex 4.03 is not more than ten percent (10%) of the transaction value of the good as determined in Article 4.07.

2. For a good provided for in Chapters 50 through 63 of the Harmonized System, the percentage indicated in the paragraph 1 refers to the weight of fibers or yarns with respect to the weight of the good being produced.

3. Paragraph 1 does not apply to a non-originating material used in the production of goods provided for in Chapters 1 through 27 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

Article 4.09 Fungible Goods

1. In the preparation or production of a good which uses originating or non-originating fungible goods, the origin of these goods can be determined by the application of one of the following methods of inventory management, to be selected by the producer:

(a) first in, first out (FIFO) method;

(b) last in, first out (LIFO) method; or

(c) averaging method.

2. Where originating or non-originating fungible goods are mixed or combined physically in warehouse and do not go through any production process or any operation other than unloading, reloading or any other necessary movement in the territory of the Party before the exportation to keep the good in good condition or to transport them to the territory of the other Party, the origin of the goods shall be determined by one of the inventory management methods.

3. Once the method of inventory management is selected it shall be used during the entire period or a fiscal year.

Article 4.10 Sets or Assortments of Goods

1. Sets or assortments of goods classified according to rule 3 of the General Rules of Interpretation of the Harmonized System and the goods whose description according to the Harmonized System nomenclature is specifically that of a set or assortment shall qualify as originating, provided that every good included in the set or assortment complies with the rules of origin established in this Chapter and in Annex 4.03.

2. Notwithstanding paragraph 1, a set or assortment of goods shall be considered originating if the value of all non-originating goods used in making the set or assortment does not exceed the percentage set out in Article 4.08(1) with respect to the value of the set or assortment, adjusted to the point set out in Article 4.07(1) or (2), as the case may be.

3. The provisions of this Article shall prevail over the specific rules established in Annex 4.03.

Article 4.11 Accessories, Spare Parts and Tools

1. Accessories, spare parts and tools delivered with the good that usually form part of the good shall be considered one with the good and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.03, provided that:

(a) The accessories, spare parts or tools are not invoiced separately from the good; and

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

2. Where a good is subject to a regional value content requirement, its value of the accessories, spare parts or tools shall be considered as either originating or non-originating materials, as the case may be, in order to calculate the regional value content of the good.

3. For those accessories, spare parts and tools that do not satisfy the conditions mentioned above, the rules of origin shall apply to each of them respectively and separately.

Article 4.12 Containers and Packaging Materials for Retail Sale

1. Containers and packaging materials in which a good is packaged for retail sale shall, if classified with the good by Harmonized System code, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.03.

2. If the good is subject to a regional value content requirement, the value of such containers and packaging materials shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.13 Containers and Packing Materials for Shipment

Containers and packing materials in which the good is packed for shipment shall be disregarded in determining whether:

(a) the non-originating materials used in the production of the good undergo an applicable change in tariff classification as set out in Annex 4.03; and

(b) the good satisfies the regional value content requirement.

Article 4.14 Transshipment

The originating goods of the other Party shall not lose such status when they are:

(a) transported directly from the territory of the other Party; or

(b) transported through the territory or territories of one or more non-Parties for the purpose of transit or temporary storing in warehouses in such territory or territories, provided that they do not undergo operations other than unloading, reloading or any other operation to preserve them in good condition.

CHAPTER 5
CUSTOMS PROCEDURES

Article 5.01 Definitions

1. For purposes of this Chapter, the following terms shall be understood as:

certifying authority: in the case of the Republic of China, the designated authority is the Bureau of Foreign Trade (BOFT), Ministry of Economic Affairs (MOEA), or other agencies as authorized by BOFT; in the case of Panama, the designated authority is the Vice-ministry of Foreign Trade, or its successor;

commercial importation: the importation of a good into the territory of one of the Parties for the purpose of sale, or any commercial, industrial or other like use;

customs authority: the competent authorities responsible under their respective laws for the administration and implementation of customs laws and regulations;

customs value: value of a good used for calculating the customs tariff according to the legislation of each Party;

days: "days" according to Article 2.01 (Definitions of General Application);

exporter: an exporter located in the territory of a Party from where the good is exported and who, according to this Chapter, is required to maintain records in the territory of that Party under Article 5.05(1)(a);

identical goods: goods which are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance which are not relevant for the determination of origin of such goods under Chapter 4 (Rules of Origin);

importer: an importer located in the territory of a Party, and required to maintain records in the territory of that Party, under Article 5.05(1)(b);

preferential tariff treatment: the application of the tariff rate corresponding to an originating good according to the Tariff Reduction Schedule, pursuant to Article 3.04 (Tariff Reduction Schedule);

producer: a "producer" according to Article 2.01 (Definitions of General Application), located in the territory of a Party, and required to maintain records in the territory of that Party, under Article 5.05(1)(a);

resolution of origin determination: a resolution issued by the customs authority made as a result of an origin-verifying procedure which establishes whether a good qualifies as originating according to Chapter 4 (Rules of Origin);

valid Certificate of Origin: a certificate of origin written in the format referred to in Article 5.02(1), completed, signed and dated by an exporter of a good in the territory of a Party according to the provision of this Chapter and to the instructions for completing the certificate, and certified by the certifying authority of the exporting Party, pursuant to the provision of this Chapter; and

value: the value of a good or material for the purpose of application of Chapter 4 (Rules of Origin).

2. Unless defined in this Article, the definitions established in Chapter 4 (Rules of Origin) are incorporated into this Chapter.

Article 5.02 Certification of Origin

1. For purposes of this Chapter, before this Agreement enters into force, the Parties shall develop a single format of Certificate of Origin, which shall enter into force with this Agreement and may thereafter be modified by mutual agreement.

2. The Certificate of Origin referred to in paragraph 1 shall be served to certify that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good.

3. Each Party shall require exporters in its territory to complete and sign a Certificate of Origin for any exportation of goods for which an importer may claim preferential tariff treatment.

4. The Certificate of Origin shall be certified by the certifying authority of the exporting Party. For this purpose the certifying authority shall ensure that the good to which a Certificate of Origin is applicable, satisfies the requirements established in Chapter 4 (Rules of Origin) and in the Annex to Article 4.03 (Specific Rules of Origin).

5. Each Party shall require the Certificate of Origin be sealed, signed and dated by the certifying authority of the exporting Party, when the goods may be considered originating according to the requirement established in Chapter 4 (Rules of Origin) and in the Annex to Article 4.03 (Specific Rules of Origin). The Certificate of Origin shall also carry a serial number allowing its identification.

6. The certifying authority of each Party shall certify the origin of the goods covered by a Certificate of Origin, based on the information provided by the exporter or producer

of the good, who shall be responsible for the veracity of the information provided and for those established in the Certificate of Origin. The certification shall be valid, while the circumstances or facts on which the certification is based do not change.

7. The certifying authority of the exporting Party shall:

(a) maintain the administrative procedures for certification of the Certificate of Origin that its producer or exporter completed and signed;

(b) provide, if requested by the customs authority of the importing Party, information about the origin of the imported goods with preferential tariff treatment; and

(c) notify in writing before this Agreement enters into force, a list of bodies entitled to issue the certificate referred to in subparagraph (a) of this Article, with the list of the name of the authorized officials and the corresponding seals and signatures. Modifications to this list shall be notified immediately in writing to the other Party and shall enter into force thirty (30) days after the date on which that Party receives that notification of the modification.

8. Each Party shall require that the Certificate of Origin be completed and signed by the exporter applicable to a single importation of one or more goods.

9. Each Party shall require that the Certificate of Origin be accepted by the customs authority of the importing Party for a period of one year from the signature date of the certifying authority.

10. Each Party shall require that the preferential tariff treatment not be denied if the goods covered by a Certificate of Origin are invoiced by the branches, subsidiary companies or agents of the producer or exporter in the territory of a non-Party, and provided that such goods are directly shipped from the territory of the other Party, without prejudice to the provisions of Article 4.14 (Transshipment).

Article 5.03 Obligations Regarding Importation

1. Each Party shall require the importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) complete a written declaration in the importation document required by its legislation, based on a valid Certificate of Origin, that a good qualifies as an originating good;

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

(c) provide, upon the request of customs authority of that Party, a copy of the Certificate of Origin; and

(d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate of Origin on which a declaration was based contains incorrect information. Where the importer presents the mentioned declaration before the customs authorities notify the revision, according to the domestic laws of each Party, the importer shall not be sanctioned.

2. Each Party shall require that, where an importer in its territory does not comply with any requirement established in this Chapter, the preferential tariff treatment for a good imported from the territory of the other Party shall be denied.

3. Each Party shall require that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at the time of entry, the importer of the good will not request for a refund or compensation of any excess duties paid.

4. Compliance with the provisions of this Article does not exempt the importer from the obligation to pay the corresponding customs tariffs according to the applicable laws of the importing Party, when the customs authority denies the preferential tariff treatment to goods imported, according to Article 5.06.

Article 5.04 Obligations Regarding Exportation

1. Each Party shall require its exporter or producer who has completed and signed a Certificate of Origin to present a copy of the Certificate of Origin to its customs authority on request.

2. Each Party shall require its exporter or producer that has completed and signed a Certificate of Origin or has provided information to its certifying authority, and that has reason to believe that this Certificate contains incorrect information, to notify promptly in writing:

(a) all persons to whom this Certificate was given;

(b) its certifying authority; and

(c) its customs authority according to its legislation,

of any change that could affect the accuracy or validity of this Certificate, in which case the exporter or producer may not be sanctioned for having presented an incorrect certification or information.

3. Each Party:

(a) shall provide that if a false certification or information by its exporter or producer resulted in a good to be exported to the territory of the other Party qualifying as an originating good, that exporter or producer shall have the similar legal consequences, as would apply to an importer in its territory for contravening its customs laws and regulations by false statement or representation; and

(b) may apply such measures as the circumstances may warrant where its exporter or producer fails to comply with any requirement of this Chapter.

4. The customs authority and the certifying authority of the exporting Party shall notify in writing to the customs authority of the importing Party about the notification referred to in paragraph 2.

Article 5.05 Records

1. Each Party shall provide that:

(a) its exporter or producer that completes and signs a Certificate of Origin or provides information to its certifying authority shall maintain for a minimum period of five years from the date the Certificate was signed, all records and documents associated with the origin of the good, including those relating to:

(i) the purchase, costs, value of, and payment for the good exported from its territory,

(ii) the purchase, costs, value of, and payment for all the materials, including indirect ones, used in the production of the good exported from its territory, and

(iii) the production of the good in the form in which it is exported from its territory;

(b) an importer applying for preferential tariff treatment shall maintain the Certificate of Origin and all the other documentation relating to the

importation requested by the importing Party for a minimum period of five years from the date of importation of the good; and

(c) the certifying authority of the exporting Party that has issued a Certificate of Origin shall maintain all documentation relating to the issuance of the Certificate for a minimum period of five years from the issuing date of the Certificate.

2. A Party may deny preferential tariff treatment to a good subject to verification of origin, if the exporter, producer or importer of the good who shall maintain records or documents according to paragraph 1:

(a) does not maintain the records or documents for determining the origin of the good, according to the provisions of this Chapter and Chapter 4 (Rules of Origin); or

(b) denies access to the records or documents.

Article 5.06 Origin Verification Procedure

1. The importing Party may request through its customs authority to the certifying authority of the exporting Party information about the origin of a good.

2. For the purpose of determining whether a good imported into its territory from the territory of the other Party under preferential tariff treatment qualifies as originating, each Party may verify the origin of the good through its customs authority by means of:

(a) written questionnaires to an exporter or a producer in the territory of the other Party;

(b) verification visits to an exporter or a producer in the territory of the other Party to review the records and documents that show compliance with rules of origin under Article 5.05 and to inspect the facilities used in the production of the good, and those used in the production of materials; or may commission the embassy in the territory of the other Party to visit the exporter or producer to verify the origin; or

(c) other procedures as the Parties may agree.

3. For purposes of this Article, the notifications of questionnaires, official letters, decisions, notices and other written communications sent to the exporter or producer for origin verification, shall be considered valid, provided that they are done by the following means:

(a) certified mail with acknowledgement of receipt or any other means that confirm the reception of this document by the exporter or producer; or

(b) any other means as the Parties may agree.

4. The provision of paragraph 2 shall be applied without prejudice to the authority of verification by the customs authority of the importing Party regarding the enforcement of other obligations of their own importers, exporters or producers.

5. The written questionnaire referred to in paragraph 2(a) shall:

(a) indicate the period available to the exporter or producer, which shall be no less than thirty (30) days from the date of receipt, to respond to the authority and return the questionnaire or the information and documentation requested; and

(b) include the notice of intention to deny preferential tariff treatment, in the event that the exporter or producer does not comply with the requirement of submitting the questionnaire duly completed or the requested information, within such period.

6. The exporter or producer that receives a questionnaire according to paragraph 2(a) shall respond to and return the questionnaire duly completed in the period established in paragraph 5(a), starting from the date of receipt. During this period, the exporter or producer may request in writing to the customs authority of the importing Party for an extension, which in this case shall not exceed thirty (30) days. This request shall not have the consequence of denying the preferential tariff treatment.

7. Each Party shall provide that where it received the responded questionnaire referred to in paragraph 2(a) within the corresponding period, each Party may still request for more information to determine the origin of the goods subject to verification. It may request, through its customs authority, for additional information from the exporter or producer, by means of a subsequent questionnaire, in which case the exporter or producer shall respond to the request and turn in the information in a period not exceeding thirty (30) days, from the date of receipt.

8. In case that the exporter or producer does not correctly respond to the questionnaires, or does not return the questionnaire within the corresponding period, as referred to in paragraphs 6 and 7 above, the importing Party may deny preferential tariff treatment to the goods subject to verification, by a prior decision in writing, addressed to the exporter or producer, including findings of fact and the legal basis for the determination.

9. Prior to conducting a verification visit pursuant to paragraph 2(b), the importing Party shall, through its customs authority, provide a written notification of its intention to conduct the visit. The notification shall be sent to the exporter or producer to be visited, certifying authorities and the customs authority of the Party in whose territory the visit is to occur, and to the other Party's embassy in the territory of the importing Party, if it is requested by that other Party. The importing Party shall, through its customs authority, request the written consent of the exporter or producer to whom it intends to visit.

10. The notification referred to in paragraph 9 shall include:

(a) the identity of the customs authority issuing the notification;

(b) the name of the exporter or producer to whom it intends to visit;

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

(d) the object and scope of the proposed verification visit, including specific reference to the goods that are the subject of the verification;

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

(f) the legal authority for the verification visit.

11. Any modification of the information referred to in paragraph 10(e) shall be notified in writing to the exporter or producer, to the customs authority and to the certifying authority of the exporting Party before the verification visit. Any modification of the information referred to in paragraph 10(a), (b), (c), (d) and (f) shall be notified according to paragraph 9.

12. Where an exporter or a producer has not given its written consent to a proposed verification visit within thirty (30) days of its receipt of a notification pursuant to paragraph 9, the importing Party may deny preferential tariff treatment to the good or goods that would have been the subject of the verification visit.

13 Each Party may require, where its customs authority receives a notification pursuant to paragraph 9 within fifteen (15) days of its receipt of the notification, postpone the proposed verification visit for a period not exceeding sixty (60) days from the date the notification is received, or for a longer period as the Parties may agree.

14. A Party shall not deny preferential tariff treatment to a good solely due to the postponement of a verification visit pursuant to paragraph 13.

15. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit to designate two observers to be present during the visit, provided that the observers do not participate in a manner other than as observers, and the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

16. Each Party shall require that an exporter or a producer provide the records and documents referred to in Article 5.05(1)(a) to the customs authority of the importing Party. Where the records and documents are not in possession of an exporter or a producer, it may request the producer or supplier of the materials to deliver them to the customs authority in charge of the verification.

17. Each Party shall verify the compliance of the requirements on regional value content, the *de minimis* calculation or any other measure included in Chapter 4 (Rules of Origin) by its customs authority, according to the generally accepted accounting principles applied in the territory of the Party from where the good is exported.

18. The customs authority of the importing Party shall write a minute of the visit that shall include the facts confirmed by it. The producer or exporter and the designated observers may sign this minute accordingly.

19. Within 120 days after the conclusion of the verification, the customs authority shall provide a written decision to the exporter or producer of the goods subject to verification, determining whether the good is qualified as originating, including the findings of fact and the legal basis for the determination.

20. Where the customs authority denies preferential tariff treatment to a good or goods subject to a verification, this authority shall issue a written decision, well founded and reasoned, which shall be notified to the exporter or producer according to paragraph 3 and shall take effect the day after the receipt.

21. Where a verification by a Party demonstrates that an exporter or a producer has certified or provided more than once in a false or unfounded manner stating that a good qualifies as an originating good, the importing Party may suspend the preferential tariff treatment to the identical good that this person exports or produces, until that person establishes compliance with Chapter 4 (Rules of Origin).

22. If, in two or more verifications of origin, two or more written decisions were made denying preferential tariff treatment to goods same as the good subject to verification, it shall be considered that an exporter or a producer has certified or provided information more than once in a false or unfounded manner stating that a good imported to the territory of a Party qualifies as originating

23. When the competent authority of the importing Party determines that a good imported into its territory does not qualify as originating, according to the tariff classification or the value applied by the Party to one or more materials used in the

production of the good, and it differs from the tariff classification or from the value applied to the materials by the Party from where the good was exported, that Party shall provide that its decision shall not take effects until it is notified in writing to the importer of the goods and to the person who has filled in and signed the Certificate of Origin, as well as to the producer of the good.

24. A Party shall not apply a decision issued under paragraph 23 to an importation made before the effective date of the decision where:

(a) the customs authority of the Party from whose territory the good was exported has issued a decision on the tariff classification or on the value of such materials, on which a person is entitled to rely; and

(b) the mentioned decisions were given prior to the initiation of origin verification.

Article 5.07 Advance Rulings

1. Each Party shall, through its customs authority, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory. These advance rulings shall be expeditiously issued by the customs authority to an importer in its territory or an exporter or a producer in the territory of the other Party, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning:

(a) whether a good qualifies as originating, pursuant to Chapter 4 (Rules of Origin);

(b) whether the non-originating materials used in the production of a good comply with the corresponding change of tariff classification in Annex 4.03 (Specific Rules of Origin);

(c) whether a good satisfies the regional value content requirement set out in Chapter 4 (Rules of Origin);

(d) whether the method applied by an exporter or a producer in the territory of the other Party according to the principles of the Customs Valuation Agreement for calculating the transaction value of the good or of the materials used in the production of the good for which an advance ruling is required is appropriate for the purpose of determining whether a good satisfies a regional value content requirement under Chapter 4 (Rules of Origin);

(e) whether a good that re-enters its territory after it has been exported from its territory to the territory of the other Party for repair or alteration qualifies

for preferential tariff treatment under Article 3.07 (Goods Re-Entered after Repair or Alteration); and

(f) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for issuing advance rulings, including:

(a) the information which is reasonably required to process an application;

(b) the power of the customs authority to request at any time additional information from the person applying for the ruling, during the course of the evaluation;

(c) the obligation of the customs authority to issue the advance ruling within a period no longer than 120 days, once all necessary information has been collected from the applicant; and

(d) the obligation of the customs authority to issue the advance ruling in a completed, well-founded and reasoned manner.

3. Each Party shall implement an advance ruling for the imports into its territory, from the date of its issue or a later date as may be specified in the ruling, unless the advance ruling has been modified or revoked according to paragraph 5.

4. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter 4 (Rules of Origin), regarding a determination of origin given to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all substantial aspects.

5. The advance ruling may be modified or revoked in the following cases:

(a) if the ruling is based on an error

(i) of fact,

(ii) in the tariff classification of a good or a material that is the subject of the ruling,

(iii) in the application of a regional value content requirement under Chapter 4 (Rules of Origin), or

(iv) in the application of the rules for determining whether a good that re-enters its territory after it has been exported from its territory to the territory of the other Party for repair or alteration qualifies for preferential tariff treatment under Article 3.07 (Goods Re-Entered after Repair or Alteration);

(b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter 3 (National Treatment and Market Access for Goods) or Chapter 4 (Rules of Origin);

(c) if there is a change in the facts or circumstances on which the ruling is based;

(d) to conform with a modification of Chapter 3 (National Treatment and Market Access), Chapter 4 (Rules of Origin), or this Chapter; or

(e) to conform with an administrative or judicial decision or a change in the domestic law of the Party that issued the advance ruling.

6. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and may not be applied to imports of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

7. Each Party shall provide that where its customs authority examines the regional value content of a good for which it has issued an advance ruling, it shall evaluate whether:

(a) the exporter or producer has complied with the terms and conditions of the advance ruling;

(b) the exporter's or producer's operations are consistent with the substantial facts and circumstances on which the advance ruling is based; and

(c) the supporting data and calculations used in the application of criteria or methods for calculating value were correct in all substantial aspects.

8. Each Party shall provide that where its customs authority determines that any requirement in paragraph 7 has not been satisfied, it may modify or revoke the advance ruling as the circumstances may warrant.

9. Each Party shall provide that, where the person to whom an advance ruling was issued demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the advance ruling was based, and where the customs authority of a Party determines that the ruling was based on incorrect information, the person to whom the ruling was issued shall not be subject to penalties.

10. Each Party shall provide that where it issues an advance ruling to a person that has misrepresented or omitted substantial facts or circumstances on which the ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the customs authority that issued the advance ruling may apply measures in accordance with the legislation of each Party.

11. The Parties shall provide that the holder of an advance ruling may use it only while the facts or circumstances on which its issuance was based are maintained. In this case, the holder of the ruling may present the necessary information so that the issuing authority may proceed according to paragraph 5.

12. A good subject to a verification of origin or a request of review or appeal in the territory of either Party shall not be subject to an advance ruling.

Article 5.08 Confidentiality

1. Each Party shall maintain, in accordance with its law, the confidentiality of confidential information collected pursuant to this Chapter and shall protect it from disclosure.

2. The confidential information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and of customs and taxation matters.

Article 5.09 Recognition and Acceptance of the Re-Exportation Certificate

1. Without prejudice to paragraph 4, the Parties hereby establish the Re-Exportation Certificate, with the aim of identifying that goods re-exported from a free zone of one Party to the territory of the other Party are goods that come from a third country, provided that the following requirements are met:

(a) the goods remained under the control of the customs authority of the re-exporting Party;

(b) the goods were not subject to further processing or other operations, excepting marketing, unloading, reloading or any other operation necessary to maintain them in good shape; and

(c) the previous requirements are documentarily proved.

2. Based on paragraph 1, each Party shall require that a re-exporter of goods located in the free zone shall complete and sign a re-exportation certificate, which shall be authenticated by the customs authority and by the administrative authorities of the re-exporting free zone and shall cover only one importation of one or more goods to its territory.

3. Each Party, through its customs authority, may request the importer in its territory who imports goods from a free zone to submit the re-exportation certificate at the time of importation and to provide one copy thereof if the customs authority requires it, covering the goods that qualify as originating under agreements or trade conventions signed with third parties by the importing Party and that claim the trade preferences granted therein.

4. Provided the requirements of paragraph 5 are met, each Party shall require that the imports of goods covered by a re-exportation certificate that qualified as originating in conformity with other agreements or trade conventions signed by the importing Party with third parties do not lose the preference or tariff benefits granted by the importing Party, due to the fact that the imports come from a free zone.

5. For the purpose of the application of paragraph 4, the Parties shall:

(a) establish a mechanism for the administration and control of these goods; and

(b) request the submission of a certificate of origin issued by third countries that benefit from the preferential tariff treatment described in paragraph 4.

Article 5.10 Penalties

1. Each Party shall establish or maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations related to the provisions of this Chapter.

2. Each Party shall establish criminal, civil or administrative penalties for the certifying authority that issues a Certificate of Origin in a false or unfounded manner.

Article 5.11 Review and Appeal

1. Each Party shall accord the same rights of review and appeal of determinations of origin and advance rulings to its importers, or to the exporters or producers of the other Party who complete and sign a Certificate of Origin, or provide information for a

good that has been the subject of a determination of origin pursuant to paragraph 19 of Article 5.06, or to whom have received an advance ruling pursuant to Article 5.07.

2. When a Party denies preferential tariff treatment to a good by a decision based on the non-fulfillment of a period established in this Chapter, with regard to the submission of records or other information to the customs authority of this Party, the ruling made in the review or appeal shall only deal with the compliance of the time period referred to in this paragraph.

3. The rights referred to in paragraphs 1 and 2 include access to at least one administrative review, independent from the official or office responsible for the determination or advance ruling under review, and access to a judicial review of the determination or ruling taken at the final instance of administrative review, according to the laws of each Party.

Article 5.12 Uniform Regulations

1. The Parties shall establish, and implement through their respective laws or regulations by the date this agreement enters into force, Uniform Regulations regarding the interpretation, application and administration of Chapter 4 (Rules of Origin), this Chapter and other matters as may be agreed by the Parties.

2. Each Party shall implement any modification of or addition to the Uniform Regulations no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

Article 5.13 Cooperation

1. Each Party shall notify the other Party of the following determinations, measures and rulings, including to the greatest extent practicable those that are prospective in application:

(a) a determination of origin issued as the result of verification conducted pursuant to Article 5.06, once the petitions of review and appeal referred to in Article 5.11 of this Chapter are exhausted;

(b) a determination of origin that the Party considers contrary to a ruling issued by the customs authority of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good;

(c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin; and

(d) an advance ruling or its modification, pursuant to Article 5.07 of this Chapter.

2. The Parties shall cooperate in the following aspects:

(a) the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreements or other customs-related agreement to which they are party;

(b) to the extent possible and for purposes of facilitating the flow of trade between their territories, such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the standardization of data elements and the exchange of information;

(c) to the extent possible, the collection and exchange of documentation on customs procedures; and

(d) to the extent possible and for purposes of verifying the origin of a good, the customs authority of the importing Party may request to the certifying authority of the other Party to conduct in its territory some related investigations or inquiries, and to issue the corresponding reports.

CHAPTER 6
SAFEGUARD MEASURES

Article 6.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

Agreement on Safeguards: the Agreement on Safeguards which forms part of the WTO Agreement;

causal link: "causal link" as defined in the Agreement on Safeguards;

critical circumstances: those circumstances where a delay in the application of safeguard measure would cause damage difficult to repair;

domestic industry: the producers as a whole of the like or directly competitive goods which operate within the territory of a Party, or those producers whose whole production of the like or directly competitive goods constitutes a major proportion of the total domestic production of these goods;

investigating authority: "investigating authority" as according to Annex 6.01;

safeguard measure: all kinds of tariff measures as applied in accordance with the provisions of this Chapter. It does not include any safeguard measure derived from a proceeding initiated before the entry into force of this Agreement;

serious injury: "serious injury" as defined in the Agreement on Safeguards;

threat of serious injury: "threat of serious injury" as defined in the Agreement on Safeguards; and

transition period: the period stated in the Tariff Reduction Schedule plus 2 years.

Article 6.02 Bilateral Safeguard Measures

1. The application of the bilateral safeguard measures shall be governed by this Chapter, and supplementary by Article XIX of GATT 1994, the Agreement on Safeguards and the respective laws of each Party.

2. Subject to paragraphs 4 through 6 and during the transition period, each Party may apply a safeguard measure if, as a result of reduction or elimination of a customs tariff in accordance with this Agreement, an originating product from the territory of a Party is being imported into the territory of the other Party, in such increased quantity, in relation to domestic production and under such conditions that the imports of that product to the Party itself constitutes a substantial cause of serious injury, or a threat thereof to the domestic industry of the like or directly competitive product. The Party into whose territory the product is being imported may, to the minimum extent necessary, to remedy or prevent the serious injury, or threat thereof:

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

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

(i) the most-favored-nation (MFN) applied customs tariff in effect at the time the measure is taken, and

(ii) the MFN applied customs tariff in effect on the day immediately preceding the date of entry into force of this Agreement.

3. The following conditions and limitations shall be observed in the proceeding that may result in the application of a safeguard measure according to paragraph 2:

(a) a Party shall, without delay and in writing, notify the other Party of the initiation of the proceeding which could have as a consequence the application of a safeguard measure against a product originating in the territory of the other Party;

(b) any safeguard measure shall be initiated no later than one year counted from the date of the initiation of the procedure;

(c) no safeguard measure may be maintained:

(i) for more than two years, extendable for a period of one additional consecutive year, according to the proceeding stated in Article 6.04(21), or

(ii) after the termination of the transition period, unless with consent of the Party against whose product the measure is applied;

(d) during the transition period, the safeguard measures, with or without extension, may only be applied twice on the same product;

(e) a safeguard measure may be applied for a second time, provided that at least a period equivalent to the half of that one during which the safeguard measure has been applied at the first time has been passed;

(f) the period which a provisional safeguard measure has been applied shall be calculated for the purpose of determining the period of duration of the definitive safeguard measure established in subparagraph (c);

(g) the provisional measures that are not definitive shall be excluded from the limitation provided for in subparagraph (d);

(h) on the termination of the safeguard measure, the applied rate of import duty shall be the rate as that in the Tariff Reduction Schedule.

4. In critical circumstances where any delay would cause damage which it would be difficult to repair, a Party may apply bilateral provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that, as a result of the reduction or elimination of a customs tariff under this Agreement, the imports of the goods originating from the other Party have been increased in such rate and amount and under such conditions as to cause or threaten to cause serious injury. The duration of provisional measures shall not exceed 120 days.

5. Only with the consent of the other Party, a Party may apply a safeguard measure after the termination of transition period, in order to deal with cases of serious injury, or threat thereof, to the domestic industry that arise from the implementation of this Agreement.

6. The Party applying a safeguard measure according to this Article shall provide to the other Party a mutually agreed compensation, in the form of concessions having substantially equivalent trade effects or being equivalent to the value of the additional customs tariff expected to result from the safeguard measure. If the Parties concerned are unable to agree on the compensation, the Party against whose product the safeguard measure is applied may take tariff measures with trade effects substantially equivalent to the effects of the safeguard measure applied pursuant to this Article. The Party shall apply the tariff measure only during the minimum necessary period to achieve the substantially equivalent effects.

Article 6.03 Global Safeguard Measures

1. Each Party shall reserve its rights and obligations in accordance with Article XIX of GATT 1994 and the Agreement on Safeguards, except those relating to compensation or retaliation and exclusion of a safeguard measure which are inconsistent with the provisions of this Article.

2. Any Party applying a safeguard measure in accordance with paragraph 1 shall exclude goods imported from the other Party from this measure unless:

(a) imports from the other Party account for a substantial share of total imports; and

(b) imports from the other Party contribute importantly to the serious injury, or threat thereof, caused by total imports.

3. To determine if:

(a) imports from the other Party account for a substantial share of total imports, those imports normally shall not be considered to be substantial if that Party is not among the top five suppliers of the product subject to the proceeding, measured in terms of its import share during the most recent three-year period; and

(b) imports from the other Party contribute importantly to the serious injury, or threat thereof, the investigating authority shall consider factors such as the change in the import share of the other Party in the total imports, as well as the import volume of the other Party and the change of that volume has occurred. Normally the imports from a Party shall not be considered to contribute importantly to serious injury or the threat thereof, if its growth rate of imports from a Party during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources during the same period.

4. A Party shall, without delay and in writing, notify the other Party of the initiation of a proceeding that may result in the application of a safeguard measure in accordance with paragraph 1.

5. No Party may apply a measure under paragraph 1 which imposes restrictions on a product, without prior written notification to the Commission, and without appropriate opportunity for consultation with the other Party, as much far in advance of taking the action as practical.

6. Where a Party determines, in accordance with this Article, to apply a safeguard measure to those goods originating from the other Party, the measure applied to those goods shall consist, only and exclusively, of tariff measures.

7. The Party taking a safeguard measure under this Article shall provide to the other Party mutually agreed trade liberalization compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional customs tariffs expected to result from the safeguard measure.

8. If the Parties are unable to agree on the compensation, the Party against whose product the safeguard measure is applied may impose measures which have trade effects substantially equivalent to the effects of the safeguard measure applied pursuant to paragraph 1.

Article 6.04 Administration of Safeguard Measure Proceedings

1. Each Party shall ensure the consistent and impartial application of its laws, regulations, decisions and rulings governing all safeguard measures proceedings.

2. Each Party shall entrust the application of safeguard measure, the determination of the existence of serious injury, or threat thereof, to an investigating authority of each Party. These decisions may be subject to review by judicial or administrative proceedings of the Party, as provided in its domestic laws. The negative determinations on the existence of serious injury, or threat thereof, shall not be subject to modification by the investigating authority, unless the modification is required by such judicial or administrative review. The investigating authority under the domestic laws, in order to carry out these proceedings, shall be provided with all necessary resources to fulfill its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for the application of safeguard measures, in accordance with the requirements indicated in this Article.

Institution of a Proceeding

4. The investigating authority may institute a proceeding, *ex officio* or by a request of the authorized entities in accordance with its laws, for the application of safeguard measure. The entity filing the petition shall demonstrate that it is representative of the domestic industry producing a product like or directly competitive with the imported product. For this purpose it shall be construed that the major proportion shall not be less than twenty five percent (25%).

5. Except as stated in this Article, the time periods that govern these proceedings shall be established in the domestic laws of each Party.

Contents of a Petition

6. Entities representing a domestic industry that file a petition to initiate an investigation shall provide the following information in the petition, to the extent that such information is publicly available from governmental or other sources, or its best estimates and the basis therefore if such information is not thus available:

(a) product description: the name and description of the imported product concerned, the tariff subheading under which that product is classified, its current tariff treatment and the name and description of the like or directly competitive domestic product concerned;

(b) representativeness:

(i) the names and addresses of the entities who present the request, as well as the location of the establishments where they produce the domestic product concerned,

(ii) the percentage of domestic production of the like or directly competitive product that such entities account for and the reasons for claiming that they are representative of the domestic industry, and

(iii) the names and locations of all other domestic establishments in which the like or directly competitive product is produced;

(c) import data: import data for each of the 3 full years immediately prior to the initiation of the proceedings relative to the application of a safeguard measure, that form the affirmative basis that the product concerned is imported in a steadily increasing manner, either in absolute terms or relative to domestic production as appropriate;

(d) domestic production data: data on total domestic production of the like or directly competitive product, for each of the 3 full years immediately previous to the initiation of the proceedings relative to the application of a safeguard measure;

(e) data showing injury, or threat thereof: quantitative and objective data indicating the nature and extent of injury, or threat thereof to the concerned domestic industry, such as data showing changes in the level of sales, prices, production, productivity, installed capacity utilization, market share, profits and losses, and employment;

(f) cause of injury: an enumeration and description of the alleged causes of the injury, or threat thereof, and a summary of the basis for the assertion that the increased imports, relative to domestic production, of the imported goods are causing or threatening to cause serious injury, supported by pertinent data; and

(g) criteria for inclusion: quantitative and objective data indicating the share of imports coming from the territory of the other Party, and the petitioner's views on the extent to which such imports are contributing importantly to the serious injury, or threat thereof.

7. Once a petition is accepted, it shall promptly be made available for public inspection, except that it contains confidential information.

Consultations

8. Once a petition filed in accordance with paragraph 6 is accepted and in any case before the initiation of the investigation, the Party that intend to initiate the case shall notify and invite the other Party to hold consultations aimed at clarifying the situation.

9. During all the investigation period, the Party, whose goods are subject to the investigation, shall be given an adequate opportunity to continue consultations.

10. During these consultations, the Parties may deal, among others, the issues relating to the investigation procedures, elimination of the measure, the issues referred to in Article 6.02 (5) and, in general, to exchange opinions about the measure.

11. Without prejudice to the obligation to provide appropriate opportunity to hold consultations, the provisions of the paragraphs 8, 9 and 10 above regarding consultations are not aimed at preventing the competent authorities of either Party from proceeding promptly to initiate an investigation or from making preliminary or final determinations, positive or negative, nor to prevent them from applying measures under this Agreement.

12. The Party carrying out an investigation shall allow, if being requested, access to the Party whose product is the subject of the investigation to the public file, including the non-confidential summary of the confidential information used for the initiation or during the course of the investigation.

Notice Requirements

13. When initiating a proceeding for the application of a safeguard measure, the investigating authority shall publish the notice of the initiation of the proceeding in the official journal or the other nationally circulated newspaper in accordance with the domestic laws of each Party, within the period of thirty (30) days starting from the acceptance of the petition. The above-mentioned publication shall be notified to the other Party, without delay and in writing. The notification shall contain the following data: the name of the applicant; the indication of the imported product that is the subject of the proceeding and its tariff item number; the nature and timing of the determination to be made; the place where the request and other documents presented during the proceeding may be inspected; and the name, address and telephone number of the office to be contacted for more information. The periods to present the proofs, reports, statement and other documents shall be established in accordance with the legislation of each Party.

14. With respect to a proceeding for the application of a safeguard measure, initiated on the basis of a petition filed by an entity alleging itself as the representative of the domestic industry, the investigating authority shall not publish the notification required by paragraph 13 without evaluating carefully first if the petition meets the requirements set out in paragraph 6.

Public Hearing

15. In the course of each proceeding, the investigating authorities shall:

(a) without prejudice to the Party's legislation, and after providing reasonable notice, notify all interested parties, including importers, exporters, consumer groups and other interested parties the date and place of a public hearing fifteen (15) days before it is held, to allow them to appear in person or by representative, to present evidence, allegation and to be heard on the questions of serious injury, or threat thereof, and the appropriate remedy; and

(b) provide an opportunity to all interested parties appearing at the hearing to cross- exam the arguments presented by interested parties.

Confidential Information

16. For the purposes of Article 6.02, the investigating authority shall establish or maintain procedures for the treatment of confidential information, protected under domestic law, that is provided in the course of a proceeding, and shall request the interested parties providing such information furnish non-confidential written summaries thereof. If the interested parties indicate that the information cannot be summarized, they shall explain the reasons why a summary cannot be provided. Unless it is demonstrated that the information is accurate, in a convincing way and from an appropriate source, the authorities may disregard that information.

17. The investigating authority shall not disclose any confidential information provided in accordance with any obligation related to the confidential information, that it has obtained in the course of the proceedings.

Evidence of injury, or threat thereof

18. In conducting its proceedings the investigating authority shall gather, to the best of its ability, all relevant information appropriate to the determination it must make. It shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, including the rate and amount of the increase in imports of the product concerned in relation with the domestic industry, the share of the domestic market taken by the increased imports, and changes in the level of sales, production, productivity, installed capacity utilization, profits and losses, and employment. In making its determination, the investigating authority may also consider other economic factors, such as changes in prices and inventories, and the ability of entities in the domestic industry to generate capital.

Deliberation and Determination

19. Except in critical circumstances and in global safeguard measures involving perishable agricultural goods, the investigating authority, before making an affirmative determination in a proceeding for the application of a safeguard measure, shall allow sufficient time to gather and check the relevant information, shall hold a public hearing and provide adequate opportunity for all interested parties to prepare and submit their views.

20. The investigating authority shall publish promptly a final determination in the official journal or other nationally circulated newspaper which shall indicate the results of the investigation and the reasoned conclusions on all pertinent issues of law and fact. The determination shall describe the imported product and its tariff item number, the standard applied and the finding made in the proceedings. The statement of reasons shall set out the basis for the determination, including a description of:

(a) the domestic industry seriously injured or threatened with serious injury;

(b) information supporting a finding that imports are increasing, the domestic industry is seriously injured or threatened with serious injury, and increasing imports are causing or threatening serious injury; and

(c) if provided for by domestic law, any finding or recommendation regarding the appropriate remedy, as well as the basis therefor.

Extension

21. If the importing Party determines that the reasons justifying the application of a bilateral safeguard measure, the Party shall notify to the competent authority of the other Party its intention of extending the measure, at least ninety (90) days before it is expected to expire, and shall prove that the reasons leading to its application persist, for the purpose of holding respective consultations which shall be done according to the provisions of this Article.

22. Additionally, entities representing a domestic industry that submit the request for an extension, shall present a readjustment plan including variables controllable by the domestic industry or production involved.

23 The notifications of extension and compensation shall be presented pursuant to this Article before the expiration of the applied measures.

Article 6.05 Dispute Settlement in Safeguard Measure Matters

No Party shall request the establishment of an arbitral group under Article 19.09 (Request for an Arbitral Group) before the applicaton of any safeguard measure by the other Party.

ANNEX 6.01

INVESTIGATING AUTHORITY

For purposes of this Chapter, the investigating authority shall be:

(a) in the case of the ROC, the International Trade Commission of the Ministry of Economic Affairs, or its successor; and

(b) in the case of Panama, the Commission of Free Competition and Consumer Affairs, or its successor.

CHAPTER 7
UNFAIR TRADE PRACTICES

Article 7.01 Scope and Coverage

1. The Parties confirm their rights and obligations according to Articles VI and XVI of GATT 1994, the Agreement on Implementation of Article VI of GATT 1994 and the Agreement on Subsidies and Countervailing Measures, that form part of the WTO Agreement. In this sense, the Parties shall ensure that their laws are consistent with the commitments taken in these agreements.

2. Each Party may initiate an investigation procedure and apply countervailing duties or antidumping duties in accordance with this Chapter, the agreements and articles referred to in paragraph 1, as well as its laws.

Article 7.02 Obligation for Completing an Investigation

1. The importing Party may end an investigation with respect to an interested party, where its competent authority determines that the dumping margin or the amount of the subsidy is *de minimis*, or that sufficient evidence of dumping, subsidy, injury, or causal link does not exist; or where its competent authority determines that the volume of the dumped or subsidized imports is insignificant.

2. For purposes of paragraph 1, it shall be considered that:

(a) the dumping margin is *de minimis* when it is less than 6%, expressed as a percentage of the export price;

(b) the amount of the subsidy is *de minimis* when it is less than 6% *ad valorem*; and

(c) the volume of the dumped or subsidized imports is insignificant if it represents less than 6% of the total imports of the like products of the importing Party.

3. An applicant may, at any time, withdraw its investigation request. Once a request for withdrawal is filed after the investigation has been initiated, the competent authority shall notify the rest of the applicants for the purpose of exerting their right of concurrence. If the applicants who disagree with the withdrawal do not represent a percentage of the national production necessary to initiate an investigation, then the investigation shall be terminated and the interested parties will be notified. The investigation may not be continued on the competent authority's own motion under any circumstance.

PART THREE
TECHNICAL BARRIERS TO TRADE

CHAPTER 8
SANITARY AND PHYTOSANITARY MEASURES

Article 8.01 Definitions

For purposes of this Chapter, the Parties shall apply the definitions and terms set out in:

(a) the Agreement on the Application of Sanitary and Phytosanitary Measures, that forms a part of the WTO Agreement, hereinafter referred to as ASPS;

(b) the Office International des Epizooties, hereinafter referred to as OIE;

(c) the International Plant Protection Convention, hereinafter referred to as IPPC; and

(d) the Codex Alimentarius Commission, hereinafter referred to as Codex.

Article 8.02 General Provisions

1. The authorities legally responsible for ensuring the compliance with the sanitary and phytosanitary obligations provided in this Chapter shall be deemed as the competent authorities.

2. The Parties, on the basis of the ASPS, established this framework of rules and disciplines that shall guide the adoption and implementation of sanitary and phytosanitary measures.

3. The Parties shall facilitate trade through mutual cooperation to prevent the introduction or spreading of pests or diseases and to improve plant health, animal health and food safety.

Article 8.03 Rights of the Parties

The Parties, according to the ASPS, may:

(a) establish, adopt, maintain or implement any sanitary and phytosanitary measures in their territories, only to the extent necessary to protect human life and health (food safety) and animal life and health or to preserve plant health, even if they are stricter than international standards, guidelines or recommendations, provided that there is a scientific basis to justify them;

(b) implement the sanitary and phytosanitary measures only to the extent necessary to reach an appropriate level of protection; and

(c) verify that plants, animals, products and by-products bound for export are subject to sanitary and phytosanitary monitoring to ensure conformity with the requirements of the sanitary and phytosanitary measures established by the importing Party.

Article 8.04 Obligations of the Parties

1. Sanitary and phytosanitary measures shall not constitute a disguised restriction to trade and shall not have the purpose or effect of creating an unnecessary obstacle to trade between the Parties.

2. Sanitary and phytosanitary measures shall be based on scientific principles, shall only be maintained if there are reasons to sustain them and shall be based on a risk assessment.

3. Sanitary and phytosanitary measures shall be based on international standards, guidelines or recommendations.

4. Where conditions are identical or similar, sanitary and phytosanitary measures shall not discriminate arbitrarily or unjustifiably.

Article 8.05 International Standards and Harmonization

With the aim to harmonize sanitary and phytosanitary measures, the procedures of control, inspection and approval of sanitary and phytosanitary measures of the Parties shall be based on the following principles:

(a) each Party shall use international standards, guidelines or recommendations as reference guideline for its sanitary and phytosanitary measures;

(b) each Party may adopt, implement, establish or maintain a sanitary or phytosanitary measure with a level of protection different from or stricter

than that of international standards, guidelines or recommendations, provided that there is scientific justification for the measure;

(c) with the aim of reaching a higher degree of harmonization, each Party shall follow the guidelines of the ASPS, the IPPC for plant health, the OIE for animal health and the Codex on food safety and tolerance limits; and

(d) the Parties shall establish harmonized systems for the procedures of control, inspection and approval of the sanitary and phytosanitary measures for animals, plants, their products and by-products as well as food safety.

Article 8.06 Equivalence

With the aim of implementing the sanitary and phytosanitary measures in the territory of the Parties, the Parties shall implement control, inspection and approval procedures according to the following principles:

(a) the Party shall accept the sanitary or phytosanitary measures of the other Party as equivalent, even if these measures differ from its own in the same product, if the other Party objectively demonstrates to the Party that its measures, based on scientific information and risk assessment, achieve the Party's appropriate level of sanitary or phytosanitary protection. The other Party shall give reasonable access upon request to the Party for information related to its inspection, testing and other relevant procedures; and

(b) The Parties shall facilitate access to their territories with respect to inspection, testing and other relevant procedures in order to establish equivalence between their sanitary and phytosanitary measures.

Article 8.07 Assessment of Risk and Determination of the Appropriate Level of Sanitary and Phytosanitary Protection

According to the guidelines developed by relevant international organizations:

(a) the Parties shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the existing risk to the protection of human life and health (food safety) and animal health, or to protect plant health taking into account the guidelines and risk assessment techniques developed by relevant international organizations;

(b) the Parties shall provide necessary access for assessing sanitary and phytosanitary services through the procedures in force for verification of

control, inspections, approval procedures, measure implementation and programs on sanitary and phytosanitary matters, on the basis of the guidelines and recommendations of the international organizations recognized by the WTO;

(c) in assessing the risk of a commodity and in establishing the appropriate level of protection, the Parties shall take into account the following factors:

(i) available scientific and technical information,

(ii) existence of pests or diseases,

(iii) pest and disease epidemiology,

(iv) analysis of critical control points to the sanitary (food safety) and phytosanitary aspects,

(v) the physical, chemical and biological hazards in foods,

(vi) relevant ecological and environmental conditions,

(vii) production processes and methods, and the inspection, sampling and testing methods,

(viii) structure and organization of sanitary and phytosanitary services,

(ix) procedures for protection, epidemiological supervision, diagnostics and treatment to ensure food safety,

(x) loss of production or sales in the event of the entry, establishment, spread or dissemination of a pest or disease,

(xi) applicable quarantine measures and treatments that shall satisfy the importing Party on risk mitigation, and

(xii) costs of controlling or eradicating pests or diseases in the territory of the importing Party and relative cost-effectiveness of other possible methods to reduce the risk;

(d) for the purpose of establishing and harmonizing the appropriate level of protection, the Parties shall avoid arbitrary or unjustifiable distinctions that may result in discrimination or disguised restriction to trade;

(e) where relevant scientific evidence is insufficient for carrying out risk assessment, the Party may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations described in this Chapter. In such circumstances, the Parties shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable time frame, and with this aim the following procedures shall be applied:

(i) the importing Party that applies the provisional measure shall request to the other Party, within thirty (30) days of the adoption of the provisional measure, necessary technical information to complete the risk assessment, and the other Party shall provide the information. If the information is not provided, the provisional measure shall be sustained, and if on expiration of this period the information has not been requested, the provisional measure shall be withdrawn,

(ii) if the importing Party has requested the information, there shall be a period of sixty (60) days from the date of provision of this information to revise, withdraw or keep as final the provisional measure. If necessary, the Party can extend the period of time,

(iii) the importing Party may request clarification about the information provided by the exporting Party after its receipt,

(iv) the importing Party shall allow the exporting Party to present its comments and shall take them into account for its conclusion of the risk assessment, and

(v) the adoption or revision of the sanitary or phytosanitary measure shall be immediately notified to the other Party through the notification authorities established under the ASPS;

(f) if the result of the risk assessment implies non-acceptance of the importation, the scientific basis for the decision shall be notified in writing; and

(g) when a Party has reasons to believe that a sanitary or phytosanitary measure established or maintained by the other Party restricts or may restrict its exports and that the measure is not based on relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, the Party may

demand an explanation for the reasons of the sanitary and phytosanitary measures and the Party maintaining these measures shall provide the explanation within sixty (60) days from the date of receipt of the inquiry by the competent authority.

Article 8.08 Recognition of Pest- or Disease- Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties shall recognize the pest- or disease- free areas and the areas of low pest or disease prevalence according to international standards, guidelines or recommendations, taking into account geographical situation, ecosystems, epidemiological surveillance and the effectiveness of sanitary and phytosanitary controls in the area.

2. The Party claiming that an area within its territory is free from a specific pest or disease, shall demonstrate objectively to the importing Party this condition and ensure that it will be maintained as such, on the basis of the protection measures implemented by those in charge of the sanitary and phytosanitary services.

3. The Party interested in obtaining recognition that an area is free from a specific pest or disease shall send the request to the other Party and provide relevant scientific and technical information.

4. The Party that receives the request for recognition may carry out inspections, testing and other verification procedures. If the Party does not accept the request, it shall indicate in writing the technical basis for its decision.

5. The Parties may initiate consultation in order to reach agreement on specific requirements for recognition of pest or disease free areas or areas of low pest or disease prevalence. In view of lack of international standards for the recognition of areas of low pest or disease prevalence, it is agreed by both Parties that the recognition of such areas shall be pending until the establishment of the international standards.

Article 8.09 Control, Inspection and Approval Procedures

1. The Parties, according to this Chapter, shall observe the provisions of Annex C to the ASPS on control, inspection and approval procedures, including approval of the use of additives or establishment of tolerances for contaminants in food, beverages and feedstuffs.

2. When the competent authority of the exporting Party requests for the first time to the competent authority of the importing Party to inspect a production unit or production process in its territory, the competent authority of the importing Party shall, upon completion of review and evaluation of necessary documents and information and risk assessment required by the importing Party, carry out the inspection within a period of 100 days. This period can be extended by mutual agreement between the Parties in

those cases where they can be justified, for example for reasons relating to the seasonality of a product. When the inspection is completed, the competent authority of the importing Party shall issue a decision based on the results of the inspection and shall notify the exporting Party within ninety (90) days after the inspection.

Article 8.10 Transparency

1. Each Party, when proposing adoption or modification of a sanitary or phytosanitary measure of general application in the central level, shall notify the following:

(a) adoptions and modifications of these measures. It shall also provide information on measures according to the provisions of Annex B to the ASPS, and shall implement the relevant adjustment;

(b) changes or revisions in sanitary or phytosanitary measures that have a significant effect on trade between the Parties, within sixty (60) days prior to the entry into force of the new provision, to allow the other Party to comment; such requirement shall be exempted for emergencies, according to the provisions of Annex B to the ASPS;

(c) changes in the status of animal health, as the occurrence of exotic diseases and diseases in List A of the OIE, within twenty four (24) hours after confirming the disease;

(d) changes in the phytosanitary status, as the occurrence of quarantine pests and diseases or spread of quarantine pests and diseases under official control, within seventy two (72) hours of their verification; and

(e) disease outbreaks which are scientifically shown to be caused by the consumption of imported food and food products, natural or processed.

2. The Parties shall use the notification authorities and enquiry points established under the ASPS as communication channels. When emergency measures are needed, the Party shall immediately notify the other Party in writing, indicating briefly the aims and basis of the measure, and the nature of the problem.

3. According to the provisions of Article 17.02 (Information Center), each Party shall answer any reasonable request for information from the other Party and shall provide relevant documentation according to the principles of paragraph 3 of the Annex B to the ASPS.

Article 8.11 Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish the Committee on Sanitary and Phytosanitary Measures, as set out in Annex 8.11.

2. The Committee shall hear matters relating to this Chapter and, without prejudice to Article 18.05(2) (Committees), shall carry out the following functions:

(a) promoting the means necessary for the training and specialization of technical staffs;

(b) promoting the active participation of the Parties in international bodies; and

(c) creating and updating a database of specialists qualified in the fields of food safety, plant and animal health, for the purpose of the provisions of Article 18.07 (Expert Groups).

Article 8.12 Technical Cooperation

Each Party may provide the other Party with advice, information and technical cooperation, on mutually agreed terms and conditions to strengthen its sanitary and phytosanitary measures, as well as activities, processes and systems on this matter.

ANNEX 8.11

COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

The Committee on Sanitary and Phytosanitary Measures, established by Article 8.11(1) shall be composed of:

(a) in the case of Panama, the Ministry of Trade and Industries, represented by the Vice-ministry of Foreign Trade, the Ministry of Agriculture and the Ministry of Health, or their successors; and

(b) in the case of the ROC, the Council of Agriculture, represented by the Bureau of Animal and Plant Health Inspection and Quarantine, the Department of Health, represented by the Bureau of Food Sanitation, and the Ministry of Economic Affairs, represented by the Bureau of Standards, Metrology and Inspection, or their successors.

CHAPTER 9

MEASURES ON STANDARDS, METROLOGY AND AUTHORIZATION PROCEDURES

Article 9.01 Definitions

1. For purposes of this Chapter, the following terms shall be understood as:

administrative refusal: action taken in the exercise of its authorities by a public body of the importing Party to prevent the entry in its territory of a consignment that does not comply with its technical regulations, conformity assessment procedures or metrological requirements;

assessment of risk: evaluation of potential adverse effects on legitimate objectives that could impede trade;

authorization procedure: any mandatory administrative procedure for granting registration, license or any other approval for a good to be produced, marketed or used for a stated purpose or under stated conditions;

comparable situation: situation that offers the same level of safety or protection for reaching a legitimate objective;

conformity assessment procedure: any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, assurance of conformity, registration, accreditation and approval as well as their combinations;

international standard: a standard, guide or recommendation, adopted by an international standardizing body and made available to the public;

international standardizing or metrological body: a standardizing or metrological body whose membership is open to at least all the Members of the WTO, including the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the Codex Alimentarius Commission (CAC), the International Organization of Legal Metrology (OIML), the International Commission on Radiation Units and Measurements, Inc. (ICRU), or any other body that the Parties designate;

legitimate objectives: national security requirements, prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment;

make compatible: to bring different standards-related measures of the same scope approved by different standardizing bodies to a level such that they are either identical,

equivalent or have the effect of permitting goods to be used in place of one another or for fulfilling the same purpose;

standard: document approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for goods 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, process or production method;

standardization measures: the rules, technical regulations or procedures for conformity assessment;

TBT Agreement: The Agreement on Technical Barriers to Trade, that forms a part of World Trade Organization (WTO);and

technical regulation: document which lays down characteristics of goods or their related processes and production methods, including the applicable administrative provisions with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production method.

2. Except as defined in paragraph 1, the Parties shall use the terms of the current ISO/IEC Guide 2:1996 “Standardization and Related Activities-General Vocabulary.”

Article 9.02 General Provisions

In addition to the provisions of the WTO Agreement, the Parties shall apply the provisions of this Chapter.

Article 9.03 Scope and Coverage

1. This Chapter shall apply to the measures adopted by the Parties on standards, authorization procedures and metrology, as well as on related measures that may directly or indirectly affect the trade in goods between the Parties.

2. This Chapter shall not apply to sanitary and phytosanitary measures.

Article 9.04 Basic Rights and Obligations

Right to Adopt Standardization Measures

1. Each Party may develop, adopt, apply and maintain:

(a) measures on standards, authorization procedures and metrology, according to the provisions of this Chapter; and

(b) technical regulations and conformity assessment procedures that allow the Party to reach its legitimate objectives.

Unnecessary Barriers

2. No Party shall develop, adopt, maintain or apply measures on standards, authorization procedures or metrology that have the purpose or effect of creating unnecessary barriers to trade with the other Party.

Non-Discriminatory Treatment

3. Each Party shall, in relation to measures on standardization, authorization procedures and metrology, accord to the goods of the other Party national treatment and treatment no less favourable than that it accords to like goods of any other country.

Use of International Standards

4. In the development or implementation of its measures on standardization, authorization procedures or metrology, each Party shall use international standards where they exist or their completion is imminent, or use the relevant parts of them, except where such international standards would not be an effective or appropriate means for fulfilling the legitimate objectives because of fundamental climatic, geographical, technological or infrastructural factors, or scientifically verified reasons.

Article 9.05 Assessment of Risk

1. In pursuing its legitimate objectives, each Party conducting risk assessments shall take into account:

(a) risk assessments carried out by international standardizing or metrological bodies;

(b) available scientific evidence or technical information;

(c) related processing technology; or

(d) intended end uses of goods.

2. Where a Party establishes a level of protection that it considers appropriate and conducts an assessment of risk, it shall avoid arbitrary or unjustifiable distinctions between similar goods in the level of protection it considers appropriate, where the distinctions:

(a) result in arbitrary or unjustifiable discrimination against goods of the other Party;

(b) constitute a disguised restriction on trade between the Parties; or

(c) discriminate between similar goods for the same use under the same conditions that pose the same level of risk and provide similar benefits.

3. A Party shall provide to the other Party, upon request, relevant documentation on its risk assessment processes and on the factors taken into account when conducting the assessment and definition of protection levels, according to Article 9.04.

Article 9.06 Compatibility and Equivalence

1. Without prejudice to the rights conferred by this Chapter and taking into account the international activities on standards and metrology, the Parties shall to the greatest extent practical make compatible their respective standards and metrology measures, without reducing the level of safety or protection to human, animal or plant life or health, the environment and consumers.

2. A Party shall accept as equivalent to its own any technical regulations of the other Party, when in cooperation with the other Party, the importing Party determines that the technical regulations of the exporting Party adequately fulfill the legitimate objectives of the importing Party.

3. The importing Party shall provide to the exporting Party, on request, its reasons in writing for not treating a technical regulation as equivalent under paragraph 2.

Article 9.07 Conformity Assessment

1. Each Party shall develop, adopt and apply conformity assessment procedures to accord access to like goods from the territory of the other Party under conditions no less favourable than those accorded to its like goods or to those of any other country, in a comparable situation.

2. With regard to its conformity assessment procedures, each Party shall:

(a) initiate and complete these procedures as expeditiously as possible and on a non-discriminatory basis;

(b) publish the procedure and the normal period of each procedure or, upon request, to convey this information to the applicant;

(c) have the competent body or authority review without delay upon receipt of an application if the documentation is complete and communicate to the applicant as soon as possible and with accuracy and thoroughness the findings of the assessment, so that the applicant may take corrective measures as needed, and even when the application shows deficiencies, proceed with the conformity assessment as far as possible if requested by the applicant and, upon request, inform the applicant of the stage of the procedure and explain any possible delay;

(d) request only the information necessary to assess the conformity and calculate the fees;

(e) respect the confidentiality of the information about a good of the other Party obtained by such procedures or provided in connection with them, in the same manner as in the case of goods from the Party, so as to protect the legitimate trade interests;

(f) make equitable the fees imposed for assessing the conformity of a good of the other Party, compared with the fees that would be collected for assessing the conformity of a like good of this Party, taking into account communication, transportation and other costs due to differences in location of the applicant's premises and of the conformity assessment body;

(g) ensure that the location of premises used in conformity assessment procedures and sampling procedures do not cause unnecessary inconvenience to applicants or their agents;

(h) if the specifications of a good are modified after the determination of its conformity with technical regulations or applicable standards, limit the conformity assessment procedure for the modified good to the extent necessary to determine with due assurance that the good shall continue to conform to the technical regulations or applicable standards; and

(i) establish a procedure for reviewing the claims related to the application of a conformity assessment procedure and adopt corrective measures if the claim is justified.

3. With the aim of advancing the facilitation of trade, a Party shall consider favourably a request from the other Party to initiate negotiations designed to conclude

agreements for the mutual recognition of the results of their respective conformity assessment procedures.

4. To the extent practicable each Party shall accept the results of conformity assessment procedures carried out in the territory of the other Party, provided that those procedures offer enough confidence, equivalent to the confidence of its own procedures and that the good meets the technical regulations or applicable standards adopted or maintained in the territory of this Party.

5. Before accepting the results of a conformity assessment procedure under paragraph 4 and with the aim of strengthening the sustained reliability of the results of conformity assessment of each Party, the Parties may consult about matters such as the technical capacity of conformity assessment bodies, including the verified compliance with relevant international standards through means such as accreditation.

6. Each Party, recognizing that the outcome shall be to the mutual advantage of both Parties, shall accredit, approve or recognize conformity assessment bodies in the territory of the other Party, in conditions no less favourable than those accorded to conformity assessment bodies in its territory.

7. The Parties may use the capacity and technical infrastructure of the accredited bodies established in the territory of the Parties in the conformity assessment procedures.

Article 9.08 Authorization Procedures

1. Each Party shall develop, adopt and apply authorization procedures to accord access to like goods from the territory of the other Party under conditions no less favourable than that accorded to its goods or to the goods of any other country, in a comparable situation.

2. In relation to its authorization procedures, each Party shall:

(a) initiate and complete these procedures as expeditiously as possible and in a non-discriminatory manner;

(b) publish the procedure and the normal period of each procedure or upon request to convey this information to the applicant;

(c) have the competent authority review without delay upon receipt of an application if the documentation is complete and communicate to the applicant as soon as possible and with accuracy and thoroughness the results of the authorization, so that the applicant may take corrective measures as needed, and even when the application shows deficiencies, proceed with the authorization procedure as far as possible if requested by

the applicant and, upon request, inform the applicant of the stage of the procedure and explain any possible delay;

(d) request only the information necessary to authorize and calculate the fees;

(e) respect the confidentiality of the information about a good of the other Party obtained by such procedures or provided in connection with them, in the same manner as in the case of goods from the Party, in order to protect the legitimate trade interests;

(f) make equitable the fees imposed for authorization procedure with respect to a good of the other Party, compared with the fees that would be collected for an authorization procedure of a like good of this Party, taking into account communication, transportation and other costs due to differences in location of the applicant' s premises and of the authorizing body; and

(g) establish a procedure for reviewing the claims related to the application of an authorization procedure and adopt corrective measures if the claim is justified.

Article 9.09 Metrology

Each Party shall ensure, to the extent practicable, the documented traceability of its standards and the calibration of its measuring instruments, according to the recommendations of the Bureau International des Poids et Mesures (BIPM) and the International Organization of Legal Metrology (OIML), comply with the requirements set out in this Chapter.

Article 9.10 Notification

1. In cases where there is no relevant international standard, or the technical content of a proposed technical regulation or of a conformity assessment procedure does not conform with the technical content of the relevant international standards, and if these technical regulations may have a significant impact on trade between the Parties, each Party shall notify in writing to the other Party the proposed measure, at least sixty (60) days before its adoption, allowing the interested parties to make comments, discuss these comments upon request, and take these comments and the results of these discussion into account.

2. If a Party faces serious problems or the threat of serious problems related to safety, health, environment protection and national security, this Party may not present the communication prior to the project, but once adopted shall notify the other Party.

3. The notifications under paragraphs 1 and 2 shall be done following the models established in the TBT Agreement.

4. Within thirty (30) days of entry into force of this Agreement, each Party shall notify the other Party of the institution designated to carry out the notifications under this Article.

5. Each Party shall notify in writing the other Party of its standardization plans and programmes.

6. Where a Party rejects a shipment by an administrative decision, the Party shall notify without delay and in writing the person in charge of the shipment of the technical reasons for the rejection.

7. Once the information required under paragraph 5 is completed the Party shall immediately transmit it to the Information Centre of the other Party.

Article 9.11 Information Centres

1. Each Party shall ensure the existence of an information centre in its territory that may answer all reasonable questions and requests from the other Party and from interested persons and supply the relevant updated documentation relating to any measure on standards, metrology, conformity assessment procedures or authorization procedures adopted or proposed in its territory by governmental or non-governmental bodies.

2. Each Party designates the centre set out in Annex 9.11(2) as Information Centre.

3. If an information centre requests copies of the documents referred to in paragraph 1 they shall be delivered without cost. The interested persons from the other Party shall receive copies of the documents at the same price as the nationals from this Party, plus the actual cost of shipment.

Article 9.12 Committee on Standards, Metrology and Authorization Procedures

1. The Parties hereby establish the Committee on Standards, Metrology and Authorization Procedures, as set out in Annex 9.12.

2. The Committee will hear matters relating to this Chapter, and without prejudice to the provisions of Article 18.05(2)(Committees) shall have the following functions:

(a) analyzing and proposing ways to resolve measures on standards, authorization procedures and metrology that a Party considers a technical barrier to trade;

(b) facilitating the process by which the Parties shall make compatible their measures on standards and metrology, giving priority, *inter alia*, to labelling and packaging;

(c) promoting technical cooperation activities between the Parties;

(d) providing assistance to the risk assessment activities carried out by the Parties;

(e) working together to develop and strengthen the standards and metrology measures of the Parties; and

(f) facilitating the process by which the Parties shall establish mutual recognition agreements.

Article 9.13 Technical Cooperation

1. Each Party shall promote the technical cooperation between their standards and metrology bodies, providing information or technical assistance to the extent possible and on mutually agreed terms, in order to assist the implementation of this Chapter and strengthen the activities, processes, systems and measures related to standards and metrology.

2. The Parties may make joint efforts to manage the activities of technical cooperation coming from non-Party countries.

ANNEX 9.11(2)
INFORMATION CENTRES

The Information Centre referred to in Article 9.11(2) shall be composed of:

(a) in the case of Panama, the Ministry of Trade and Industries, through the General Directorate of Standards and Industrial Technology, or its successor; and

(b) in the case of the ROC, the Ministry of Economic Affairs, through the Bureau of Standards, Metrology and Inspection, or its successor.

ANNEX 9.12

COMMITTEE ON STANDARDS, METROLOGY AND AUTHORIZATION PROCEDURES

The Committee on Standards, Metrology and Authorization Procedures established in Article 9.12(1) shall be composed of:

(a) in the case of Panama, the Ministry of Trade and Industries, through the Vice-ministry of Foreign Trade or its successor; and

(b) in the case of the ROC, the Ministry of Economic Affairs, through its Vice-ministry or its successor.

PART FOUR

INVESTMENT, SERVICES AND RELATED MATTERS

CHAPTER 10
INVESTMENT

Section A - Investment

Article 10.01 Scope and Coverage

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

   (a) investors of the other Party with respect to all aspects of its investments;

   (b) investments of investors of the other Party in the territory of the Party; and

   (c) all investments of the investors of a Party in the territory of the other Party with regard to Article 10.07.

2. This Chapter does not apply to:

   (a) measures adopted or maintained by a Party in relation to financial services;

   (b) measures adopted by a Party to limit the participation of investment of investors of the other Party in its territory for reasons of public order or national security;

   (c) economic activities reserved by each Party pursuant to its law in force on the date of the signing of this Agreement, as listed in Annex III on economic activities reserved to each Party;

   (d) government services or functions such as law enforcement, correctional services, income security or unemployment insurance, social security services, social welfare, public education, public training, health, and child care;

   (e) disputes or claims arising before the entry into force of this Agreement or relating to facts that occurred before it entered into force, even if their effects persist thereafter; and

(f) government procurement.

3. This Chapter applies to the entire territory of the Parties and to any level of government regardless of any inconsistent measures that may exist in the law of these government levels.

4. Notwithstanding the provisions of paragraph 2(d), if a duly authorized investor from a Party provides services or carries out functions such as correctional services, income security or unemployment insurance, social security services, social welfare, public education, public training, health, and child care, the investment of this investor shall be protected by the provisions of this Chapter.

5. This Chapter shall apply to both investments made prior to and after the entry into force of this Agreement, by investors of a Party in the territory of the other Party.

Article 10.02 National Treatment

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

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

Article 10.03 Most-Favored-Nation Treatment

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

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

Article 10.04 Fair and Equitable Treatment

Each Party shall accord to investors of the other Party and their investments treatment in accordance with international law, including fair and equitable treatment as well as full protection and security.

Article 10.05 Standard of Treatment

Each Party shall accord to investors of the other Party and to investments of investors of the other Party the better of the treatment required by Articles 10.02, 10.03 and 10.04.

Article 10.06 Compensation for Losses

Each Party shall accord the investors of the other Party whose investments have been adversely affected in its territory due to armed conflict, state of emergency, insurrection, or civil strife, non-discriminatory treatment on any measure adopted or maintained in relation to such losses.

Article 10.07 Performance Requirements

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of the other Party in its territory:

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

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

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

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

This paragraph does not apply to any requirement other than indicated herein.

2. No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of the other Party, on compliance with any of the following requirements:

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

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

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

This paragraph does not apply to any requirements other than indicated herein.

3. The provisions included in:

(a) paragraph 1(a), (b), and (c) and paragraph 2(a) and (b) do not apply to requirements relating to the qualification of goods and services for programs of export promotion and foreign aid programs;

(b) paragraph 1(b) and (c) and paragraph 2(a) and (b) do not apply to the procurement by a Party or by a state enterprise; and

(c) paragraph 2(a) and (b) does not apply to the requirements imposed by an importing Party related to the contents of a good necessary to qualify it for preferential tariffs or quotas.

4. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of the other Party, 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.

5. Provided that these measures are not applied in an arbitrary or unjustified manner or do not constitute a disguised restriction to international trade or investment, nothing in paragraph 1(b) or (c) or 2(a) or (b) shall be construed to prevent a Party from adopting or maintaining measures, including environment measures, necessary to:

(a) ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

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

(c) conserve living or non-living exhaustible natural resources.

6. In the case where, in opinion of a Party, the imposition by the other Party of any of the following requirements shall adversely affect trade flows or constitutes a significant barrier to investment by an investor of a Party, the matter shall be considered by the Commission:

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

(b) to transfer technology, production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(c) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

7. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 6(b). For greater certainty, Articles 10.02 and 10.03 apply to the measure.

8. If the Commission finds that the imposition of any of the above requirements adversely affects the trade flow, or represents a significant barrier to investment by an investor of the other Party, it shall recommend that the practice in question be suspended.

Article 10.08 Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is an investment of an investor of the other Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, of an enterprise of that Party that is an investment of an investor of the other Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.09 Reservations and Exceptions.

1. Articles 10.02, 10.03, 10.07 and 10.08 do not apply to:

(a) any existing non-conforming measure that is maintained by:

(i) a Party at the national level, as set out in its Schedule to Annex I or III, or

(ii) a local or municipal government;

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

(c) the amendment of any non-conforming measure referred to in subparagraph (a), provided that this amendment does not decrease the conformity of the measure as it existed before its amendment by Articles 10.02, 10.03, 10.07, and 10.08.

2. Articles 10.02, 10.03, 10.07 and 10.08 shall not apply to any measure adopted or maintained by a Party in relation to sectors, sub-sectors or activities, as are indicated in their Schedule to Annex II.

3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Article 10.03 does not apply to treatment accorded by a Party under agreements, or with respect to sectors included in its Schedule to Annex IV.

5. Articles 10.02, 10.03 and 10.08 do not apply to:

(a) procurement by a Party or a state enterprise; and

(b) subsidies or grants provided by a Party or a state enterprise, including government supported loans, guarantees and insurance.

Article 10.10 Transfers

1. Each Party shall permit all transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Such transfers include:

(a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;

(b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

(d) payments made pursuant to Article 10.11; and

(e) payments arising from the mechanism of dispute settlement under section B of this Chapter.

2. Each Party shall permit transfers to be made without delay in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

3. No Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

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

(b) criminal or penal offenses;

(c) reports of transfers of currency or other monetary instruments;

(d) ensuring the satisfaction of judgments and arbitral awards in adjudicatory proceedings; or

(e) issuing, trading or dealing in securities.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.

Article 10.11 Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of the other Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

(a) for a public purpose, or public order and social interest;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law; and

(d) on payment of compensation in accordance with this Article.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. The amount paid as compensation shall be no less than the equivalent amount that would have been paid on that date to the expropriated investor in a currency of free convertibility in the international financial market according to the exchange rate in force on the date in which the fair market price was determined. The compensation shall include the payment of interests computed from the day of dispossession of the expropriated investment until the day of payment, and shall be computed on the basis of a commercially applicable rate for this currency set by the national bank system of the Party where the expropriation occurred.

5. Upon payment, the compensation shall be freely transferable according to Article 10.10.

6. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with TRIPS.

7. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

Article 10.12 Special Formalities and Information Requirements

1. Nothing in Article 10.02 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair

the protections afforded by a Party to investors of the other Party and investments of investors of the other Party pursuant to this Chapter.

2. Notwithstanding Articles 10.02 and 10.03, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 10.13 Relation to Other Chapters

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

2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provisions of that of cross border service. This Chapter applies to that Party's treatment of the posted bond or financial security.

Article 10.14 Denial of Benefits

Upon notification and consultation done according to Articles 17.04 (Provision of Information) and 19.06 (Consultations), a Party may deny the benefits under this Chapter to an investor of the other Party that is an enterprise of such other Party and to the investment of this investor, if investors of a non Party are owners of or control the enterprise under the terms set out in the definition "investment" of an investor of a Party according to Article 10.39 and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 10.15 Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken under its ecological or environmental laws.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party.

Section B-Settlement of Disputes between a Party and an Investor of the other Party

Article 10.16 Purpose

Without prejudice to the rights and obligations of the Parties under Chapter 19 (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes arising from the violation of obligations established under Section A of this Chapter that assures both equal treatment among investors of the Parties in accordance with the principle of reciprocity and due process before an impartial tribunal.

Article 10.17 Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim on the grounds that the other Party or an enterprise controlled directly or indirectly by the other Party, has breached an obligation under this Chapter if the investor has suffered losses or damages from the violation of this Chapter.

2. An investor may not make a claim if more than 3 years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has suffered losses or damages.

Article 10.18 Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party or an enterprise controlled directly or indirectly by that Party has breached an obligation under this Chapter, whenever the enterprise has suffered losses or damages due to that violation or arising therefrom.

2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than 3 years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has suffered losses or damages.

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 10.17 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 10.21, the claims should be heard together by a Tribunal established under Article 10.27, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not submit a claim to arbitration under this Section.

Article 10.19 Settlement of a Claim through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 10.20 Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least ninety (90) days before the claim is submitted, which notice shall specify:

(a) the name and address of the disputing investor and, where a claim is made under Article 10.18, the name and address and the type of business of the enterprise;

(b) the provisions of this Chapter alleged to have been breached and any other relevant provisions;

(c) the issues and the factual basis for the claim; and

(d) the relief sought and the approximate amount of damages claimed.

Article 10.21 Submission of a Claim to Arbitration

1. Provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) the ICC Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration established in this Chapter except to the extent modified by this Section.

Article 10.22 Conditions Precedent to Submission of a Claim to Arbitration

1. Consent of the disputing parties in the arbitration procedure according to this Chapter shall be considered as a consent to this arbitration that excludes any other procedure.

2. Each Party may demand the exhaustion of its local administrative remedies as a condition for consenting to the arbitration under this Chapter. Nevertheless, if 6 months have elapsed from the date on which the administrative remedies were lodged and the administrative authorities have not issued a final resolution, the investor may directly appeal to arbitration, according to the provisions of this Section.

3. A disputing investor may submit a claim under Article 10.17 to arbitration only if:

(a) the investor consents to arbitration in accordance with the procedures set out in this Section; and

(b) the investor and, where the claim is for losses or damages to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.17, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

4. A disputing investor may present a claim to the arbitration procedure according to Article 10.18 only if both investor and enterprise:

(a) consent to submit the claim to arbitration in accordance with the procedures set out in this Section; and

(b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.18, except for a proceeding for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

5. The consent and the waiver required by this Article shall be stated in writing, delivered to the disputing Party and included in the submission of the claim to arbitration.

6. The waiver by the enterprise, under paragraphs 3(b) and 4(b), shall not be required if, and only if, the disputing Party had deprived the disputing investor of the control of an enterprise.

Article 10.23 Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures and requirements set out in this Section.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall be deemed as having satisfied the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties; and

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

Article 10.24 Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 10.27, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator of the Tribunal, appointed by agreement of the disputing parties.

Article 10.25 Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator

1. In the event a disputing party does not appoint an arbitrator or an agreement is not reached about the appointment of the presiding arbitrator of the Tribunal, the arbitrator or the presiding arbitrator of the Tribunal in the arbitration proceeding shall be designated, according to this Section.

2. Where a Tribunal, not being the one created according to Article 10.27, is not constituted within a period of ninety (90) days from the date on which the claim is submitted to arbitration, the Secretary-General of the ICSID, the Secretary-General of the ICC or an appropriate official at an international organization agreed upon by the disputing parties (hereinafter the Secretary-General), shall appoint the not yet appointed arbitrator or arbitrators, except for the presiding arbitrator of the Tribunal who shall be

appointed according to paragraph 3. In any case, the majority of arbitrators may not be nationals of the disputing Party or the Party of the disputing investor.

3. The Secretary-General shall appoint the presiding arbitrator of the Tribunal from the roster of arbitrators referred to in paragraph 4, ensuring that the presiding arbitrator of the Tribunal is not a national of the disputing Party or a national of the Party of the disputing investor. In case of not finding in the roster an available arbitrator to head the Tribunal, the Secretary- General shall appoint from the roster of arbitrators of the ICSID the presiding arbitrator of the Tribunal, provided that he or she is of a nationality different from the disputing Party or from the Party of the disputing investor.

4. On the date of entry into force of this Agreement, the Parties shall establish and maintain a roster of six (6) arbitrators as possible presiding arbitrators of the Tribunal, none of which may be national of a Party, who comply with the rules contemplated in Article 10.21 and have experience in International Law and in investment matters. The members of the roster shall be appointed by mutual agreement, regardless of nationality, for a period of two (2) years that may be extended if the Parties so decide. In case of death or resignation of one member of the roster, the Parties shall appoint by mutual agreement the other person to substitute him or her in its functions for the remaining period to which the former person was appointed.

Article10.26 Agreement to Appointment of Arbitrators

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 10.25(3) or on a ground other than nationality:

(a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a disputing investor referred to in Article 10.17 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and

(c) a disputing investor referred to in Article 10.18(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

Article 10.27 Consolidation

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 10.21 that have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims; or

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General to establish a Tribunal and shall specify in the request:

(a) the name of the disputing Party or disputing investors against which the order is sought;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

4. The disputing party shall deliver a copy of the request to the disputing Party or disputing investors against which the order is sought.

5. Within sixty (60) days of receipt of the request, the Secretary-General shall establish a Tribunal comprising three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in Article 10.25(4). In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties. The Secretary-General shall appoint the two other members from the roster referred to in Article 10.25(4), and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.

6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 10.17 or 10.18 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

(a) the name, address and the type of business of the enterprise of the disputing investor;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article 10.21 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 10.21 be stayed, unless the latter Tribunal has already adjourned its proceedings, until there is a decision about the propriety of consolidation.

10. A disputing Party shall deliver to the Secretariat, within 15 days of receipt by the disputing Party, a copy of:

(a) a request for arbitration made under paragraph (1) of Article 36 of the ICSID Convention;

(b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules;

(c) a notice of arbitration given under the UNCITRAL Arbitration Rules; or

(d) a request for arbitration made under ICC Arbitration Rules.

11. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3:

(a) within fifteen (15) days of receipt of the request, in the case of a request made by a disputing investor; or

(b) within fifteen (15) days of making the request, in the case of a request made by the disputing Party.

12. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 within fifteen (15) days of receipt of the request.

13. The Secretariat shall maintain a public register of the documents referred to in paragraphs 10, 11 and 12.

Article 10.28 Notice

A disputing Party shall deliver to the other Party:

(a) written notice of a claim that has been submitted to arbitration no later than thirty (30) days after the date that the claim is submitted; and

(b) copies of all pleadings filed in the arbitration.

Article 10.29 Participation by a Party

On written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

Article 10.30 Documents

1. A Party shall be entitled, at its own cost, to receive from the disputing Party a copy of:

(a) the evidence that has been tendered to the Tribunal according to this Section; and

(b) the written argument of the disputing parties.

2. A Party receiving information pursuant to paragraph 1 shall treat the confidential information as if it were a disputing Party.

Article 10.31 Venue of Arbitration

Unless the disputing parties agree otherwise, a Tribunal established under this Section shall hold an arbitration in the territory of a party to the New York Convention, selected in accordance with:

(a) the ICSID Additional Facility Rules if the arbitration is under those Rules, or the ICSID Convention;

(b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules; or

(c) the ICC Arbitration Rules if the arbitration is under those Rules.

Article 10.32 Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

Article 10.33 Interpretation of Annexes

1. Where a disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in those Annexes, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within sixty (60) days of delivery of the request, shall submit in writing its interpretation to the Tribunal.

2. Further to Article 10.32(2), a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal established under this Section. If the Commission fails to submit an interpretation within sixty (60) days, the Tribunal shall decide the issue.

Article 10.34 Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning the controversy.

Article 10.35 Interim Measures of Protection

A Tribunal established under this Section may request, or the disputing parties may petition to, in accordance with domestic legislation, national courts for imposing 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. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach

referred to in Article 10.17 or 10.18.

Article 10.36 Final Award

1. Where a Tribunal established under this Section makes a final award against a Party, the Tribunal may award, only:

(a) monetary damages and any applicable interest; or

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs in accordance with the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is made under Article 10.18(1):

(a) an award of restitution of property shall provide that restitution be made to the enterprise; or

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise.

3. The award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

Article 10.37 Finality and Enforcement of an Award

1. An award made by a Tribunal established under this Section shall have no binding force except between the disputing parties and in respect of the particular case.

2. Subject to paragraph 3 and the applicable review procedure for an award, a disputing party shall abide by and comply with an award without delay.

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

(a) in the case of a final award made under the ICSID Convention

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) explanation, revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules

(i) ninety (90) days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

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

4. Each Party shall provide for the enforcement of an award in its territory.

5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article 19.09 (Request for an Arbitral Group). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) a recommendation that the Party abide by or comply with the final award.

6. A disputing investor may seek enforcement of an arbitration award under the New York Convention, or the ICSID Convention, regardless of whether proceedings have been taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

Article 10.38 General Provision

Time when a Claim is Submitted to Arbitration

1. A claim is submitted to arbitration under this Section when:

(a) the request for arbitration under paragraph (1) of Article 36 of the ICSID Convention has been received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General;

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party; or

(d) the request for arbitration under Article 4 of the ICC Arbitration Rules has been received by the Secretariat.

Delivery of Notifications and Other Documents

2. Delivery of notifications and other documents on a Party shall be made to the place named for that Party in Annex 10.38(2).

Receipts under Insurance or Guarantee Contracts

3. In an arbitration under this Section, a Party shall not assert, as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Publication of an Award

4. The awards shall be published only if there is an agreement in writing by the disputing parties.

Section C - Definitions

Article 10.39 Definitions

For purposes of this Chapter, the following terms shall be understood as:

Additional Facility Rules of ICSID: Additional Facility Rules of ICSID established in 1978;

claim: the claim made by the disputing investor against a Party under Section B of this Chapter;

disputing investor: an investor that makes a claim under Section B of this Chapter;

disputing parties: the disputing investor and the disputing Party;

disputing Party: a Party against which a claim is made under Section B of this Chapter;

disputing party: the disputing investor or the disputing Party;

enterprise: an "enterprise" as defined in Chapter 2 (General Definitions), and a branch of an enterprise;

enterprise of a Party: an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

ICC: the International Chamber of Commerce;

ICSID: the International Centre for Settlement of Investment Disputes;

ICSID Convention: the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965;

investment: any kind of goods or rights of any nature acquired or used with the purpose of obtaining an economic profit or other business objective, acquired with resources transferred or reinvested by an investor, and including:

(a) an enterprise, shares in an enterprise, shares in the capital of an enterprise that allow the owner to participate in its income or profits. Debt instruments of an enterprise and loans to an enterprise where:

(i) the enterprise is an affiliate of the investor, or

(ii) the date of maturity of the debt instrument or loan is at least 3 years,

(b) a stake in an enterprise that grants to the owner the right to participate in the assets of this enterprise in a liquidation, provided that they do not arise from a debt instrument or a loan excluded under subparagraph (a);

(c) real estate or other properties, tangible or intangible, including rights in the intellectual property field, as well as any other proprietary right (such as mortgages, liens, usufruct and similar rights), acquired with the expectation of or used with the purpose of obtaining an economic benefit or other business objectives;

(d) share or benefits arising from the allocation of capital or other resources to the developing of an economic activity in the territory of a Party according, *inter alia*; to:

(i) contracts that involve the presence of the property of an investor in the territory of a Party, including concessions and construction and turnkey contracts, or

(ii) contracts where remuneration substantially depends on the production, income or profits of an enterprise,

but investment does not include:

(e) a payment obligation or a credit granted to the State or a state enterprise,

(f) monetary claims exclusively derived from:

(i) commercial contracts for the sale of goods or services by a national or an enterprise in the territory of a Party to an enterprise in the territory of the other Party, or

(ii) a credit granted in relation to a commercial transaction, of which expiration date is less than 3 years, such as trade financing, except a loan covered by the provisions of subparagraph (a); or

(g) any other monetary claim that does not involve the kinds of interests as set out in subparagraphs (a) through (d);

investor of a Party: a Party or a state enterprise of a Party or a national or an enterprise of a Party that makes or has made an investment in the territory of the other Party;

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

Secretary-General: the Secretary-General of the ICSID, or the ICC;

transfers: remittance and international payments;

Tribunal: an arbitration tribunal established under Article 10.21,and Article 10.27; and

UNCITRAL Arbitration Rules: the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.

ANNEX 10.38(2)

DELIVERY OF NOTIFICATIONS AND OTHER DOCUMENTS

1. For purposes of the Article 10.38(2), the place for the delivery of notifications and other documents will be:

(a) in the case of Panama:

Ministry of Trade and Industries

Vice-ministry of Foreign Trade

Vía Ricardo J. Alfaro, Plaza Edison, Piso #3

Panamá, República de Panamá

(b) in the case of the ROC:

Ministry of Economic Affairs

No.15 Fu-Chou Street, Taipei

Taiwan

The Republic of China

2. The Parties shall communicate any change of the designated place for the delivery of notifications and other documents.

CHAPTER 11
CROSS-BORDER TRADE IN SERVICES

Article 11.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

cross-border provision of a service or **cross-border trade in services:** the provision of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to the services consumer of the other Party; or

(c) by a service provider of a Party, through presence of natural persons of a Party in the territory of the other Party, but does not include the provision of a service in the territory of a Party by an investment, as defined in Article 10.39 (Definitions), in that territory;

enterprise: an "enterprise" as defined in Chapter 2 (General Definitions);

enterprise of a Party: an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

quantitative restriction: a non-discriminatory measure that imposes limitations on:

(a) the number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or

(b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

services provided in the performing of government functions: any cross-border service provided by a public institution in non-commercial conditions and without competing with one or more service providers; and.

service provider of a Party: a person of a Party that provides or seeks to provide a cross-border service.

Article 11.02 Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of the other Party, including measures respecting:

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

(b) the purchase or use of, or payment for, a cross-border service;

(c) the access to and use of distribution and transportation systems in connection with the provision of a cross-border service;

(d) the access to networks and public services of telecommunication and its use;

(e) the presence in its territory of a cross-border service provider of the other Party; and

(f) the provision of a bond or other form of financial security as a condition for the provision of a cross-border service.

2. For purposes of this Chapter, it shall be understood that the measures adopted or maintained by a Party include measures adopted or maintained by non-governmental institutions or bodies in the performance of regulatory, administrative or other functions of a governmental nature delegated to them by the Party.

3. This Chapter does not apply to:

(a) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance;

(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service,

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

(iii) computer reservation system (CRS) services;

(c) government services or functions such as law enforcement, correctional services, income security or unemployment insurance or social security services, social welfare, public education, public training, health, and child care;

(d) cross-border financial services; and

(e) government procurement done by a Party or state enterprise.

4. Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment.

Article 11.03 National Treatment

1. Each Party shall accord to cross-border services and service providers of the other Party treatment no less favorable than that it accords, in like circumstances, to its own services and service providers.

2. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

Article 11.04 Most-Favored-Nation Treatment

Each Party shall accord to cross-border services and service providers of the other Party treatment no less favorable than that it accords, in like circumstances, to services and service providers of any non-Party.

Article 11.05 Standard of Treatment

Each Party shall accord to cross-border services and service providers of the other Party the better of the treatment required by Articles 11.03 and 11.04.

Article 11.06 Local Presence

No Party may require a service provider of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

Article 11.07 Permission, Authorization, Licensing and Certification

With a view to ensuring that any measure adopted or maintained by a Party relating to the permission, authorization, licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to cross-border trade, each Party shall endeavor to ensure that any such measure:

(a) is based on objective and transparent criteria, such as competence and the ability to provide a cross-border service;

(b) is not more burdensome than necessary to ensure the quality of a cross-border service; and

(c) does not constitute a disguised restriction on the cross-border provision of a service.

Article 11.08 Reservations

1. Articles 11.03,11.04 and 11.06 do not apply to:

(a) any existing non-conforming measure that is maintained by

(i) a Party at the national level, as set out in its Schedule to Annex I,

(ii) a local or municipal government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.03,11.04 and 11.06.

2. Articles 11.03, 11.04 and 11.06 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.

Article 11.09 Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex V any quantitative restriction that it maintains.

2. Each Party shall notify the other Party of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule as referred to in paragraph 1.

3. Regularly, at least every 2 years, the Parties shall endeavour to negotiate with the aim of liberalizing or eliminating:

(a) existing quantitative restrictions maintained by a Party, according to the list referred to in paragraph 1; or

(b) quantitative restrictions adopted by a Party after the entry into force of this Agreement.

Article 11.10 Denial of Benefits

Subject to prior notification and consultation in accordance with Articles 17.04 (Provision of Information) and 19.06 (Consultations), a Party may deny the benefits of this Chapter to a service provider of the other Party where the Party decides, according to its effective law that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party having no substantial business activities in the territory of the other Party.

Article 11.11 Future Liberalization

The Parties, through future negotiations to be convened by the Commission, shall deepen the liberalization reached in different service sectors, with the aim of eliminating the remaining restrictions listed under Article 11.08(1) and (2).

Article 11.12 Procedures

The Parties shall establish procedures for:

(a) a Party to notify and include in its relevant Schedule

(i) amendments of measures referred to in Article 11.08(1) and (2), and

(ii) quantitative restrictions in accordance with Article 11.09; and

(b) consultations on reservations or quantitative restrictions for further liberalization, if any.

Article 11.13 Disclosure of Confidential Information

No provision in this Chapter may be construed as imposing on the Parties the obligation to provide confidential information of which the disclosure may be an obstacle to the observance of laws or otherwise be damaging to the public interest, or that may injure legitimate trade interests of state and private enterprises.

Article 11.14 Committee on Investment and Cross-border Trade in Services

1. The Parties hereby establish the Committee on Investment and Cross-border Trade in Services, as set out in Annex 11.14.

2. The Committee shall hear matters relating to this Chapter and Chapter 10 (Investment) and, without prejudice to the provisions of Article 18.05(2)(Committees), shall have the following functions:

(a) supervising the implementation and administration of Chapters 10 (Investment) and 11 (Cross-border Trade in Services);

(b) discussing matters relating to investment and cross-border trade in services presented by a Party;

(c) analyzing matters that are discussed in other international fora;

(d) facilitating the exchange of information between the Parties and cooperating in giving advice on investment and cross-border trade in services; and

(e) establishing working groups or convening panels of experts on matters of interest to the Parties.

3. The Committee shall meet when necessary or at any other time at the request of either Party. Representatives of other institutions may also take part in its meetings if the relevant authorities deem it appropriate.

ANNEX 11.14

COMMITTEE ON INVESTMENT AND CROSS-BORDER TRADE IN SERVICES

The Committee on Investment and Cross-border Trade in Services set up under Article 11.14 shall be composed of:

(a) in the case of Panama, the Ministry of Trade and Industries, represented by the Vice-ministry of Foreign Trade or its successor; and

(b) in the case of the ROC, the Ministry of Economic Affairs, represented by the Bureau of Foreign Trade or its successor.

CHAPTER 12
FINANCIAL SERVICES

Article 12.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

cross-border provision of financial services or cross-border trade of financial services: the provision of a financial service:

(a) from the territory of a Party to the territory of the other Party;

(b) in the territory of a Party to a consumer of services of the other Party; or

(c) by a service provider of a Party through the presence of natural persons of a Party in the territory of the other Party;

disputing investor: an investor that submits to arbitration a claim under Article 12.19 and Section B of Chapter 10 (Investment);

enterprise: "enterprise" defined in Chapter 2 (General Definitions);

financial institution: any financial intermediary or other enterprise that is authorized to do financial service business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of the other Party: a financial institution, including a branch, established under the existing law located in the territory of a Party that is owned or controlled by persons of the other Party;

financial service: a service of a financial nature, including bank, insurance, reinsurance, securities, futures, and a service related or auxiliary to a service of a financial nature;

investment: any kind of goods or rights of any nature acquired or used with the purpose of obtaining an economic profit or other business objective, acquired with resources transferred or reinvested by an investor, and including:

(a) an enterprise, shares in an enterprise, shares in the capital of an enterprise that allow the owner to participate in its income or profits. Debt instruments of an enterprise and loans to an enterprise where:

(i) the enterprise is an affiliate of the investor, or

(ii) the date of maturity of the debt instrument or loan is at least 3 years;

(b) a stake in an enterprise that grants to the owner the right to participate in the assets of this enterprise in a liquidation, provided that they do not arise from a debt instrument or a loan excluded under subparagraph (a);

(c) real estate or other properties, tangible or intangible, including rights in the intellectual property field, as well as any other proprietary right (such as mortgages, liens, usufruct and similar rights), acquired with the expectation of or used with the purpose of obtaining an economic benefit or other business objectives;

(d) share or benefits arising from the allocation of capital or other resources to the developing of an economic activity in the territory of a Party according, *inter alia*, to:

(i) contracts that involve the presence of the propriety of an investor in the territory of a Party, including concessions and construction and turnkey contracts, or

(ii) contracts where remuneration substantially depends on the production, income or profits of an enterprise, and

(e) a loan granted by a provider of cross-border financial services or a debt instrument owned by the provider, except a loan to a financial institution or a debt instrument issued by it,

but investment does not include:

(f) a payment obligation or a credit granted by the State or a state enterprise;

(g) monetary claims exclusively derived from:

(i) commercial contracts for the sale of goods or services by a national or an enterprise in the territory of a Party to an enterprise in the territory of the other Party, or

(ii) a credit granted in relation to a commercial transaction, of which expiration date is less than 3 years, such as trade financing, except a loan covered by the provisions of subparagraph (a);

(h) any other monetary claim that does not involve the kinds of interests as set out in subparagraphs (a) through (e); or

(i) a loan to a financial institution or a debt instrument issued by a financial institution, except if it is a loan to or a debt instrument issued by a financial institution treated as capital for regulatory purposes by a Party in whose territory the financial institution is located;

investment of an investor of a Party: an investment owned or directly controlled by an investor of the Party. In the case of an enterprise, an investment is property of an investor of a Party if this investor holds more than fifty per cent (50%) of it equity interest. An investment is controlled by an investor of a Party if the investor has the power to:

(a) designate a majority of directors; or

(b) legally manage its operations in any other way;

investor of a Party: a Party or a state enterprise thereof, or a national or enterprise of the Party, that seeks to make, makes or has made an investment in the territory of the other Party. The intention of trying to realize an investment may demonstrate, among other forms, by means of juridical acts tending to materialize the investment, or being in process of compromising the necessary resources to realize it;

new financial service: a financial service not provided in the territory of a Party that is provided within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the territory of a Party;

provider of cross-border financial services of a Party: a person authorized by a Party who undertakes the business of providing financial services in its territory and who tries to conduct or conducts cross-border financial services;

provider of financial services of a Party: a person of a Party who undertakes the business of providing some financial service in the territory of the other Party;

public entity: a central bank or monetary authority of a Party, or any financial institution of public nature owned or controlled by a Party, and does not have commercial functions;

regulatory authorities: any governmental body that exercises a supervising authority over providers of financial services or financial institutions; and

self-regulatory organization: any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that

exercises its own or delegated regulatory or supervisory authority over financial service providers or financial institutions.

Article 12.02 Scope and Coverage

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

(a) financial institutions of the other Party;

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

(c) cross-border trade in financial services.

2. Nothing in this Chapter shall be construed to prevent a Party, or its public entities, from exclusively conducting or providing in its territory:

(a) activities conducted by the monetary authorities or by any other public institution with the aim of implementing monetary or exchange policies;

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

(c) other activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.

3. The provisions of this Chapter shall prevail upon those of other Chapters, except where there is an explicit reference to these Chapters.

4. Article 10.11 (Expropriation and Compensation) forms a part of this Chapter.

Article 12.03 Self-regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service provider of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such self-regulatory organization.

Article 12.04 Right of Establishment

1. The Parties recognize the principle that investors of a Party shall be permitted to establish a financial institution in the territory of the other Party through any forms of establishment and operation that the law of that Party permits.

2. Each Party may impose terms and conditions on establishment of a financial institution that are consistent with Article 12.06.

Article 12.05 Cross-border Trade

1. No Party may adopt any measure restricting any type of cross-border trade in financial services by cross-border financial service providers of the other Party that the Party permits on the date of entry into force of this Agreement, except to the extent set out in Section B of the Schedule to Annex VI of the Party.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service providers of the other Party located in the territory of that other Party. This obligation does not require a Party to permit such providers to do business or solicit in its territory. The Parties may define "solicitation" and "doing business" for purposes of this obligation.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service providers of the other Party and of financial instruments.

Article 12.06 National Treatment

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

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own similar financial institutions and to investments of its own investors in similar financial institutions, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. Subject to Article 12.05, where a Party permits the cross-border provision of a financial service it shall accord to the cross-border financial service providers of the other Party treatment no less favorable than that it accords to its own similar financial service providers, with respect to the provision of such service.

4. A Party's treatment of similar financial institutions and similar cross-border financial service providers of the other Party, whether different or identical to that accorded to its own institutions or providers in like circumstances, is consistent with paragraphs 1 through 3 if the treatment affords equal competitive opportunities.

5. A Party's treatment does not afford equal competitive opportunities if it disadvantages similar financial institutions and similar cross-border financial service providers of the other Party in their ability to provide financial services as compared with the ability of the Party's own financial institutions and similar financial service providers to provide such services.

Article 12.07 Most-Favored-Nation Treatment

Each Party shall accord to investors, financial institutions, investments of investors in financial institutions and cross-border financial service providers of the other Party treatment no less favorable than that it accords in similar circumstances to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service providers of any non-Parties.

Article 12.08 Recognition and Harmonization

1. Where a Party applies measures included in this Chapter it may recognize the prudential measures of the other Party or of a non-Party. This recognition may be:

(a) unilaterally granted;

(b) reached through harmonization or other means; or

(c) based on an agreement or arrangement with the other Party or with the non-Party.

2. The Party that grants the recognition of prudential measures according to paragraph 1, shall give the other Party appropriate opportunities to show the existence of circumstances in which there are or shall be equivalent regulations, supervision and implementation of regulations and, as appropriate, procedures to share information between the Parties.

3. Where a Party grants recognition to the prudential measures according to paragraph 1(c) and the circumstances of paragraph 2 exist, this Party shall give appropriate opportunities to the other Party to negotiate the accession to the agreement or arrangement, or to negotiate a similar agreement or arrangement.

4. No provision of this Article shall be construed as the application of a mandatory procedure of review of the financial system or the prudential measures of a Party by the other Party.

Article 12.09 Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining prudential measures such as:

(a) the protection of fund administrators, investors, depositors, financial market participants, policyholders, policy claimants, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service provider;

(b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers;, and

(c) ensuring the integrity and stability of the financial system of a Party.

2. Nothing in this Chapter applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations of Investment Performance Requirements with respect to measures covered by Chapter 10 (Investment) or Article 12.17.

3. Article 12.06 shall not apply to the granting by a Party to a financial institution of an exclusive right to provide a financial service referred to in Article 12.02 paragraph 2(b).

4. Notwithstanding Article 12.17(1), (2) and (3), a Party may prevent or limit transfers by a financial institution or cross-border financial service provider to, or for the benefit of, an affiliate of or person related to such institution or service provider, through the equitable, and non-discriminatory application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

Article 12.10 Transparency

In addition to the Article 17.03 (Publication), each Party shall undertake the following:

1. Each Party's regulatory authorities shall make available to interested persons all related information for completing applications relating to the provision of financial services.

2. On the request of an applicant, the regulatory authorities shall inform the applicant of the status of its application. If such authorities require additional information from the applicant, they shall notify the applicant without undue delay.

3. Each regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service provider of the other Party relating to the provision of a financial service within 120 days. The authority shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within 60 days thereafter.

4. Nothing in this Chapter requires a Party to disclose or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service providers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 12.11 Committee on Financial Services

1. The Parties hereby establish the Committee on Financial Services, as set out in Annex 12.11.

2. The Committee shall hear matters relating to this Chapter and, without prejudice to the provisions of Article 18.05(2) (Committees), shall have the following functions:

(a) supervising the implementation of this Chapter and its further elaboration;

(b) considering issues regarding financial services that are referred to it by a Party;

(c) participating in the dispute settlement procedures in accordance with Articles 12.18 and 12.19; and

(d) facilitating the exchange of information between the supervising authorities, cooperating on advising about prudential regulation and endeavoring to harmonize the normative frameworks for regulations as well as the other policies, if it considers appropriate.

3. The Committee shall meet as necessary or by request of either Party to assess the implementation of this Chapter.

Article 12.12 Consultations

1. Without prejudice to Article 19.06 (Consultations), a Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee at its meeting.

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.11.

3. A Party may request that regulatory authorities of the other Party participate in consultations under this Article regarding measures of general application of that other Party which may affect the operations of financial institutions or cross-border financial service providers in the territory of the requesting Party.

4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 3 to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial institution in the territory of the other Party or a cross-border financial service provider in the territory of the other Party, the Party may approach the competent regulatory authority of the other Party to seek the information.

Article 12.13 New Financial Services and Data Processing

1. Each Party shall allow a financial institution of the other Party to provide any new financial service of a type similar to those that the Party allows to its own financial institutions according to its law. The Party may decide the institutional and juridical forms through which this service shall be offered and may require authorization for the provision of the service. Where an authorization is required, the relevant dispositions shall be issued in a reasonable period of time and may only be denied for prudential reasons, provided that the reasons are not contrary to the law of the Party, and to Articles 12.06 and 12.07.

2. Each Party shall allow the financial institutions of the other Party to transfer information for processing into or out of the territory of the Party, using any means authorized within it, if this is necessary to conduct regular business activities in these institutions.

3. Each Party commits itself to respecting the confidentiality of the information processed within its territory and originating in a financial institution located in the other Party.

Article 12.14 Senior Management and Board of Directors

1. No Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. No Party may require that the board of directors or administrative council of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 12.15 Reservations and Specific Commitments

1. Articles12.04 through 12.07, 12.13 and 12.14 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at the national level, as set out in Section A of its Schedule to Annex VI;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 12.04 through 12.07, 12.13 and 12.14.

2. Articles 12.04 through 12.07, 12.13 and 12.14 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section B of its Schedule to Annex VI.

3. Section C of each Party's Schedule to Annex VI sets out certain specific commitments by that Party.

4. In Chapters 10 (Investment) and 11 (Cross-border Trade in Services) a reservation on matters relating to local presence, national treatment, most-favored-nation treatment, senior management and board of directors and administrative council

shall be deemed to constitute a reservation from Article 12.04 through 12.07, 12.13 and 12.14, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.

Article 12.16 Denial of Benefits

A Party may partially or wholly deny the benefits arising from this Chapter to a provider of financial services of the other Party or to a provider of cross-border financial services of the other Party, upon notification and consultations, according to Articles 12.10 and 12.12, if the Party determines that the service is being provided by an enterprise that does not conduct substantial trade activities in the territory of the other Party and is owned by persons of a non-Party or is under their control.

Article 12.17 Transfers

1. Each Party shall permit all transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Such transfers include:

(a) profits, dividends, interests, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;

(b) proceeds from the sale or liquidation of all or part of the investment;

(c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

(d) payments made pursuant to Article 10.11 (Expropriation and Compensation); and

(e) proceeds from a dispute settlement procedure between a Party and an investor of the other Party pursuant to this Chapter and Section B of Chapter 10 (Investment).

2. Each Party shall permit transfers to be made without delay in a currency of free convertibility at the market rate of exchange prevailing on the date of transfer.

3. No Party may require its investors to transfer, or penalize its investors that fail to transfer the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the fair and non-discriminatory application of its laws in cases of:

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

(b) criminal or penal offenses or confirmed administrative resolutions;

(c) non-compliance with the requirement to report on currency transfers or other monetary instruments;

(d) ensuring the satisfaction of judgments and awards in adjudicatory proceedings; or

(e) ensuring the enforcement of laws and regulations on issues, trade and operations of securities.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the fair and non-discriminatory application of its laws relating to the matters set out in paragraph 4.

Article 12.18 Dispute Settlement Between the Parties

1. Chapter 19 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Committee on Financial Services shall maintain by consensus a roster of up to eighteen (18) individuals including five (5) individuals of each Party, who are willing and able to serve as arbitrators in disputes related to this Chapter. The roster members shall meet the quality set out in Chapter 19 (Dispute Settlement) and have broad practicing experience in financial sectors or financial regulation.

3. For purposes of constituting the arbitral group, the roster referred to in paragraph 2 shall be used, unless the disputing Parties agree that the arbitral group may comprise individuals not included in this roster, provided that they conform to the requirements under paragraph 2. The president shall always be elected from that roster.

4. In any dispute where the arbitral group finds a measure to be inconsistent with the obligations of this Chapter when a suspension of benefits is processed under Chapter 19 (Dispute Settlement) and the measure affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in this sector;

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

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

Article 12.19 Investment Disputes Settlement in Financial Services Between an Investor of a Party and the Other Party

1. Section B of Chapter 10 (Investment) shall be incorporated into this Chapter and be made as a part of it.

2. Where an investor of the other Party submits a claim under Article 10.17 (Claim by an Investor of a Party on Its Own Behalf) or 10.18 (Claim by an Investor of a Party on Behalf of an Enterprise) to arbitration under Section B of Chapter 10 (Investment) against a Party and the disputing Party invokes Article 12.09, on request of the disputing Party, the Tribunal shall refer the matter in writing to the Committee for a decision. The Tribunal may not proceed before the receipt of a decision under this Article.

3. In a referral pursuant to paragraph 2, the Committee shall decide the issue of whether and to what extent Article 12.09 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

4. Where the Committee has not decided the issue within sixty (60) days of the receipt of the referral under paragraph 2, the disputing Party or the Party of the disputing investor may request the establishment of an arbitral group under Article 19.09 (Request for an Arbitral Group). The arbitral group shall be constituted in accordance with Article 12.18 and shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

5. Where no request for the establishment of an arbitral group pursuant to paragraph 4 has been made within ten (10) days of the expiration of the 60-day period referred to that paragraph, the Tribunal may proceed to decide the matter.

ANNEX 12.11

COMMITTEE ON FINANCIAL SERVICES

The Committee on Financial Services, established under Article 12.11, shall be composed of:

(a) in the case of Panama, the Ministry of Trade and Industries through the Vice-ministry of Foreign Trade, or its successor, in consultation with the competent authority as appropriate (Superintendence of Banks, Superintendence of Insurance, Reinsurance and National Commission of Securities); and

(b) in the case of the ROC, the Ministry of Economic Affairs through the Bureau of Foreign Trade, or its successor, in consultation with the competent authorities as appropriate.

CHAPTER 13
TELECOMMUNICATIONS

Article 13.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

authorized equipment: terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

conformity assessment procedure: "conformity assessment procedure" as defined in Article 9.01 (Definitions), and includes the procedures referred to in Annex 13.01(A);

enhanced or value-added services: those telecommunications services employing computer processing applications that:

(a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provide a customer with additional, different or restructured information; or

(c) involve customer interaction with stored information;

Intra-corporate communications: subject to Annex 13.01(B), telecommunications through which an enterprise communicates:

(a) internally, with or among its subsidiaries, branches or affiliates, as defined by each Party; or

(b) on a non-commercial basis with other persons that are fundamental to the economic activity of the company and that have a continuing contractual relationship with it,

but does not include telecommunications services provided to persons other than those described herein;

main provider or dominant operator: a provider with the capacity to deeply affect the conditions of participation (from the point of view of prices and supply) of the telecommunication services in a given market due to its control of essential infrastructure or the use of its market position;

monopoly: a body, including a consortium or a governmental body, maintained or designed according to its law, if so allowed, as the exclusive provider of telecommunication networks or public services in any relevant market in the territory of a Party;

network termination point: the final demarcation of the public telecommunications transport network at the customer's premises;

private telecommunications network: subject to Annex 13.01(B), a telecommunications transport network that is used exclusively for intra-corporate communications or between predetermined persons;

protocol: a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling or data information;

public telecommunications transport network: public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

public telecommunications transport service: any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically 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 information;

standards-related measure: a "standards-related measure" as defined in Article 9.01 (Definitions);

telecommunications: any transmission, emission or reception of signs, signals, writings, images, sounds and information of any kind, through a physical line, radio-electricity, optical means or other electromagnetic systems;

telecommunications service: a service supplied by signal transmission and reception through physical lines, radio-electricity, optical means or other electromagnetic systems, but does not mean distribution by cable, radio broadcasting or other kind of electromagnetic distribution of radio and television programmes; and

terminal equipment: any analog or digital device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

Article 13.02 Scope and Coverage

1. This Chapter applies to:

(a) subject to Annex 13.01(A), measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of the other Party, including prices fixing and access and use by such persons operating private networks for intra-corporate communications;

(b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of the other Party in the territory, or across the borders, of a Party; and

(c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Except to ensure that persons operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party to authorize a person of the other Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;

(b) require a Party, or require a Party to oblige any person, to establish, construct, acquire, lease, operate or supply telecommunications transport networks or telecommunications transport services not offered to the public generally;

(c) prevent a Party from prohibiting persons operating private telecommunication networks from using their networks to provide public telecommunications transport networks or services to third persons; or

(d) require a Party to oblige a person engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

Article 13.03 Access to and Use of Public Telecommunications Transport Networks and Services

1. For purposes of this Article, "non-discriminatory" means on terms and conditions no less favorable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

2. Each Party shall ensure that persons of the other Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in the rest part of this Article.

3. Subject to paragraphs 7, 8 and Annex 13.01(B), each Party shall ensure that such persons are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;

(b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons, according to those set out in Annex 13.01(B);

(c) perform switching, signaling and processing functions; and

(d) use operating protocols of their choice, according to the technical plans of each Party.

4. Without prejudice to its applicable law, each Party shall ensure that the pricing of public telecommunications transport services reflects economic costs directly related to providing the services. Nothing in this paragraph shall be construed to permit a party to establish cross-subsidization between public telecommunications transport services.

5. Under Annex 13.01(B), each Party shall ensure that persons of the other Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for Intra-corporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

6. Further to Article 20.02 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of subscribers to public telecommunications transport networks or services.

7. Further to Article 13.05, each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:

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

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

8. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 7, such conditions may include:

(a) a restriction on resale or shared use of such services;

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

(c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, where the circuits are used in the provision of public telecommunications transport networks or services; and

(d) a licensing, permit, concession, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

Article 13.04 Conditions for the Provision of Enhanced or Value-added Services

1. Each Party shall ensure that:

(a) any licensing, permit, concession, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed diligently; and

(b) information required under such procedures, adjustable under the existing law of the Parties, to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations.

2. Without prejudicing the law of either Party, neither Party may require a service provider of enhanced or value-added services to:

(a) provide those services to the public generally;

(b) adjust its rates or price on cost base;

(c) file a tariff or price;

(d) interconnect its networks with any particular customer or network; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:

(a) such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or

(b) a monopoly, main provider, incumbent carrier to which Article 13.06 applies.

Article 13.05 Standards-Related Measures

1. Each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) prevent technical damage to public telecommunications transport networks;

(b) prevent technical interference with, or degradation of, public telecommunications transport services;

(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;

(d) prevent billing equipment malfunction;

(e) ensure users' safety and access to public telecommunications transport networks or services; or

(f) ensure electromagnetic spectrum’s efficiency.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. Neither Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Each Party shall:

(a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. When the condition allows it, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from

laboratories or testing facilities in the territory of the other Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

Article 13.06 Monopolies or Anti-competition Practice

1. Where a Party maintains or designates a monopoly, or main provider or incumbent carrier, to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly, main provider or incumbent carrier does not use its monopoly position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of the other Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anticompetitive conduct, each Party shall make efforts to conform with or maintain effective measures as referred to paragraph 1, such as:

(a) accounting requirements;

(b) requirements for structural separation;

(c) rules to ensure that the monopoly, main provider or incumbent carrier accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; or

(d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

Article 13.07 Transparency

Further to Article 17.03 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

(a) tariffs, price and other terms and conditions of service;

(b) specifications of technical interfaces with the networks or services;

(c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;

(d) conditions applying to attachment of terminal or other equipment to the networks; and

(e) notification, permit, registration, certificate licensing or concession requirements.

Article 13.08 Relation to Other Chapters

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

Article 13.09 Relation to Other International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 13.10 Technical Cooperation and Other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

ANNEX 13.01 (A)

CONFORMITY ASSESSMENT PROCEDURE

For purposes of this Chapter, conformity assessment procedures include:

In the case of Panama:

(a) Act No. 31, February 8, 1996, on the rules governing telecommunications in the Republic of Panama;

(b) Executive Decree No. 73, April 9, 1997, Telecommunication Rules;

(c) Resolution JD-119, October 28, 1997, by which the Regulatory Body prohibits the importation into the Republic of Panama of telephonic equipment and wireless intercommunication equipment that do not comply with the National Scheme of Frequency Assignation;

(d) Resolution JD-952, August 11, 1998, by which the Regulatory Body adopts procedures to test new technology equipment that use frequencies of the radio-electric spectrum; and

(e) Resolution JD-1785, January 3, 2000, that establishes the procedure for registering and authorizing the introduction in Panamanian territory of wireless intercommunication telephones or equipment.

In the case of the ROC:

(a) Telecommunications Act, May 21, 2003;

(b) Compliance Approval Regulations of Telecommunications Terminal Equipment, June 28, 2000;

(c) Regulations on Inspection and Certification of Controlled Telecommunications Equipment, August 30, 2002;

(d) Administrative Regulations on Low-Power Radio Waves Radiated Devices, October 23, 2002;

(e) Administrative Regulations on Controlled Telecommunications Equipment Radio-Frequency Devices, September 14, 2000;

(f) Rules Governing the Third Generation (3G) Mobile Telecommunications Service, March 6, 2003;

(g) Administrative Regulations governing 1900Mhz Digital Low-Tier Cordless Telephony Business, March 6, 2003;

(h) Regulations Governing Fixed Network Telecommunications Businesses, March 6, 2003;

(i) Administrative Rules on Satellite Communication Services, March 6, 2003;

(j) Regulations Governing Mobile Telecommunications Businesses, March 6, 2003; and

(k) Administrative Regulations On Amateur Radios, October 11, 2000.

ANNEX 13.01 (B)

PRIVATE NETWORKS INTERCONNECTION (PRIVATE CIRCUITS)

1. In the case of both Panama and the ROC, it shall be understood that the private telecommunication networks used in the private communications of a company may not be connected with public telecommunications transport networks nor may be used to provide telecommunication services, even free of charge, to third persons who are not subsidiaries, branch offices or affiliates of a company or that are not owned by it nor are under its control.

2. The provisions of paragraph 1 shall no longer be effective in Panama or the ROC after its present legal conditions change and it allows the interconnection of the private telecommunication networks used in the internal communications of enterprises to the public telecommunication transport networks and the provision to third persons of services that are key for the economic activities of an enterprise and that maintain a continued contractual relation with it.

CHAPTER 14
TEMPORARY ENTRY
FOR BUSINESS PERSONS

Article 14.01 Definitions

1. For purposes of this Chapter, the following terms shall be understood as:

business activities: legitimate commercial activities undertaken and operated with the purpose of obtaining profits in the market, not including the possibility of obtaining employment, wages or remuneration from a labour source in the territory of a Party;

business person: a national of a Party who is engaged in trade of goods, provision of services or conduct of investment activities;

national: "national" as defined in Chapter 2 (General Definitions), but not including those permanent residents or definitive residents;

labour certification: procedure applied by the competent administrative authority with the purpose of determining if a national of a Party who seeks a temporary entry into the territory of the other Party displaces national workers in the same domestic industry or noticeably harms labour conditions in it;

pattern of practice: a practice repeatedly followed by the immigration authorities of one Party during the representative period immediately before the execution of the same;

temporary entry: entry into the territory of a Party by a business person of the other Party without the intention to establish permanent residence.

2. For purposes of Annex 14.04:

executive functions: functions assigned in an organization to a person who shall have the following basic responsibilities:

(a) managing the administration of the organization, or of a relevant component, or function within it;

(b) establishing the policies and objectives of the organization, component or function; or

(c) receiving supervision or general direction only from executives in a higher level, the board of directors or the administrative council of the organization or its shareholders.

management functions: functions assigned in an organization to a person who shall have the following basic responsibilities:

(a) managing the organization or an essential function within it;

(b) supervising and controlling the work of other professional employees, supervisors or administrators;

(c) having the authority to engage and dismiss or to recommend these actions, and to undertake other actions related to management of the personnel directly supervised by this person, and to perform senior functions within the organization hierarchy or functions related to his position; or

(d) performing discretionary actions related to the daily operation of the function over which this person has the authority; and

functions requiring specialized knowledge: functions that require special knowledge of goods, services, research, equipment, techniques, management of an organization or of its interests and their application in international markets, or an advanced level of knowledge or experience in the processes and procedures of the organization.

Article 14.02 General Principles

This Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the necessity to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

Article 14.03 General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 14.02 and, in particular, shall apply expeditiously those measures so as to avoid unduly delaying or impairing trade in goods or services or conduct of investment activities under this Agreement.

2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 14.04 Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provision of Annex 14.04 and 14.04(1).

2. A Party may refuse a temporary entry to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. When a Party refuses a temporary entry in accordance with paragraph 2, the Party shall:

(a) inform in writing the business person of the reasons for the refusal; and

(b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

5. An authorization of temporary entry under this Chapter, does not supersede the requirements demanded by the exercise of a profession or activity according to the specific rules in force in the territory of the Party authorizing the temporary entry.

Article 14.05 Provision of Information

1. Further to Article 17.03 (Publication), each Party shall:

(a) provide to the other Party such materials as will enable it to become acquainted with its measures relating to this Chapter; and

(b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such

a manner as will enable business persons of the other Party to become acquainted with them.

2. Each Party shall collect, maintain, and make available to the other Party the information respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including data specific to each authorized category.

Article 14.06 Dispute Settlement

1. A Party may not initiate proceedings under Article 19.06 (Consultations) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 14.03 unless:

(a) the matter involves a pattern of practice; and

(b) the business person has exhausted the available administrative review regarding the particular matter.

2. The administrative review referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within 6 months of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 14.07 Relation to Other Chapters

Except for this Chapter, Chapters 1 (Initial Provisions), 2 (General Definitions), 18 (Administration of the Agreement) and 21 (Final Provisions) and Articles 17.02 (Information Centre), 17.03 (Publication), 17.04 (Provision of Information) and 17.06 (Administrative Proceedings for Adopting Measures of General Applications), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

ANNEX 14.04

TEMPORARY ENTRY FOR BUSINESS PERSONS

Section A - Business Visitors

1. Each Party shall grant temporary entry and expedite document verification to a business person seeking to engage in a business activity set out in Appendix 14.04(A)(1), without other requirements than those established by the existing immigration measures applicable to temporary entry, on presentation of:

(a) proof of nationality of a Party;

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry, and evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall consider that a business person satisfies the requirements of paragraph 1(b) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of most of the profits remain outside such territory.

For purpose of this paragraph, a Party that authorizes temporary entry shall normally accept a declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it should be conducted according to its law.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 14.04(A)(1), on a basis no less favorable than that provided under the existing provisions of the measures set out in Appendix 14.04(A)(3).

4. No Party may:

(a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry in accordance with paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider removing their visa or equivalent document requirement.

Section B - Traders and Investors

1. Each Party shall grant temporary entry and provide documentation verification to a business person, who in a capacity that is supervisory, managerial, executive or requiring specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, and seeks to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the other Party into which entry is sought; or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

2. No Party may:

(a) as a condition for authorizing temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry in accordance with paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

Section C - Intra-corporate Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render management, executive or functions requiring specialized knowledge to that enterprise or a subsidiary or affiliate thereof, provided that the business person otherwise complies with effective immigration measures applicable to temporary entry. A Party may require the person to

have been employed continuously by the enterprise for 1 year immediately preceding the date of the application for admission.

2. No Party may:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

ANNEX 14.04 (1)

SPECIAL PROVISION REGARDING TEMPORARY ENTRY OF BUSINESS PERSONS

For Panama:

1. It shall be considered that the business persons who enter Panama under any of the categories established in Annex 14.04 carry out activities that are useful or beneficial to the country.

2. The business persons who enter Panama under any of the categories of Annex 14.04 shall hold a temporary residence permit and may renew this permit for consecutive periods as long as the conditions are maintained. Such persons may not request permanent residence nor change their immigration status, unless they comply with the general provisions of the Migration Law, Decree No. 16, June 30, 1960 and its amendments and of the Decree of the Cabinet No. 363, December 17, 1970.

For the ROC:

1. The business person shall obtain a visitor or resident visa prior to entry. A visitor visa of which validity no longer than 1 year, multiple entry and 90- day duration of stay may be issued. The business person in possession of a resident visa may stay in the ROC provided the work permit remains valid. The duration of stay may be extendable for consecutive periods as long as the conditions justifying it are maintained. Such a person may not require permanent residence unless satisfying the provisions of the Immigration Law.

2. If a business person is defined as a resident in the Mainland China area by the Statute Governing the Relations Between the People of the Taiwan Area and the Mainland Area and its Regulations, the person must apply for entry permit according to the said Statute and Regulations.

APPENDIX 14.04(A)(1)

BUSINESS VISITORS

Research and Design

- Technical, scientific and statistical researchers conducting independent research or research for an enterprise established in the territory of the other Party.

Cultivation, Manufacture and Production Purchasing

- Purchasing and production personnel at managerial level conducting commercial operation for an enterprise established in the territory of the other Party.

Marketing

- Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise established in the territory of the other Party.
- Trade fair and promotional personnel attending a trade convention.

Sales

- Sales representatives and agents taking orders or negotiating contracts on goods or services for an enterprise established in the territory of the other Party but not delivering goods or providing services.
- Buyers purchasing for an enterprise established in the territory of the other Party.

After-sale Service

- Installation, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

General Service

- Consultants conducting business activities at the level of the provision of cross-border services.
- Management and supervisory personnel engaging in a commercial operation for an enterprise established in the territory of the other Party.
- Financial services personnel engaging in commercial operation for an enterprise established in the territory of the other Party.
- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.
- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

APPENDIX 14.04(A)(3)

EXISTING IMMIGRATION MEASURES

In the case of Panama, the Migration Law, Decree No.16, June 30, 1960, and the amendment, published by the Official Gazette 14,167, on July 05, 1960；the Cabinet Decree No.363, December 17, 1970, published by the Official Gazette 16,758,on December 24, 1970.

In the case of the ROC, the Immigration Law, promulgated No. 8800119740 on May 21, 1999; the Statute Governing Issuance of ROC Visas on Foreign Passports, promulgated on June 02, 1999, and the Regulations for Issuance of ROC Visas on Foreign Passports, promulgated on May 31, 2000. Employment Service Act, Promulgated on May 8, 1992, amended on January 21, 2002；Enforcement Rules of the Employment Service Act, amended by the Council of Labor Affairs on October 31, 2001.

PART FIVE
COMPETITION POLICY

CHAPTER 15
COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES

Section A-Competition Policy

Article 15.01 Objectives

The objectives of the this Chapter consist of assuring that the benefits of the trade liberalization are not reduced by anticompetitive activities and promoting the cooperation and coordination between the authorities of the Parties.

Article 15.02 Cooperation

1. The Parties recognize the importance of the cooperation and coordination in the application of their enforcement mechanisms, including notification, consultations and mutual exchange of information regarding the enforcement of the competition laws and policies in the area of free trade as long as they do not contravene legal obligations regarding confidentiality.

2. To such end, each Party shall adopt and maintain measures to prohibit anticompetitive trade practices and shall apply the appropriate enforcement mechanisms under those measures, recognizing that such measures will contribute to the fulfillment of the objectives as set forth in this Agreement.

Section B- Monopolies and State Enterprises

Article 15.03 Monopolies and State Enterprises

1. Nothing in this Agreement shall prevent a Party from designating or maintaining a monopoly or a state enterprise if and whenever its law permits it.

2. If a Party's law does permit it, where the Party intends to designate a monopoly or a state enterprise, and the designation may affect the interests of persons of the other Party, the Party shall:

(a) wherever possible, provide prior written notification to the other Party of the designation; and

(b) endeavor to introduce at the time of designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits under this Agreement.

3. Each Party shall ensure, if designation or maintenance of a monopoly or a state enterprise is permitted by the Party's law, that any monopoly or any state enterprise designated or maintained by the Party:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly or a state enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopolized goods or services such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;

(b) provides non-discriminatory treatment to investments of investors, to goods and to service providers of the other Party in its purchase or sale of the monopolized goods or services in the relevant market; and

(c) does not use its monopoly position to engage, either directly or indirectly, in anticompetitive practices that adversely affect an investment of an investor of the other Party.

4. Paragraph 3 does not apply to procurement by governmental agencies of goods or services for official purposes and not with a view to commercial resale or with a view to use in the production of goods or the provision of services for commercial sale.

PART SIX
INTELLECTUAL PROPERTY RIGHTS

CHAPTER 16
INTELLECTUAL PROPERTY

Section A - General Provisions

Article 16.01 General Provisions

The Parties agree that TRIPS and the following intellectual property (IP) related international conventions shall govern and apply to all intellectual property issues arising from this Agreement:

(a) the Paris Convention for the Protection of Industrial Property (1967);

(b) the Bern Convention for the Protection of Literary and Artistic Works (1971);

(c) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;

(d) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Reproduction;

(e) the Convention of the International Union for the Protection of New Varieties of Plants (UPOV), Act of 1978 or Act of 1991 according to the country;

(f) the World Intellectual Property Organization (WIPO) Copyright Treaty of 1996; and

(g) the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty of 1996.

Section B - Protection of the Intellectual Property Rights

Article 16.02 General Obligations

1. Each Party shall accord nationals of the other Party appropriate protection and

enforcement of intellectual property rights referred to in this Chapter and shall ensure that measures intended for the enforcement of these rights do not create obstacles to legitimate trade.

2. Each Party may accord in its legislation a broader protection to the intellectual property rights than the protection required in this Chapter, provided that this protection is not inconsistent with the provision of the Chapter.

Article 16.03 Exhaustion of the Copyright and Related Rights

1. The Parties agree to apply the principle of the copyright and related rights exhaustion, meaning that the holder of the copyright and related rights shall not hinder free trade of legitimate products in a Party, once legally introduced for trade into that Party, by the same right or license holder or by any other authorized third person, provided that these products and the packages that are in immediate contact with them have not suffered any modification or alteration.

2. The Parties have one year from the entry into force of this Agreement to incorporate this principle into its national legislation.

Article 16.04 Protection of Geographic Indications

1. Each Party shall recognize and protect the geographical indications of another Party provided for in this Article.

2. Neither Party shall permit the importation, manufacture or sale of goods using a geographical indication protected by the other Party, unless it is processed and certified in the originating Party according to the applicable legislation governing the geographic indication.

3. The provisions in paragraphs 1 and 2 shall only be effective with regard to the geographical indications that are protected by the legislation of the Party demanding protection and whose definition agreed upon by section 3 of TRIPS. Likewise, to accede to protection, each Party shall notify the other Party of the geographical indications, which comply with the above-mentioned requirements and shall be included in the scope of protection.

4. The above mentioned provisions shall be understood without prejudice to the recognition that the Parties may accord to the homonymous geographical indications that may lawfully belong to a non-Party.

Appellation of Origin for Seco

5. The ROC shall recognize the appellation of origin "Seco" for exclusive use as a kind of spirits made from sugarcane originating in Panama. Consequently it shall not be permitted in the ROC the importation, manufacture or sale of this product, unless it is processed in Panama, according to Panamanian laws, rules, technical regulations and standards applicable to the said product.

6. **The provisions of Section C (Enforcement) of this Chapter, as well as those established in Article 23 (1) of TRIPS shall be applicable to the appellation of origin for Seco.**

Article 16.05 Protection of Traditional Knowledge

1. Each Party shall protect the collective intellectual property rights and the traditional knowledge of indigenous people on their creations, subject to commercial use, through a special system of registration, promotion and marketing of their rights, aiming at emphasizing the indigenous sociological and cultural values of the indigenous people and the local communities and bring to them social justice.

2. Each Party shall recognize that the customs, traditions, beliefs, spirituality, religiosity, cosmos vision, folklore expressions, artistic manifestations, traditional skills and any other form of traditional expression of the indigenous people and local communities are a part of their cultural heritage.

3. The cultural heritage shall not be subject to any form of exclusivity by unauthorized third parties applying the intellectual property system, unless the request is done by the indigenous people and local communities or by third parties with their authorization.

Article 16.06 Protection of Folklore

Each Party shall ensure the effective protection of all folklore expressions and manifestations and of artistic manifestations of the traditional and popular culture of the indigenous and local communities.

Article 16.07 Relation between Access to Genetic Resources and Intellectual Property

1. Each Party shall protect the access to its genetic resources and the traditional knowledge developed by indigenous people and local communities on the uses of the biological resources containing these genetic resources, against the indiscriminate use of biological diversity, as well as ensuring that the Party will participate in benefits derived from the use of its genetic resources.

2. Each Party shall accord a fair and equitable participation in the benefits derived from the access to its genetic resources and from the uses of its traditional knowledge

and folklore expressions.

3. Each Party shall ensure that the protection accorded to the industrial property shall safeguard its biological and genetic heritage. Consequently, the licensing of patents on inventions developed from material obtained from such heritage or traditional knowledge shall be subject to the condition that this material was acquired according to relevant national and international laws and regulations.

Article 16.08 Plant breeders

1. Each Party shall recognize and ensure the so called "breeder's right" through a special system of registration as provided for in the relevant laws and regulations in the territory of each Party, as well as through the mechanism of mutual recognition to be developed as agreed upon by the Parties, with the aim of protecting the rights originating from the use of plant varieties.

2. The right accorded to the breeder of a plant variety is an intellectual property right which accords to its holder an exclusive right, so that his or her authorization is required to conduct some acts of exploitation of the protected variety.

3. The breeder's right shall be marketable, transferable and inheritable. The owner of the right may accord to third persons license to exploit the protected varieties.

4. The breeder's right covers all plant species and genera and shall be applied to any kind of plants and seeds, and to any part thereof that can be used as reproduction or propagation material. The breeder's right shall also be accorded where the variety is new, different, homogeneous and stable.

5. The right conferred on the breeder shall be granted for twenty (20) years in Panama and for fifteen (15) years in the ROC from the date of concession of the title of protection. In the case of vines, forest trees, fruit trees and ornamental trees, including in each case their rootstocks, the protection shall have a term of twenty five (25) years in Panama and of fifteen (15) years in the ROC. Once the protection term expires, the varieties shall be considered as in the public domain.

Section C - Enforcement

Article 16.09 Applications

1. The Parties confirm the effective rights and obligations among them with respect to the procedures of observance in accordance with TRIPS.

2. The Parties recognize that the growing importance of IP protection in traditional knowledge and folklore, genetic resources, geographic indications, plant breeders and

other related matters is critical to economic competitiveness in the knowledge-based economy and to sustainable economic development. The Parties, therefore, confirm that either Party which is not party to one or more of the multilateral agreements listed in Article 16.01 shall undertake with the best efforts to pursue affiliation, in due course, to the said agreements.

Article 16.10 Enforcement of Intellectual Property Rights

Each Party shall establish in its legislation administrative, civil and criminal procedures, effective with the objective to reach an adequate and effective protection of the intellectual property rights. Also for all the procedures as mentioned above, the due process as regards the relationship between the plaintiff and the defendent shall be taken into account.

Article 16.11 Enforcement of Border Measures

Each Party shall adopt legislation on measures in border control, to the extent that the customs authorities shall be granted action to inspect or to retain merchandise, with the purposes of suspending or avoiding the free circulation of the merchandise involved to accord the rightholders protection.

Article16.12 Transparency

The Parties shall notify the Committee on Intellectual Property under this Agreement the laws, regulations and the dispositions. In relation to final judicial decisions and administrative rulings of general application, the foregoing shall be published, or where such publication is not practical made publicly available, to enable the governments of each Party and right holders to become acquainted with them.

Article 16.13 Committee on Intellectual Property

1. The Parties hereby establish the Committee on Intellectual Property, as set out in Annex 16.13, to discuss and review all IP related issues arising from this Agreement.

2. An Expert Group of Intellectual Property shall be established under the Committee on Intellectual Property, composed of three IP experts from the Intellectual Property Office in each Party. The Committee or the Expert Group on Intellectual Property shall meet, in principle, once a year or as requested by either Party, subject to mutual agreement. The location of the meeting shall rotate between the Parties.

Article 16.14 Technical Cooperation

The Parties shall establish a system of technical cooperation between the Parties and within the framework of the WTO on matters relating to intellectual property,

particularly in areas of newly developed IP-related issues.

ANNEX 16.13

COMMITTEE ON INTELLECTUAL PROPERTY

The Committee on Intellectual Property under Article 16.13 shall be composed of:

(a) in the case of Panama, the Ministry of Trade and Industries through the Vice-ministry of Foreign Trade, or its successor; and

(b) in the case of the ROC, Ministry of Economic Affairs through the Intellectual Property Office, or its successor.

PART SEVEN
ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

CHAPTER 17
TRANSPARENCY

Article 17.01 Definitions

For purposes of this Chapter, "administrative ruling of general application" means an administrative ruling or interpretation that applies to all persons and situations of fact 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 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.

Article 17.02 Information Centre

1. Each Party shall designate an office as an information centre for facilitating the communications between the Parties on any subject covered in this Agreement.

2. When a Party requests it, the information centre of the other Party shall indicate the office or official responsible for the matter and shall offer assistance required for facilitating communications with the requesting Party.

Article 17.03 Publication

Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application which are in reference to any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable the other Party and any interested person to become acquainted with them.

Article 17.04 Provision of Information

1. Each Party shall, to the maximum extent possible, notify the other Party of any actual measure in force which it considers could affect in the future or might already be materially affecting the interests of the other Party in terms of this Agreement.

2. Each Party, on request of the other Party, shall provide information and respond promptly to questions pertaining to any actual measure in force.

3. Any notification or the supplying of information on measures in force or proposed as referred to under this Article shall be made without prejudice to whether the measure is consistent with this Agreement.

Article 17.05 Guarantees on Hearing, Legality and Due Process

Each Party shall ensure that in legal and administrative proceedings related to the application of any measure referred to in Article 17.03 the guarantees on hearing, legality and due process established in their own laws are respected in the sense of Articles 17.06 and 17.07.

Article 17.06 Administrative Proceedings for Adopting Measures of General Applications

For purposes of administering in a consistent, impartial and reasonable manner all measures of general application which affect aspects covered by this Agreement, each Party shall, in its administrative proceedings which are applying measures referred to in Article 17.03 with respect to persons, goods or services in particular of the other Party in specific cases, ensure that:

(a) wherever possible, persons of the other Party that would be directly affected by a proceeding are provided with reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a declaration of the authority which legally corresponds to the initiation of the proceeding and a general description of all of the issues in controversy;

(b) the said persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, provided that the time, the nature of the proceeding and the public interest permit; and

(c) its procedures are in accordance with its legislation.

Article 17.07 Review and Appeal

1. Each Party shall maintain tribunals or judicial proceedings or proceedings of an administrative nature according to the Party's laws for purposes of a prompt and timely review and, where warranted, correction of definitive administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, before the said tribunals or in its procedures, the parties to the proceeding have the right to:

(a) a reasonable opportunity to support or defend their respective positions and arguments; and

(b) a decision based on the evidence and arguments presented by them.

3. Subject to appeal or further review as provided for in its laws, each Party shall ensure that such decisions are implemented by the offices or authorities.

Article 17.08 Communications and Notifications

Except any provision to the contrary, a communication or notification shall be considered delivered to a Party upon its receipt by the national section of the Secretariat of such Party.

CHAPTER 18
ADMINISTRATION OF THE AGREEMENT

Section A - Commission, Sub-commission and Secretariat

Article 18.01 Administrative Commission of the Agreement

1. The Parties hereby establish the Administrative Commission of the Agreement, which is composed of the officials referred to in Annex 18.01 or of the persons designated by them.

2. The Commission shall have the following functions:

(a) supervising the accomplishment and correct implementation of the provisions of this Agreement;

(b) evaluating the results achieved by the implementation of this Agreement;

(c) monitoring developments and making recommendations to the Parties for modifications as it deems appropriate;

(d) resolving any dispute arising from the interpretation or application of this agreement, in accordance with Chapter 19 (Dispute Settlement);

(e) supervising the work of all committees established or created under this Agreement and pursuant to Article 18.05(3); and

(f) cosidering any other matter that may affect the functioning of this Agreement or that is entrusted to the Commission by the Parties.

3. The Commission may:

(a) create *ad hoc* or standing committees, or expert groups as necessary for implementing this Agreement, and assign functions to them;

(b) for purposes of accomplishing the objectives of this Agreement, modify:

(i) the schedule of goods of a Party contained in Annex 3.04 (Tariff Reduction Schedule) with the purposes of incorporating one or more of the goods excluded in the Tariff Reduction Schedule,

(ii) the period established in Annex 3.04 (Tariff Reduction Schedule) with the purpose of accelerating tariff reduction,

(iii) the rules of origin set out in Annex 4.03 (Specific Rules of Origin),

(iv) the Uniform Regulations,

(v) Annex I, II, III and IV of Chapter 10 (Investment),

(vi) Annex I, II and V of Chapter 11 (Cross-border Trade in Services), and

(vii) Annex VI of Chapter 12 (Financial Services);

(c) seek the advice of non-governmental persons or groups;

(d) make and approve regulations required for the implementation of this Agreement; and

(e) take any other action in the exercise of its functions as the Parties may agree upon.

4. The modifications referred to in paragraph 3(b) shall be implemented by the Parties according to their respective national laws.

5. The Commission may establish its rules and procedures, and all its decisions shall be made by consensus.

6. The Commission shall convene at least once a year in regular session, and shall convene by request of a Party in special session. The location of the meeting shall rotate between the Parties.

Article 18.02 Administrative Sub-commission of the Agreement

1. The Parties hereby establish the Administrative Sub-commission of the Agreement, which is composed of the officials as set out in Annex 18.02 or persons designated by them.

2. The Sub-commission shall have the following functions:

(a) developing and reviewing the technical documents necessary for taking decisions under the Agreement;

(b) following up the decisions adopted by the Commission;

(c) without prejudice to Article 18.01(2), may also supervise the work of all committees, sub-committees and expert groups established under this Agreement and pursuant to Article 18.05(3); and

(d) reviewing any other matter that may affect the functioning of this Agreement and that is assigned by the Commission.

3. The Commission may establish rules and procedures applicable to the proper operation of the Sub-commission.

Article 18.03 Secretariat

1. The Commission shall establish and oversee a Secretariat which is composed of their national sections.

2. Each Party:

(a) shall designate a permanent office or official responsible for acting on behalf of the national section of the Secretariat of such Party and shall notify the Commission of the address, phone number and any other relevant information where its national section is located;

(b) shall be responsible for:

(i) the operation and costs of its section; and

(ii) the remuneration and payment of the expenses of arbitrators, their assistants and the assigned experts under this Agreement, as set out in Annex 18.03; and

(c) shall designate a Secretary to serve in its national section, who shall be responsible for its administration.

3. The Secretariat shall have the following functions:

(a) providing assistance to the Commission and to the Sub-commission;

(b) providing administrative support to the arbitral groups created according to Chapter 19 (Dispute Settlement), in accordance with the proceedings established pursuant to Article 19.13(Model Rules of Procedure);

(c) by instructions of the Commission, supporting the work of the committees, sub-committees and expert groups established under this Agreement;

(d) conducting communications and notifications pursuant to Article 17.08 (Communications and Notifications); and

(e) other matters as assigned by the Commission.

Section B- Committees, Sub-committees and Expert Groups

Article 18.04 General Provisions

1. The provisions stated in this section shall, in a supplementary manner, apply to all committees, sub-committees and expert groups created under this Agreement.

2. Each committee, sub-committee and expert group shall be composed of representatives of each Party and all their decisions shall be made by consensus.

Article 18.05 Committees

1. The Commission may create committees other than those established according to Annex 18.04.

2. All committees shall have the following functions:

(a) monitoring by its jurisdiction the implementation of the Chapters of this Agreement;

(b) reviewing matters submitted by a Party claiming that a measure in force of the other Party by its jurisdiction has affected the effective implementation of the undertakings included in the Chapters of this Agreement;

(c) requesting the competent authority to prepare technical reports and taking necessary actions to settle the issue;

(d) assessing and recommending proposals to the Commission to modify, amend or add to the provisions of this Agreement within its competency;

(e) proposing to the Commission the revision of measures in force of a Party which it considers may be inconsistent with the obligations of this Agreement or may cause nullification or impairment in the sense of Annex 19.03 (Nullification and Impairment); and

(f) carrying out other tasks that the Commission may assign to it pursuant to the provisions of this Agreement and other instruments derived from it.

3. The Commission and the Sub-commission shall supervise the work of all committees established or created under this Agreement.

4. Each committee may establish its own rules and procedures and shall meet upon the request of a Party or the Commission.

Article 18.06 Sub-Committees

1. With the aim of delegating its functions, a committee may create standing sub-committees for matters specifically delegated to them, and supervise their work. Each sub-committee shall have the same functions as a committee on matters for which it was delegated.

2. Each sub-committee shall report to the committee on the implementation of its mandate.

3. The rules and procedures of a sub-committee may be established by the committee that created it. Sub-committees shall meet at the request of a Party or their corresponding committee.

Article 18.07 Expert Groups

1. Notwithstanding Article 18.01(3)(a), a committee or sub-committee may also create *ad hoc* expert groups, with the purpose of conducting necessary technical research that it deems appropriate for accomplishing its functions, and shall supervise their work. The expert groups shall strictly accomplish what they have been entrusted to do, and within the terms and timeframes established. Each expert group shall report to the committee or sub-committee that created it.

2. The rules and procedures of an expert group may be established by the committee or sub-committee that created it.

ANNEX 18.01

MEMBERS OF THE ADMINISTRATIVE COMMISSION OF THE AGREEMENT

The Administrative Commission of the Agreement under Article 18.01(1) shall be composed of:

(a) in the case of Panama, the Minister of Trade and Industries, or his successor; and

(b) in the case of the ROC, the Minister of Economic Affairs, or his successor.

ANNEX 18.02

MEMBERS OF THE ADMINISTRATIVE SUB-COMMISSION OF THE AGREEMENT

The Administrative Sub-commission of the Agreement under Article 18.02 is composed of:

(a) in the case of Panama, the National Director for International Trade Negotiations, Ministry of Trade and Industries, or his successor; and

(b) in the case of the ROC, the Director General of the Bureau of Foreign Trade, Ministry of Economic Affairs, or his successor.

ANNEX 18.03

REMUNERATION AND PAYMENT OF EXPENSES

1. The Commission shall establish the amounts of remuneration and expenses that shall be paid to arbitrators, their assistants and experts.

2. The remuneration for these arbitrators, their assistants and experts, their travel and lodging expenses, and all the general expenses of arbitral groups, shall be covered in equal parts by the Parties.

3. Each arbitrator, assistant and expert shall keep a record and render a final account of the person's time and expenses; the arbitral group shall keep a similar record and a final account of all general expenses.

ANNEX 18.04
COMMITTEE

Committee on Trade in Goods (Article 3.16)

Committee on Sanitary and Phytosanitary Measures (Article 8.11)

Committee on Standards, Metrology and Authorization Procedures(Article 9.12)

Committee on Investment and Cross-border Trade in Services (Article 11.14)

Committee on Financial Services (Article 12.11)

Committee on Intellectual Property (Article 16.13)

CHAPTER 19
DISPUTE SETTLEMENT

Section A - Dispute Settlement

Article 19.01 Definitions

For purposes of this Chapter, the following definitions shall be understood as:

complaining Party: the Party that makes a claim;

consulting Party: any Party that holds consultations under Article 19.06;

defendant Party: the Party against which a complaint is made; and

disputing Party: the complaining Party or the defendant Party.

Article 19.02 General Provisions

1. The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. Any settlement of matters raised under this Chapter shall be consistent with this Agreement and shall not nullify nor impair the benefits for the Parties deriving from it, nor shall impede the attainment of any objective of this Agreement.

3. The mutually satisfactory solutions reached by the Parties of any matters raised in accordance with the provisions of this Chapter, shall be notified to the Commission within a period of fifteen (15) days after the agreement on the settlement of the dispute in question is reached.

Article 19.03 Scope of Application

Except as otherwise provided for in this Agreement, the procedures of this Chapter shall apply:

(a) to prevent or settle disputes between the Parties regarding the application or interpretation of this Agreement; or

(b) when a Party considers that an actual measure of the other Party is or would be inconsistent with the obligations of this Agreement or might cause nullification or impairment as set out in Annex 19.03.

Article 19.04 Choice of Fora

1. The disputes arising in connection with the provisions of this Agreement and the WTO Agreement or agreements negotiated in accordance with the WTO Agreement may be settled in one of those fora, as the complaining Party chooses.

2. Where a Party has requested the establishment of an arbitral group under Article 19.09 or has requested the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO Agreement, the forum chosen shall be used to the exclusion of the other.

Article 19.05 Urgent Cases

1. In cases of urgency including such cases, as contemplated in paragraphs 2 and 3, the Parties and the arbitral groups shall make every effort to accelerate to the greatest extent the proceedings.

2. In cases of perishable agricultural goods, fish and fish products that are perishable:

(a) a consulting Party may request in writing that the Commission meet, when an issue is not resolved in accordance with Article 19.06 within fifteen (15) days following the submission of the request for consultations; and

(b) the Party that has requested the intervention of the Commission, may request in writing the formation of an arbitral group when the issue has not been resolved within fifteen (15) days after the meeting of the Commission, or if the Commission has not met, within fifteen (15) days after submitting the request for such a meeting.

3. In cases of urgency other than those referred to in paragraph 2, the Parties shall try to the extent possible to reduce by half the timeframe as provided for in Articles 19.07 and 19.09 for requesting a meeting of the Commission and the establishment of an arbitral group respectively.

Article 19.06 Consultations

1. A Party may request in writing to enter into consultations with the other Party regarding any actual measure or any other matter that the Party considers may affect the operation of this Agreement in terms of Article 19.03.

2. The complaining Party requesting consultations shall submit their request to the responsible agency of the other Party.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution on any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the consulting Parties shall:

(a) provide information to allow the undertaking of the examining of how the actual measures or any other matter might affect the operation of this Agreement; and

(b) treat the confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

The Initiation of the Proceedings

Article 19.07 Commission Intervention

1. Any consulting Party may request in writing that the Commission meet provided that:

(a) an issue that has not been resolved in accordance with Article 19.06 within thirty (30) days following the submission of the request for consultations, unless that the Parties agree another deadline by mutual consent; or

(b) the Party that has been delivered the request for consultations has not answered within the deadline of ten (10) days following the submission of the request.

2. The request referred to in paragraph 1 shall indicate the measure or any other issue that is the object of a claim and the applicable provisions of this Agreement.

3. Unless otherwise decided, the Commission shall meet within ten (10) days following the submission of the request, and with the purpose of obtaining a mutually satisfactory dispute resolution, may:

(a) call on technical advisors or create expert groups as it considers necessary;

(b) request the good offices, conciliation or mediation of a person or group of persons or other alternative ways of dispute resolution; or

(c) formulate recommendations.

4. Unless otherwise decided, the Commission shall consolidate 2 or more proceedings under this Article relating to the same measure. The Commission may accumulate 2 or more proceedings under this Article in relation to other issues, when considered convenient to examine them jointly.

Article 19.08 Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are initiated on a voluntary basis if the Parties so agree.

2. Proceedings involving good office, conciliation and mediation, and in particular the positions of the Parties to the dispute during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by either Party to a dispute. They may begin and be terminated at any time.

Proceeding of Arbitral Group

Article 19.09 Request for the Establishment of an Arbitral Group

1. The Party that has requested the intervention of the Commission, according to Article 19.07, may request in writing to the other Party for the establishment of an arbitral group, when the dispute in question cannot be resolved within:

(a) thirty (30) days after the meeting of the Commission, or if this has not been held, thirty (30) days after the submission of the request for a meeting of the Commission;

(b) thirty (30) days after the Commission has met and accumulated the most recent issue in accordance with Article 19.07(4); or

(c) any other period that the Parties may agree upon.

2. The request for the establishment of an arbitral group shall be made in writing, and shall state whether the consultations have been held, and in case that the Commission has met, state the actions taken; and the Party shall give the reason for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

3. Within fifteen (15) days of the submission of the request to the responsible agency of the other Party, the Commission shall establish the arbitral group in accordance with Article 19.12.

4. Unless the Parties agree otherwise, the arbitral group shall be established and shall exercise its functions in accordance with the provisions of this Chapter.

Article 19.10 List of Arbitrators

1. Upon entry into force of this Agreement, the Parties shall establish and maintain a list of up to twenty individuals with the required qualification to serve as arbitrators. Said list shall be composed of the "List of Arbitrators of the Parties" and the "List of Arbitrators of Non-Party Countries". Each Party may designate five (5) national arbitrators to form the "List of Arbitrators of the Parties", and five (5) arbitrators of Non-Party countries to form the "List of Arbitrators of Non-Party Countries".

2. The rosters of arbitrators might be modified every 3 years. Notwithstanding, the Commission might revise, by request of a Party, the roster of arbitrators before the expiration of this period.

3. The members of the rosters of arbitrators shall meet the qualifications set forth in Article 19.11.

Article 19.11 Qualifications of the Arbitrators

1. All the arbitrators shall meet the following qualifications:

(a) have specialized knowledge or experience in law, international trade, other matters related to this Agreement, or in the settlement of disputes arising from international trade agreements;

(b) be elected strictly according to their objectivity, integrity, reliability and good judgement;

(c) be independent, not associated with, and not accepting instructions from any Party; and

(d) observe the Code of Conduct that the Commission establishes.

2. Persons that have participated in a dispute under Article 19.07 (3) cannot serve as arbitrators for the same dispute.

Article 19.12 Composition of the Arbitral Group

1. In the establishment of the arbitral group, the Parties shall observe the following procedures:

(a) the arbitral group shall be composed of three members;

(b) the Parties shall endeavor to agree on the designation of the chair of the arbitral group within fifteen (15) days after the submission of the request for the establishment of the arbitral group;

(c) if the Parties do not reach an agreement within the above-mentioned timeframe, on the designation of the chair of the arbitral group, he or she shall be chosen by drawing lot from the "List of Arbitrators of non-Party Countries";

(d) within fifteen (15) days after the designation of the chair, each Party shall select an arbitrator from the "List of Arbitrators of the Parties", and the arbitrator selected could be one of the disputing Party's nationality; and

(e) if a disputing Party does not select an arbitrator, the arbitrator shall be chosen by drawing lot from the "List of Arbitrators of the Parties" and shall be of that Party's nationality.

2. Where a disputing Party considers that an arbitrator has violated the Code of Conduct, the Parties shall hold consultations and decide whether to remove that arbitrator and select a new one pursuant to the provisions of this Article.

Article 19.13 Model Rules of Procedure

1. Upon the entry into force of this Agreement, the Commission shall establish the Model Rules of Procedure in accordance with the following principles:

(a) the procedures shall ensure the right of a hearing before the arbitral group and the opportunity to present allegations and rebuttals in writing; and

(b) the hearings before the arbitral group, the deliberations and the preliminary report, as well as all the writings and communications presented in it shall be confidential.

2. The Commission may modify the Model Rules of Procedure.

3. Unless the Parties agree otherwise, the proceeding before the arbitral group shall follow the Model Rules of Procedure.

4. Unless the Parties agree otherwise, the mandate of the arbitral group shall be:

"To examine in light of the provisions of this Agreement the dispute submitted for its consideration under the terms set forth in the request for the meeting of the Commission, and make reports as provided for in Articles 19.15 and 19.16".

5. If the complaining Party claims that a matter was a cause of nullification or impairment of benefits in the sense of Annex 19.03, the mandate shall state it.

6. When a disputing Party requests that the arbitral group reaches conclusions about the extent of the adverse trade effects brought upon by the measure adopted by the other Party and considered by the disputing Party as inconsistent with the Agreement, or that the measure has caused nullification or impairment in the sense of Annex 19.03, the mandate shall state it.

Article 19.14 Information and Technical Advice

At the request of a disputing Party or *ex officio,* the arbitral group may seek information and technical advice from the persons or institutions that it deems appropriate under the Model Rules of Procedure.

Article 19.15 Preliminary Report

1. The arbitral group shall issue a preliminary report based on the arguments and submissions presented by the Parties and on any information received in accordance with Article 19.14, unless the Parties agree otherwise.

2. Unless the Parties agree otherwise, the arbitral group shall present to the Parties, within ninety (90) days of the nomination of the last arbitrator a preliminary report which includes :

(a) findings of fact, including any findings pursuant to a request under Article 19.13(6);

(b) a decision about the inconsistency or possible inconsistency of the measure in question with the obligations arising from this Agreement or about the measure being a cause of nullification or impairment as set out in Annex 19.03 or any other decision requested in the mandate;

(c) its recommendations, if any, to settle the dispute; and

(d) if this is the case, the timeframe for the implementation of the report in accordance with paragraphs 2 and 3 of Article 19.17.

3. Arbitrators may furnish separate opinions in writing on matters in which the consensus is not reached.

4. The Parties may make comments in writing to the arbitral group about the preliminary report within fourteen (14) days of its presentation.

5. In such an event and after examining the written comments, the arbitral group may *ex officio* or at the request of a disputing Party:

(a) request the comments from the Parties;

(b) reconsider its preliminary report; and

(c) take any steps deemed appropriate.

Article 19.16 Final Report

1. The arbitral group shall notify the Parties of its final report by majority vote, including any separate opinions in writing on matters in which there is no consensus, within thirty (30) days of the presentation of the preliminary report, unless the Parties agree on a different timeframe.

2. No arbitral group may reveal in its preliminary or final report the identity of the arbitrators that have joined either the majority or the minority vote.

3. The final report shall be published within fifteen (15) days of its notification to the Parties, unless they agree otherwise.

Article 19.17 Implementation of the Final Report

1. The final report shall make mandatory for the Parties the requirements and periods that it orders. The timeframe for implementing the final report shall not exceed 6 months from the date on which the final report was notified to the Parties, unless the Parties agree on a different timeframe.

2. If the final report of the arbitral group states that the measure is inconsistent with this Agreement, the defendant Party shall refrain from executing the measure or shall repeal it. The arbitral group shall determine a timeframe for implementation, taking into account the complexity of the *de facto* and *de jure* issues implied and the nature of the final report. This period shall not exceed 180 days.

3. If the final report states that the measure is a cause of nullification or impairment as set out in Annex 19.03, it shall specify the degree of nullification or impairment and may suggest the adjustments that it considers mutually satisfactory for the Parties. At the same time, the timeframe for reaching mutually satisfactory solutions should be determined, taking into account, the complexity of the *de facto* and *de jure* issues implied and the nature of the final report. This period should not exceed 180 days.

4. Within 5 days after the expiration of the timeframe determined by the arbitral group, the defendant Party shall inform the arbitral group and the other Party of actions adopted to comply with the final report. Within thirty (30) days after expiration of the timeframe as referred to in paragraphs 2 and 3, the arbitral group shall determine whether the defendant Party has complied with the final report. In case the arbitral group determines that the defendant Party has not complied with the final report, the complaining Party may suspend benefits in accordance with Article 19.18.

Article 19.18 Suspension of Benefits

1. The complaining Party may suspend the benefits to the defendant Party arising from this Agreement that have an effect equivalent to the benefits not received, if the arbitral group decides that:

(a) a measure is inconsistent with the obligations of this Agreement and that the defendant Party has not complied with the final report within the timeframe determined by the arbitral group in the final report; or

(b) a measure is a cause of nullification or impairment as set out in Annex 19.03 and the Parties have not reached a mutually satisfactory agreement on the dispute within the timeframe determined by the arbitral group.

2. The suspension of benefits shall last until the defendant Party complies with the final report or until the Parties reach a mutually satisfactory agreement on the dispute, as the case may be. When the defendant Party, after suspension of benefits, considers that it has adopted measures necessary to implement the final report and the complaining Party does not restore benefits previously suspended, it may ask for the establishment of an arbitral group in accordance with paragraph (4) to determine if it has complied with the final report.

3. In considering the benefits to be suspended in accordance with this Article:

(a) the complaining Party shall endeavor first to suspend benefits within the same sector or sectors affected by the measure or by other matter considered by the arbitral group as inconsistent with the obligations arising from this Agreement or that has been a cause of nullification or impairment as set out in Annex 19.03; and

(b) if the complaining Party considers that it is not feasible nor effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

4. Once the benefits have been suspended pursuant to this Article, the Parties, by request in writing from a Party, shall establish an arbitral group if necessary to determine if the final report has been complied with or if the level of benefits suspended to the defendant Party by the complaining Party under this Article is obviously excessive. To the extent practicable, the arbitral group shall be composed of the same arbitrators who have knowledge over the dispute.

5. The proceedings before the arbitral group established for purposes of paragraph 4 shall be carried forward pursuant to the Model Rules of Procedure set out in Article 19.13 and the final report shall be issued within sixty (60) days of the nomination of the last arbitrator, or any other timeframe agreed upon by the Parties. If this arbitral group was composed of the same arbitrators who have knowledge over the dispute, it shall present its final report within thirty (30) days of the presentation of the request referred to in paragraph 4.

Section B –Domestic Proceedings and Settlement of Private Commercial Disputes

Article 19.19 Interpretation of the Agreement Before Judicial and Administrative Proceedings

1. The Commission shall endeavor to give, as soon as possible, an appropriate and non-binding interpretation or response, where:

(a) a Party considers that a matter of interpretation or application of this Agreement arisen or that arises in a judicial or administrative proceeding of the other Party merits an interpretation by the Commission; or

(b) a Party communicates to the Commission of the reception of a request for an opinion about a matter of interpretation or implementation of this Agreement in a judicial or administrative proceeding of this Party.

2. The Party in which territory a judicial or administrative proceeding is taking place shall present in the proceeding the interpretation or response of the Commission in accordance with the procedures of that forum.

3. When the Commission does not agree upon an interpretation or response, a Party may submit its own opinion to the judicial or administrative proceeding in accordance with the procedures of that forum.

Article 19.20 Private Rights

No Party may provide for a right of action under its domestic law against the other Party on the grounds that a measure of that Party is inconsistent with this Agreement.

Article 19.21 Alternative Dispute Settlement Methods Between Individuals

1. Each Party shall promote and facilitate arbitration and other alternative methods to settle international commercial disputes between individuals in the territories of the Parties.

2. For purposes of paragraph 1, each Party shall have appropriate procedures ensuring the observance of the international arbitration conventions that it has ratified and the recognition and implementation of arbitral awards in these disputes.

3. The Commission may establish a Consultative Committee on Private Commercial Disputes, composed of persons with specialized knowledge or experience in the resolution of private international commercial disputes. Once the Committee is created, it shall present reports and recommendations in general nature about the existence, use and efficiency of arbitration and other procedures for dispute settlement.

ANNEX 19.03

NULLIFICATION AND IMPAIRMENT

1. A Party may resort to the dispute settlement mechanism of this Chapter, when in light of the application of a measure from the other Party that does not contravene this Agreement, it considers that the benefits that might be reasonably expected are nullified or impaired in:

(a) Part Two (Trade in Goods);

(b) Part Three (Technical Barriers to Trade); or

(c) Chapter Eleven (Cross-border Trade in Services)

2. With respect to any measure subject to an exception in accordance with Article 20.02 (General Exceptions), a Party may not invoke:

(a) paragraph 1(a) or (b), to the extent that the benefit arises from any cross-border trade in services provision of Part Two (Trade in Goods), or of Part Three (Technical Barriers to Trade); or

(b) paragraph 1 (c).

3. To determine the elements of nullification and impairment, the Parties may take into account the principles set out in the jurisprudence of paragraph 1(b) of Article XXIII of GATT 1994.

CHAPTER 20
EXCEPTIONS

Article 20.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

IMF: the International Monetary Fund;

international capital transactions: "international capital transactions" as defined under the Articles of Agreement of the International Monetary Fund;

payments for current international transactions: "payments for current international transactions" as defined under the Articles of Agreement of the International Monetary Fund;

tax convention: a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

transfers: international transactions and related international transfers and payments.

Article 20.02 General Exceptions

1. Article XX of GATT 1994 and its interpretative notes are incorporated into this Agreement and form an integral part of it for purposes of:

(a) Part Two (Trade in Goods), except to the extent that some of its provisions apply to services or investment;

(b) Part Three (Technical Barriers to Trade), except to the extent that some of its provisions apply to services or to investment; and

(c) Part Five (Competition Policy), to the extent that some of its provisions apply to goods.

2. Subparagraphs (a), (b) and (c) of Article XIV of GATS are incorporated into this Agreement and form an integral part of it, for purposes of:

(a) Part Two (Trade in Goods), to the extent that some of its provisions apply to services;

(b) Part Three (Technical Barriers to Trade), to the extent that some of its provisions apply to services;

(c) Chapter 10 (Investment);

(d) Chapter 11 (Cross-border Trade in Services);

(e) Chapter 12 (Financial Services);

(f) Chapter 13 (Telecommunications);

(g) Chapter 14 (Temporary Entry for Business Persons); and

(h) Chapter 15 (Competition Policy, Monopolies and State Enterprises), to the extent that some of its provisions apply to services.

Article 20.03 National Security

Nothing in this Agreement shall be construed to:

(a) require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purposes of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) prevent any Party from taking action in fulfilling of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 20.04 Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers when the Party is facing serious balance of payments difficulties, or the threat thereof, so long as such restrictions are consistent with this Article. A Party taking such measure shall do so in accordance with the conditions established under Article XII of GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994.

2. The Party shall notify the other Party within thirty (30) days after the adoption of a measure in accordance with paragraph 1. In the event that both Parties become party to the Articles of Agreement of the IMF, the procedure of the following paragraph (paragraph 3 of this Article) should be followed.

3. As soon as feasible after a Party has applied a measure conforming with this Article, in accordance with the Party' s international obligations, the Party shall:

(a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF;

(b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties; and

(c) adopt or maintain economic policies consistent with such consultations.

4. A measure adopted or maintained under this Article shall:

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

(b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;

(c) be temporary and be phased out progressively as the balance of payments situation improves;

(d) be consistent with paragraph 3(c) and with the Articles of Agreement of the IMF; and

(e) be applied on a national treatment or most-favored-nation treatment basis, whichever is more favorable.

5. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic program, provided that a Party does not impose a measure for the purposes of protecting a specific industry or sector unless the measure is consistent with paragraph 3(c) and with Article VIII(3) of the Articles of Agreement of the IMF.

6. Restrictions imposed on transfers:

(a) where they apply to payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the IMF;

(b) where they apply to international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the IMF and be imposed only in conjunction with measures imposed on current international transactions under paragraph 3(a); and

(c) may not take the form of tariff surcharges, quotas, licenses or other similar measures.

Article 20.05 Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information of which the disclosure would impede law enforcement or would be contrary to the Party's Constitution or public interest or its laws for protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Article 20.06 Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between any such convention and this Agreement, the tax convention shall prevail to the extent of the inconsistency.

3. Notwithstanding paragraph 2:

(a) Article 3.03 (National Treatment) and other provisions of this Agreement necessary to make said Article effective shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 3.14 (Export Taxes) shall apply to taxation measures.

4. For purposes of this Article, taxation measures do not include:

(a) a "customs duty" as defined in Article 2.01 (Definitions of General Application); nor

(b) the measures listed in exceptions (b), (c) and (d) under the definition of customs duty.

5. Subject to paragraph 2:

(a) Articles 11.03 (National Treatment) and 12.06 (National Treatment) shall apply to taxation measures on profits, capital gains or on taxable capital of enterprises related to the purchase or consumption of particular services;

(b) Articles 10.02 (National Treatment), 10.03 (Most-Favored-Nation Treatment), 11.03 (National Treatment), 11.04 (Most-Favored-Nation Treatment), 12.06 (National Treatment) and 12.07 (Most-Favored-Nation Treatment) shall apply to taxation measures other than those related to profits, capital gains or taxable capital of enterprises, as well as estate, inheritance and gift taxes,

except that nothing in those Articles shall apply to:

(i) any most-favored-nation obligations with respect to an advantage accorded by a Party in fulfillment of a tax convention;

(ii) any existing taxation measure which provides different tax treatment between residents and non-residents;

(iii) the amendment to a non-conforming provision of any existing tax measure as provided for in paragraph (d) above to the extent that the amendment does not decrease its conformity, at the time of the amendment with any of these Articles; or

(iv) any new tax measure which aims at ensuring the equitable and effective imposition or collection of taxes, and that does not arbitrarily discriminate between persons, goods or services of the Parties or

arbitrarily nullify or impair benefits accorded pursuant to those Articles, in the sense of Annex 19.03 (Nullification and Impairment).

CHAPTER 21
FINAL PROVISIONS

Article 21.01 Modifications

1. Any modification of this Agreement shall be agreed upon by both Parties.

2. The modifications agreed upon shall enter into force after their approval according to the applicable legal procedures of each Party and shall be made a part of this Agreement.

Article 21.02 Reservations

This Agreement may not be subject to reservations or interpretative declarations by either Party at the time of its ratification.

Article 21.03 Validity

1. This Agreement shall have indefinite duration and shall enter into force between Panama and the ROC on the thirtieth day after the day on which the countries have exchanged their ratification instruments certifying that the procedures and legal formalities have been concluded.

2. For this Agreement to become effective between Panama and the ROC, it shall be stated in the ratification instruments that the legal procedures and requirements have been completed, which includes:

(a) Annex 3.04 (Tariff Reduction Schedule), relating to the Tariff Reduction Schedule between Panama and the ROC;

(b) Section C of Annex 4.03 (Specific Rules of Origin), applicable between Panama and the ROC;

(c) Annexes I, II, III and IV of Chapter 10 (Investment), relating to applicable reservations and restrictions on investment between Panama and the ROC;

(d) Annexes I, II and V of Chapter 11 (Cross-border Trade in Services), relating to applicable reservations and restrictions on cross-border services between Panama and the ROC;

(e) Annex VI of Chapter 12 (Financial Services), relating to applicable reservations and restrictions on financial services between Panama and the ROC;

(f) Annex 3.11(6) (Import and Export Restrictions), as appropriate; and

(g) Other matters as agreed upon by the Parties.

Article 21.04 Annexes

The Annexes to this Agreement constitute an integral part of this Agreement.

Article 21.05 Termination

1. Either Party may terminate this Agreement.

2. The termination shall enter into force 180 days after notification to the other Party without prejudice to a different date that the Parties may agree.

Article 21.06 Authentic Texts

The English, Spanish and Chinese texts of this Agreement are equally authentic. In the event of any discrepancy in the interpretation of this Agreement, the English version shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Taipei, in duplicate in the Chinese, Spanish and English languages, this twenty-first day of August of the year two thousand and three.

FOR THE GOVERNMENT OF THE REPUBLIC OF CHINA:	FOR THE GOVERNMENT OF THE REPUBLIC OF PANAMA:
Chen Shui-bian	Mireya Moscoso Rodriguez
President	President
Republic of China	Republic of Panama

MIREYA MOSCOSO

PRESIDENTA DE LA REPUBLICA DE PANAMA

A TODOS LOS QUE LAS PRESENTES VIERN

SALUD

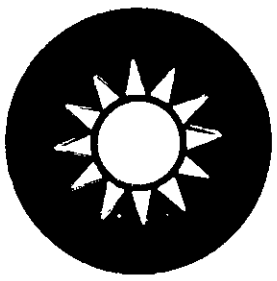
POR CUANTO, el 21 de agosto de 2003 se suscribió en Taipei, el **TRATADO DE LIBRE COMERCIO ENTRE LA REPUBLICA DE PANAMA Y LA REPUBLICA DE CHINA.**

POR CUANTO, la Asamblea Legislativa, mediante la Ley 62 de 18 de octubre de 2003, promulgada en las Gacetas Oficiales 24,915 de 23 de octubre de 2003; 24,916 de 24 de octubre de 2003; 24,917 de 27 de octubre de 2003; 24,918 de 28 de octubre de 2003; 24,919 y 24,919 – A, de 29 de octubre de 2003, aprobó dicho Tratado, que incluye el Anexo 3.04 (Programa de Desgravación Arancelaria); la Sección C del Anexo 4.03 (Reglas de Origen Específicas); los Anexos I, II, III y IV del Capítulo 10 (Inversión); los Anexos I, II y V del Capítulo 11 (Comercio Transfronterizo de Servicios) y el Anexo VI del Capítulo 12 (Servicios Financieros), en cumplimiento de los procedimientos y formalidades jurídicas de la República de Panamá.

POR TANTO, por el presente Instrumento, **RATIFICO** el mencionado Tratado y Anexos, teniéndolo como Ley de la República y comprometiendo para su observancia el honor nacional.

EN FE DE LA CUAL, expido la presente **RATIFICACIÓN,** firmada de mi Mano, sellada con el Sello del Estado y refrendada por el Ministro de Relaciones Exteriores, en el Palacio de la Presidencia, el 29 de octubre de 2003.

El Ministro de Relaciones Exteriores,



核准書

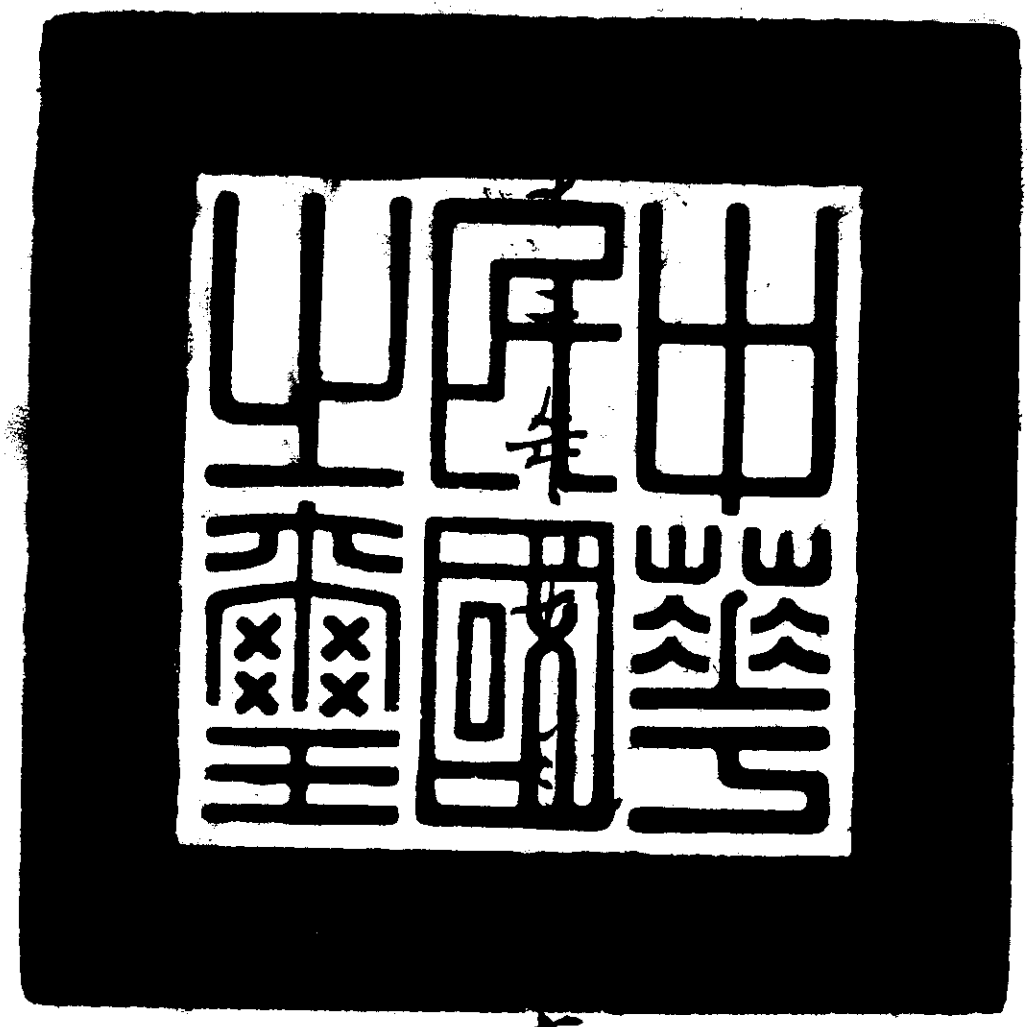
本總統與巴拿馬共和國總統莫絲柯索，於西元二〇〇三年八月廿一日在台北簽訂兩國間自由貿易協定。本總統茲依照該協定第二十一・〇三條之規定暨中華民國憲法程序，予以批准，並備具批准書，由本總統署名，鈐蓋國璽，以昭信守。

鈐蓋國璽，以昭信守。

中華民國總統 陳水扁

外交部長 簡又新

中華民國



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