PART : 1

FREE TRADE AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF CHILE
AND
THE GOVERNMENT OF THE KINGDOM OF THAILAND

เสนอโดย

กรมเจรจาการค้าระหว่างประเทศ
กระทรวงพาณิชย์

FREE TRADE AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF CHILE

AND

THE GOVERNMENT OF THE KINGDOM OF THAILAND

Table of Contents

Preamble

The Republic of Chile and the Kingdom of Thailand, hereinafter individually referred to as a "Party" or collectively as the "Parties":

Inspired by their longstanding friendship and cooperation and growing economic, trade and investment relationship;

Recognising that the strengthening of their economic partnership will bring economic and social benefits, create new opportunities for employment and improve the living standards of their people;

Creating an expanded and secure market for the goods and services produced in their territories;

Resolved to promote bilateral trade through the establishment of clear and mutually advantageous trade rules and the avoidance of trade barriers;

Promoting a predictable, transparent, and consistent business environment that will assist juridical persons to plan effectively and use resources efficiently;

Building on their respective rights and obligations under the World Trade Organization (WTO), other multilateral, regional and bilateral agreements to which they are both parties;

Recalling the Asia-Pacific Economic Cooperation (APEC) goals and aware of the growing importance of trade and investment for the economies of the Asia-Pacific region; and

Desiring to strengthen the cooperative framework for the conduct of economic relations to ensure it is dynamic and encourages broader and deeper economic cooperation;

HAVE AGREED AS FOLLOWS:

Chapter 1

Initial Provisions

Article 1.1: Objectives

The objectives of this Agreement are to:

(a) liberalise and facilitate trade in goods and services between the Parties;

(b) facilitate the mutual recognition of the results of conformity assessment procedures for products or processes;

(c) liberalise, encourage and promote investment and ensure protection for investments and investment activities in the Parties;

(d) facilitate the movement of natural persons;

(e) ensure and enhance adequate, effective and non-discriminatory protection of trade between the Parties;

(f) enhance cooperation for mutual benefit of the Parties; and

(g) promote transparency in the implementation of laws and regulations respecting matters covered by this Agreement.

Article 1.2: Establishment of a Free Trade Area

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

Article 1.3: Relation to Other Agreements

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

Chapter 2

General Definitions

Article 2.1: Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

Agreement means the Free Trade Agreement between Chile and Thailand;

APEC means Asia-Pacific Economic Cooperation;

Commission means the Free Trade Commission established under Article 13.1 (Free Trade Commission);

customs authority means the authority that, according to the legislation of each Party, is responsible for the administration and enforcement of its customs laws and regulations:

(a) in the case of Chile, the Chile Customs Service; and

(b) in the case of Thailand, the Customs Department;

customs duties includes any import duty and a charge of any kind imposed in connection with the importation of a good, but does not include any:

(a) charges equivalent to internal taxes, including excise duties, sales tax, and goods and services taxes imposed in accordance with a Party's commitments under paragraph 2 of Article III of GATT 1994;

(b) anti-dumping or countervailing duty or safeguards duty applied in accordance with Chapter 8 (Trade Remedies); or

(c) fees or other charges that are limited in amount to the approximate cost of services rendered, and do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of GATT 1994, contained in Annex 1A to the WTO Agreement;

days means calendar days, including weekends and public holidays;

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

GATS means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

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

goods of a Party means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. A good of a Party may include materials of other countries;

Harmonized System (HS) means the Harmonized Commodity Description and Coding System governed by The International Convention on the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, and Chapter Notes, and their amendments, as adopted and implemented by the Parties in their respective tariff laws;

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

juridical person of a state means a juridical person that is owned or controlled through ownership interests by a Party;

measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, practice, decision, administrative action or any other form;

national means:

(a) in the case of Chile, a natural person who has the Chilean nationality as defined in Article 10 of the *Constitución Política de la República de Chile*; and

(b) in the case of Thailand, any person who possesses Thai nationality under the law in force in the Kingdom of Thailand;

originating means qualifying under the rules of origin set out in Chapter 4 (Rules of Origin);

person means a natural person or a juridical person;

person of a Party means a natural person or a juridical person of a Party;

preferential tariff treatment means the duty rate applicable under this Agreement to an originating good;

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

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

subheading means the first six digits in the tariff classification number under the Harmonized System (HS);

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

territory means:

(a) in the case of Chile, the land, maritime, and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(b) in the case of Thailand, the territory of the Kingdom of Thailand, including its internal waters, exclusive economic zone, the continental shelf and any other maritime areas in which it exercises sovereign rights and jurisdiction in accordance with international law;

WTO means the World Trade Organization; and

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

Chapter 3

Trade in Goods

Article 3.1: Definitions

For the purposes of this Chapter:

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

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

duty-free means free of customs duty;

export subsidies shall have the meaning assigned to that term in Article 1 (e) of WTO Agreement on Agriculture, including any amendment of that Article; and

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

Article 3.2: Scope and Coverage

Except as otherwise provided, this Chapter applies to trade in all goods between the Parties.

Article 3.3: National Treatment

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. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 3.4: Elimination of Customs Duties

1. The provisions of this Chapter concerning the elimination of customs duties on imports shall apply to goods originating in the territory of the Parties.

2. Except as otherwise provided in this Agreement, a Party shall not increase any existing customs duty or introduce a new customs duty on an originating good covered by this Agreement**.**

3. Except as otherwise provided in this Agreement, and subject to a Party's Schedule as set out in Annex 3.4, as at the date of entry into force of this Agreement, each Party shall eliminate all customs duties on originating goods of the other Party.

4. If a Party reduces its applied most-favoured-nation customs duties rate with respect to any product, listed in Annex 3.4, after the entry into force of this Agreement and before the end of the tariff reduction and/or elimination period, the Parties shall consult to consider adjusting the customs duties of such product to be consistent with the most-favoured-nation customs duties rate reduction.

5. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules in Annex 3.4. An agreement between the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate determined pursuant to their Schedules in Annex 3.4 for such good when approved by each Party in accordance with Article 13.1.4 (b) (Free Trade Commission).

6. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in its Schedule in Annex 3.4. A Party considering doing so shall inform the other Party as early as practicable.

Article 3.5: Administrative Fees and Formalities

1. Each Party shall ensure that fees, charges, formalities and requirements imposed in connection with the importation and exportation of goods shall be consistent with its rights and obligations under GATT 1994.

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

3. Each Party shall as much as possible, make available through the internet or a comparable computer-based telecommunications network, a current list of the fees and charges it imposes in connection with importation or exportation**.**

Article 3.6: Price Band System

Chile may maintain its price band system as established under its Law Nº 18.525 or succeeding system for the products covered by that law[1], provided it is applied consistent with Chile's rights and obligations under the WTO Agreement.

[1] For greater certainty, Chile shall not incorporate new products in the Price Band System. The products covered by the price band system are HS (2007) 1001.9000, 1101.0000, 1701.1100, 1701.1200, 1701.9100, 1701.9910, 1701.9920 and 1701.9990.

Article 3.7: Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of all forms of export subsidies for agricultural goods and shall cooperate in an effort to achieve such an agreement and prevent their reintroduction in any form.

2. Neither Party shall introduce or maintain all forms of export subsidy on any agricultural good destined for the territory of the other Party.

Article 3.8: Non-Tariff Measures

1. Each Party shall not adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with its WTO rights and obligations or this Agreement. To this end, Article XI of GATT 1994 and its interpretative notes shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

2. The Parties understand that the rights and obligations in paragraph 1 prohibit a Party from adopting or maintaining:

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

(b) import licensing conditioned on the fulfillment of a performance requirement; or

(c) voluntary export restraints.

3. For transparency purposes, Chile recalls that it has notified to WTO the Law 18.483 or its successor on measures concerning the importation of used vehicles.

4. Each Party shall ensure the transparency of its non-tariff measures permitted in paragraph 1 and shall ensure that any such measures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

Article 3.9: Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods (hereinafter referred to as "the Committee"), comprising of representatives of the Parties.

2. To facilitate communications between the Parties on any matter relating to this Chapter, each Party shall designate a contact point. Where a Party considers that any proposed or actual measure of the other Party may materially affect trade in goods between the Parties, that Party may, through the contact point, request detailed information relating to that measure.

3. The functions of the Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) considering any issue related to this Chapter;

(c) receiving reports from, and reviewing the work of the Committee on Rules of Origin established pursuant to Article 4.14 (Committee on Rules of Origin);

(d) establishing any working groups, as and when necessary;

(e) carrying out other functions as may be delegated by the Commission in accordance with Chapter 13 (Administration and Institutional Provisions);

(f) identifying and recommending measures to promote and facilitate improved market access, including any acceleration of tariff commitments under Article 3.4;

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

(h) reporting the findings and the outcome of discussions to the Commission.

4. The Committee shall meet at such venue and time as may be agreed by the Parties. Meetings may be held via teleconference, videoconference or through any other means as mutually determined by the Parties.

Chapter 4

Rules of Origin

Section 1

Determination of Origin

Article 4.1: Definitions

For the purposes of this Chapter:

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

CIF means the value of the good imported and includes the cost of insurance and freight up to the port or place of entry in the country of importation. The valuation shall be made in accordance with Article VII of GATT 1994 and the Agreement on the Implementation of Article VII of GATT 1994 as contained in Annex 1A to the WTO Agreement;

competent authority means the authority that, according to the legislation of each Party, is responsible for the issuing of the certificate of origin and may designate the issuance of the certificate of origin into other entities or bodies. In the case of Chile, the General Directorate of International Economic Affairs, Ministry of Foreign Affairs, and in the case of Thailand, the Ministry of Commerce, or an authority succeeding this Ministry;

exporter means a natural or juridical person located in the territory of a Party, where a good is exported from, by such a person;

FOB means the free-on-board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with Article VII of GATT 1994 and the Agreement on the Implementation of Article VII of GATT 1994 as contained in Annex 1A to the WTO Agreement;

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

Generally Accepted Accounting Principles (GAAP) means the recognised consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

goods means any materials and/or products which can be wholly obtained or produced, or manufactured, even if they are intended for later use as material in another manufacturing operation;

importer means a natural or juridical person located in the territory of a Party where a good is imported into, by such a person;

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

material means a good or any matter or substance such as raw materials, ingredients, parts, components, sub-components or sub-assemblies that are used or consumed in the production of goods or transformation of another good or are subject to a process in the production of another good;

originating goods or originating material means goods or material that qualifies as originating in accordance with the provisions of this Chapter;

packing materials and containers for shipment means goods used to protect a good during its transportation, different from those containers and packages and packing materials used for retail sale;

product specific rules means rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a Qualifying Value Content (QVC) criterion or a combination of any of these criteria; and

production means methods of obtaining goods including, but not limited to growing, raising, mining, harvesting, fishing, farming, trapping, hunting, capturing, aquaculture, gathering, collecting, breeding, extracting, manufacturing, processing or assembling a good.

Article 4.2: Origin Criteria

Except as otherwise provided for in this Chapter, a good shall qualify as an originating good of a Party where:

(a) the good is wholly obtained or produced entirely in the Party, as defined in Article 4.3;

(b) the good is produced entirely in the Party exclusively from originating materials of the Parties; or

(c) the good satisfies the product specific rules set out in Annex 4.2, when the good is produced entirely in the Party using non-originating materials in whole or in part.

Additionally, the good shall meet all applicable requirements of this Chapter.

Article 4.3: Wholly Obtained or Produced Goods

The following goods shall be considered as wholly obtained or produced entirely in the territory of a Party:

(a) plants, plant goods and vegetable goods grown and harvested, picked or gathered in the territory of the Party;

(b) live animals born and raised in the territory of the Party;

(c) goods obtained from live animals referred to in subparagraph (b);

(d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing and farming conducted in the territory of the Party;

(e) micro-organisms and viruses from natural habitats or cultivate in the territory of the Party;

(f) minerals and other naturally occurring substances, not included in subparagraphs (a) to (e), extracted or taken from its soil, water, seabed or beneath the seabed of the Party;

(g) goods of sea-fishing taken by vessels registered with a Party and entitled to fly its flag and other goods[2] extracted or taken from the waters, seabed or beneath the seabed outside the territorial waters of that Party, provided that Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law;

(h) goods such as fish, shellfish and other marine life or marine goods taken from the high seas by vessels registered and entitled to fly the flag of that Party;

(i) goods obtained, processed or produced on board a factory ship registered with that Party and entitled to fly the flag of that Party, exclusively from products referred to in subparagraph (g) and (h);

(j) waste or scrap collected or derived from production in the territory of the Party and are fit only for the recovery of raw materials;

(k) used goods and goods collected there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes; and

(l) goods obtained or produced in the territory of a Party solely from goods referred to in subparagraphs (a) to (k).

[2] Other goods refers to minerals and other naturally occurring substances.

Article 4.4: Qualifying Value Content (QVC)

1. The QVC of a good shall be calculated as follows:

$$QVC = \frac{V - VNM}{V} \times 100$$

where:

QVC - is the qualifying value content expressed as a percentage;

V - is the FOB value of the final good; and

VNM - is the CIF value of the non-originating materials.

2. For the purposes of calculating the QVC provided in paragraph 1, VNM shall be:

(a) the CIF value at the time of importation of the goods; or

(b) the earliest ascertained price paid for the goods of undetermined origin in the territory of the Party where the working or processing takes place.

Article 4.5: Indirect Materials

Any indirect material used in the production of a good but not incorporated into the good shall be treated as originating materials, irrespective of whether such indirect material originates from a non-Party, including:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices and supplies used for testing or inspection of the goods;

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

(d) tools, dies and moulds;

(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 and buildings; and

(g) any other materials which 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.

Article 4.6: Minimal Operations and Processes that do not Confer Origin

The following minimal operations or processes, undertaken exclusively by itself or in combination, do not confer origin:

(a) operations to ensure the preservation of products in good condition during transport and storage such as drying, freezing, keeping in brine, ventilation, chilling and like operations;

(b) sifting, classifying, washing, cutting, slitting, bending, coiling or uncoiling, sharpening, simple grinding, slicing;

(c) cleaning, including removal of dust, oxide, oil, paint or other coverings;

(d) painting and polishing operations;

(e) testing or calibration;

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

(g) simple[3] mixing of goods, whether or not of different kinds;

(h) simple[3] assembly of parts of products to constitute a complete good;

(i) changes of packing, unpacking or repacking operations, and breaking up and assembly of consignments;

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

(k) mere dilution with water or another substance that does not materially alter the characteristics of the goods;

(l) husking, partial or total bleaching, polishing and glazing of cereals and rice;

(m) disassembly; and

(n) mere making-up of sets of goods.

[3] "Simple" generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a bio-chemical process) which results in a molecule with a new structure by breaking intra molecular bonds and by forming new intra molecular bonds, or by altering the spatial arrangement of atoms in a molecule.

Article 4.7: Accumulation

Unless otherwise provided in this Agreement, originating goods of a Party which are used in the processing or production in the territory of the other Party as material for finished goods, shall be deemed as an originating material in the territory of the latter Party where the working or processing of the finished goods has taken place.

Article 4.8: *De Minimis*

1. A good that does not undergo a change in tariff classification shall be considered as originating if:

(a) the value of all non-originating materials used in its production that do not undergo the required change in tariff classification do not exceed ten percent (10%) of the FOB value of the good; and

(b) the good meets all other applicable criteria set forth in this Chapter for qualifying as originating goods.

2. The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-originating materials for any applicable QVC requirement for the good.

Article 4.9: Fungible Goods and Materials

1. The determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each of the materials, or through the use of an inventory management method recognised in the GAAP of the Party in which the production is performed or otherwise accepted by that Party.

2. Once a decision has been taken on the inventory management method, the method of inventory management chosen by the exporter must be maintained throughout the fiscal year.

Article 4.10: Accessories, Spare Parts, Tools and Instructional or Information Materials

1. If the goods are subject to the requirements of a change in tariff classification or specific manufacturing or processing operation, the origin of accessories, spare parts, tools, instructional or other information materials delivered with a good that form part of the good's standard accessories, spare parts, or tools, shall be regarded as a part of the good, and shall be disregarded in determining whether or not all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification provided that:

(a) the accessories, spare parts, tools, instructional or other information materials are classified with, and not invoiced separately from, the good; and

(b) the quantities and value of the accessories, spare parts, tools, instructional or other information materials are customary for the good.

2. If the goods are subject to QVC requirement, the value of the accessories, spare parts, tools, and instructional or information materials shall be taken into account as the value of originating or non-originating materials, as the case may be, in calculating the QVC of the goods.

Article 4.11: Treatment of Packages, Packing Materials and Containers

1. Packages and packing materials for retail sale:

(a) If a good is subject to the QVC as set out in Annex 4.2, the value of the packages and packing materials for retail sale, shall be taken into account in determining the origin of that good as originating or non-originating, as the case may be, provided that the packages and packing materials are considered to be forming a whole with the good; and

(b) If a good is subject to the change in tariff classification criterion as set out in Annex 4.2, packages and packing materials classified together with the packaged good, shall not be taken into account in determining origin.

2. The containers and packing materials exclusively used for the transport of a good shall not be taken into account for determining the origin of the said good.

Article 4.12: Direct Consignment

1. The goods shall be deemed as directly consigned from the exporting Party to the importing Party:

(a) if the goods are transported without passing through the territory of any non-Party; or

(b) if the goods are transported for the purpose of transit through a non-Party with or without transshipment or temporary storage in such non-Party, provided that:

(i) the goods have not entered into trade or consumption in the territory of the non-Party;

(ii) the transit entry is justified for geographical reason or by consideration related to transport requirements; and

(iii) the goods have not undergone any operation in the territory of the non-Party other than unloading, reloading or any operation required to keep the goods in good condition.

2. The directly consigned goods shall retain its originating status.

3. In the case where the originating goods of the exporting Party is imported through one or more non-Parties, the customs authority of the importing Party may require importers, who claim the preferential tariff treatment for the goods, to submit the following documentation to the customs authorities of the importing Party:

(a) a Through Bill of Lading or similar documents used in multimodal transportation; and

(b) supporting documents, if any, in evidence that the requirements of subparagraphs 1 (b) (i), (ii) and (iii) are being complied with.

Article 4.13: Certificate of Origin

A claim that goods are eligible for preferential tariff treatment under this Agreement shall be supported by a Certificate of Origin issued by the exporting Party in the form as prescribed in Section A of Annex 4.13 (Form of Certificate of Origin of Chile, issued by its competent authority) or Section B of Annex 4.13 (Form of Certificate of Origin of Thailand, issued by its competent authority).

Article 4.14: Committee on Rules of Origin

1. The Parties hereby establish a Committee on Rules of Origin (hereinafter referred to as "the Committee"), comprising of government representatives of each Party.

2. The functions of the Committee shall be to:

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

(b) report its findings to the Committee on Trade in Goods in accordance with Article 3.9 (Committee on Trade in Goods);

(c) identify areas, relating to this Chapter to be improved for facilitating trade in goods between the Parties;

(d) consider any other matters as Parties may agree related to this Chapter; and

(e) carry out other functions as may be delegated by the Commission in accordance with Article 13.1.4 (Free Trade Commission).

3. The Committee shall meet at such venues and times as may be agreed by the Parties.

Section 2

Operational Procedures

Article 4.15: Certification of Origin

1. The Certificate of Origin shall be issued by the respective competent authority of each Party.

2. Each Party shall inform the other Party of the name, address, and specimen of official seals of its competent authorities, in hard copy and soft copy format. Any change in names, addresses, or seals shall be promptly informed in the same manner.

3. For the purposes of checking the Certificate of Origin:

   (a) Chile shall provide websites with some key information of the Certificate of Origin issued by Chile such as Reference Number, HS code, description of goods, date of issuance, quantity and name of the exporter; and

   (b) Thailand shall provide information on specimen signatures in hard or soft copy formats upon request and shall provide prompt update where appropriate.

   To the best of its competence and ability, Thailand shall endeavour to provide websites in the same information as specified above by Chile. The Committee shall consult on the implementation of the websites.

4. The issued Certificate of Origin shall be applicable to a single importation of an originating good of the exporting Party into the importing Party and be valid for twelve (12) months from the date of issuance.

5. The original of the Certificate of Origin shall be submitted to customs authorities at the time the declaration of the goods is made in accordance with the respective laws and regulations of the importing Party.

6. The Parties, to the extent possible, should implement an electronic system for issuance of Certificate of Origin. The Parties also recognise the validity of the electronic signature.

Article 4.16: Certificate of Origin

1. In the case of Chile, the Certificate of Origin shall be in 216 mm x 313 mm size paper and in conformity to the form as shown in Section A of Annex 4.13.

2. In the case of Thailand, the Certificate of Origin shall be in ISO A4 size paper and in conformity to the form as shown in Section B of Annex 4.13. The Certificate of Origin shall comprise one (1) original and two (2) carbon copies (Duplicate and Triplicate). The original copy shall be forwarded by the exporter to the importer for submission to the customs authority

at the port or place of importation. The duplicate shall be retained by the competent authority in the exporting Party. The triplicate shall be retained by the exporter.

3. The Certificate of Origin shall be made in the English language.

4. Each Certificate of Origin shall bear a serial reference number separately given by each place or office of issuance.

5. Unused spaces in the Certificate of Origin shall be crossed out by the competent authority to prevent any subsequent addition.

Article 4.17: Application for Certificate of Origin

1. At the time of carrying out the formalities for exporting the goods under preferential treatment, the exporter or its authorised representative shall submit a written application for the Certificate of Origin together with appropriate supporting documents proving that the goods to be exported fulfill the originating criteria under this Agreement.

2. For the purposes of determining originating status, the competent authorities shall have the right to request supporting documentary evidence or to carry out check(s) considered appropriate in accordance with respective laws and regulations of a Party.

Article 4.18: Obligations of the Competent Authority

The competent authority shall carry out proper examination upon each application for the Certificate of Origin to ensure that:

(a) the application and the Certificate of Origin are duly completed and signed by the authorised signatory;

(b) the origin of the good is in conformity with this Agreement;

(c) other statements on the Certificate of Origin correspond to the supporting documentary evidence submitted;

(d) description, quantity and weight of goods, marks and number of packages, number and kinds of packages, as specified, conform to the goods to be exported; and

(e) multiple items declared on the same Certificate of Origin shall be allowed, provided that each item qualifies separately in its own right.

Article 4. 19: Treatment of Erroneous Declaration in the Certificate of Origin

Neither erasures nor superimpositions shall be allowed on the Certificate of Origin. Any alteration shall be made by:

(a) striking out the erroneous materials and making any addition required. Such alterations shall be approved by an official authorised to sign the Certificate of Origin and certified by the competent authorities. Unused spaces shall be crossed out to prevent any subsequent addition; or

(b) issuing a new Certificate of Origin to replace the erroneous one. The new Certificate of Origin shall bear the reference number and the date of issuance of the original Certificate of Origin. The words "replaced C/O No... issued date..." shall be endorsed. The new Certificate of Origin shall take effect from the date of issuance of the original Certificate of Origin.

Article 4.20: Issuance of the Certificate of Origin

1. The Certificate of Origin shall be issued prior to, at the time of exportation, or no later than three (3) days after the time of exportation.

2. Where a Certificate of Origin has not been issued at the time of exportation or no later than three (3) days from the declared shipment date, due to involuntary errors or omissions or other valid causes, the Certificate of Origin may be issued retroactively but no longer than one (1) year from the date of shipment and shall be duly and prominently marked "Issued Retroactively".

Article 4.21: Loss of the Certificate of Origin

1. In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply in writing to the issuing authorities for a certified true copy to be made out on the basis of the export documents in their possession bearing the endorsement of the words "CERTIFIED TRUE COPY" in Box 14. This copy shall bear the date of issuance of the original Certificate of Origin.

2. The certified true copy shall take effect from the date of issuance of the original Certificate of Origin.

Article 4.22: Exceptions

1. In the case of consignments of goods originating in the exporting Party and not exceeding US$200 FOB, the requirement of a Certificate of Origin may be waived provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of this Chapter.

2. An importation of originating goods of the exporting Party, for which the customs authority of the importing Party has waived the requirement for a Certificate of Origin.

Article 4.23: Treatment of Minor Discrepancies

1. The customs authority of the importing Party should disregard minor errors, such as slight discrepancies or omissions, typing errors or overrunning the margin of the designated field, provided that these minor errors may not affect the authenticity of the Certificate of Origin or the accuracy of the information included in the Certificate of Origin.

2. Where the origin of the goods is not in doubt, tariff classification differences between the statements made in the Certificate of Origin and those made in the documents submitted to the customs authority of the importing Party for the purposes of carrying out the formalities for importing the goods shall not *ipso-facto* invalidate the Certificate of Origin, if it does in fact correspond to the goods submitted. The process on claiming the preferential tariff treatment shall be subject to domestic laws and regulations.

3. For multiple items declared under the same Certificate of Origin, a problem with one of the items listed shall not affect or delay the granting of preferential tariff treatment and customs clearance of the remaining items listed in the Certificate of Origin.

Article 4.24: Claims for Preferential Tariff Treatment

1. For the purposes of claiming preferential tariff treatment, the importer shall submit to the customs authority of the importing Party, an import declaration, a Certificate of Origin and other documents as required in accordance with the laws and regulations of the importing Party.

2. In cases when a Certificate of Origin is rejected by the customs authority of the importing Party, the Certificate of Origin shall be marked accordingly in Box 4 and the original Certificate of Origin shall be returned to the competent authority within a reasonable period not exceeding sixty (60) days. The competent authority shall be duly notified of the grounds for the denial of preferential tariff treatment.

Article 4.25: Verification of Origin

1. For the purposes of determining whether a good imported from the exporting Party under preferential tariff treatment qualifies as an originating good of the exporting Party, the customs authority of the importing Party may request the competent authority of the exporting Party, information relating to the origin of the good, where it has reasonable doubt as to the authenticity of the Certificate of Origin or the accuracy of the information included in the Certificate of Origin.

2. Where the customs authority of the importing Party requests the information under paragraph 1, it shall provide the competent authority of the exporting Party with:

(a) the reasons why such verification is requested;

(b) the Certificate of Origin of the good or a copy thereof; and

(c) any information and documents as may be necessary for purposes of such request;

3. For the purposes of paragraph 1, the competent authority of the exporting Party shall provide the information requested within a period of six (6) months from the date of receipt of the request. If the customs authority of the importing Party considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the customs authority of the importing Party, the competent authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide the information requested within a period of three (3) months from the date of receipt of the request.

4. The request of information in accordance with paragraph 1 shall not preclude the use of the verification method provided for in Article 4.26.

5. The competent authority of the exporting Party shall promptly transmit the information requested to the customs authority of the importing Party which shall then determine whether or not the goods concerned is originating. The entire process from the date of receipt of the request of the information until the notification of the result shall be completed within one hundred and eighty (180) days.

Article 4.26: Verification Visit

1. The customs authority of the importing Party may request the competent authority of the exporting Party:

(a) to conduct a visit, whereby it shall deliver a written communication at least ninety (90) days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the competent authority of the exporting Party. The competent authority of the exporting Party shall request the written consent of the exporter or the producer of the good in the exporting Party whose premises are to be visited; and

(b) to provide information relating to the origin of the good in the possession of the competent authority of the exporting Party during the visit pursuant to subparagraph (a).

2. The communication referred to in paragraph 1 shall include:

(a) the identity of the customs authority issuing the communication;

(b) the name of the exporter/producer, whose premises are requested to be visited;

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

(d) the objective and scope of the proposed visit, including specific reference to the good subject to the verification, referred in the Certificate of Origin; and

(e) the names and titles of the officials of the customs authority of the importing Party to be present during the visit.

3. The competent authority of the exporting Party shall respond in writing to the importing Party, within thirty (30) days of the receipt of the communication referred to in paragraph 2, if it accepts or refuses to conduct the visit requested pursuant to paragraph 1.

4. For the compliance of subparagraph 1 (a), the competent authority of the exporting Party shall cooperate by providing the necessary information and relevant documentations as well as facilitating an on-site visit to the premises of the exporter or the producer of the goods in the exporting Party.

5. The competent authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide information within sixty (60) days or any other mutually agreed period from the last day of the visit, to the customs authority of the importing Party pursuant to paragraph 1.

Article 4.27: Determination of Origin and Preferential Tariff Treatment

1. The customs authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Chapter.

2. The customs authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment in the following cases:

(a) where the competent authority of the exporting Party fails to respond to the request within the period referred to in Articles 4.25.3 or 4.26.3;

(b) where the competent authority of the exporting Party refuses to conduct a visit, or fails to respond to the communication referred to in Article 4.26.1 within the period referred to in Article 4.26.3; or

(c) where the information provided to the customs authority of the importing Party pursuant to Articles 4.25 or 4.26, is not sufficient to prove that the good qualifies as an originating good of the exporting Party.

In such cases, a written determination thereof shall be sent to the competent authority of the exporting Party.

3. After carrying out the procedures outlined in Articles 4.25 or 4.26 as the case may be, the customs authority of the importing Party shall provide the competent authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination, within forty-five (45) days from the date of receipt of the information provided by the competent authority of the exporting Party pursuant to Articles 4.25 or 4.26. The competent authority of the exporting Party shall inform such determination by the customs authority of the importing Party to the exporter of the good in the exporting Party, whose premises were subject to the visit referred to in Article 4.26.

4. The competent authority of the exporting Party shall, when it cancels the decision to issue the Certificate of Origin, promptly notify the cancellation to the exporter to whom the Certificate of Origin has been issued, and to the customs authority of the importing Party except where the Certificate of Origin has been returned to the competent authority of the exporting Party. The customs authority of the importing Party may deny preferential tariff treatment when it receives the notification.

Article 4.28: Records and Confidentiality

1. For the purposes of the verification process, the application for Certificates of Origin and all documents related to such application shall be kept by the competent authorities and exporters for five (5) years from the date of issuance of the Certificate of Origin.

2. Information relating to the validity of the Certificate of Origin shall be furnished upon request of the importing Party by the appropriate authorities.

3. Any confidential information shall be treated as such in accordance with the Parties domestic legislation and shall be used for the validation of Certificates of Origin purposes only.

4. The Parties shall maintain, in accordance with their laws and regulations, the confidentiality of classified business information collected in the process of verification pursuant to Articles 4.25 and 4.26 and shall protect that information from disclosure that could prejudice the competitive position of the person who provided the information. The classified business information may only be disclosed to those authorities responsible for the administration and enforcement of origin determination.

5. All records identified in the preceding paragraphs of this Article may be maintained in paper or electronic form in accordance with the domestic laws and regulations of each Party

Article 4.29: Exhibition

1. Originating goods, sent for exhibition in a country other than Chile or Thailand and sold during or after the exhibition for importation in Chile or Thailand shall be deemed as originating and eligible for preferential tariff treatment provided it is shown to the satisfaction of the customs authority of the importing Party that:

(a) an exporter has consigned the goods from Chile or Thailand to the country in which the exhibition is held and has exhibited there;

(b) the goods have been sold or transferred to a consignee or otherwise dispose of by that exporter to an importer in Chile or Thailand;

(c) the goods have been consigned during the exhibition or immediately thereafter in the Party in which they were sent for exhibition and have not been used for a purpose other than demonstration at the exhibition; and

(d) the goods have remained during the exhibition under customs control.

2. A Certificate of Origin must be issued or made out in accordance with this Chapter. The name and address of the place of the exhibition must be indicated in the Certificate of Origin. Where necessary, additional documentary evidence of the conditions, under which they have been exhibited, may be required from the relevant authorities of the country where the exhibition took place.

3. Paragraph 1 shall apply to any trade, agricultural or crafts exhibition, fair or similar show or display in shops or business premises with the view to the sale of foreign goods and where the goods remain under customs control during the exhibition.

Article 4.30: Sanctions against False Declaration

1. Each Party shall establish or maintain appropriate sanctions against its exporters to whom a Certificate of Origin has been issued, for providing false declaration or documents to the competent authority of the exporting Party, prior to the issuance of the Certificate of Origin.

2. Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against its exporters to whom a Certificate of Origin has been issued if they fail to notify in writing to the competent authority of the exporting Party without delay after having known, after the issuance of the Certificate of Origin, that such good does not qualify as originating goods of the exporting Party.

3. When the exporter repeatedly provided false information or documentation, the competent authority may temporarily suspend the issuance of a new Certificate of Origin.

Article 4.31: Obligations of the Exporter

The exporter to whom a Certificate of Origin has been issued in the exporting Party referred to in Article 4.15, shall notify in writing to the competent authority of the exporting Party without delay when such exporter knows that such good does not qualify as originating goods of the exporting Party.

Article 4.32: Obligations of the Importer

1. Except as otherwise provided in this Chapter, the customs authority of the importing Party shall require an importer who claims preferential tariff treatment for goods imported from the other Party to:

(a) make a customs declaration, based on a valid Certificate of Origin, that the goods qualify as originating goods of the exporting Party;

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

(c) provide the Certificate of Origin on the request of the customs authority of the importing Party; and

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

2. An importer claiming preferential tariff treatment for goods imported into the Party's territory shall maintain, at least for five (5) years after the date of importation of the goods, a Certificate of Origin, and all other documents that the Party may require relating to the importation of the goods, in accordance with the domestic laws and regulations.

Article 4.33: Customs Duty Refund

Each Party shall provide that, where a good would have qualified as originating goods when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer may, subject to the relevant laws and regulations of the importing Party, apply for a refund of any duties paid on presentation of:

(a) a written declaration that the good qualified as originating at the time of importation;

(b) a Certificate of Origin; and

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

Article 4.34: Non-Party Invoices

1. For the purposes of granting preferential tariff treatment, the customs authority of the importing Party shall accept Certificate of Origin in cases where the sale invoice is issued by a non-Party operator, provided that the goods meet all the applicable requirements of this Chapter.

2. For the purposes of paragraph 1, the exporter shall indicate “non-Party invoicing” and the following information in the Certificate of Origin: name and legal address (including city and country) of the non-Party operator.

3. In the case where a good is invoiced by a non-Party operator, the number and date of the invoice issued by the exporter and the number and date of the invoice issued by the non-Party operator (if known) shall be indicated in the Certificate of Origin.

Chapter 5

Customs Procedures

Section A

General Provision

Article 5.1: Definitions

For the purposes of this Chapter:

commercial samples means commercial samples having a negligible value, or no commercial value, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

customs authority means the authority that according to the legislation of the country of each Party is responsible for the administration and enforcement of its customs laws:

(a) in the case of Chile, the National Customs Service; and

(b) in the case of Thailand, the Customs Department;

customs laws mean such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit/transshipment of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party;

customs procedures means the treatment applied by the customs authority of each Party to goods which are subject to customs control; and

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

Article 5.2: Objectives

The objectives of this Chapter are to:

(a) simplify and harmonise customs procedures of the Parties;

(b) ensure consistency, predictability and transparency in the application of customs laws and regulations of the Parties;

(c) ensure efficient and expeditious release of goods;

(d) facilitate trade in goods between the Parties by the use of information and communications technology, taking into account international standards; and

(e) promote cooperation between the customs authorities with relevant international standards and recommended practices such as those made under the auspices of the Customs Cooperation Council.

Article 5.3: Scope and Coverage

1. This Chapter shall apply to customs procedures for goods traded between the Parties.

2. This Chapter shall be implemented by each Party in accordance with the laws and regulations in force in each Party and within the competence and available resources of the customs authorities of each Party

Section B

Customs Procedures and Facilitation

Article 5.4: Customs Procedures

1. Customs authorities of a Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade, including through the expeditious clearance of goods and means of transport.

2. Customs procedures of a Party shall, where possible and to the extent permitted by their respective customs laws, conform with the standards and recommended practices of the World Customs Organization (WCO) and other international organization as relevant to customs.

3. The customs authority of a Party shall review its customs procedures and practices with a view to their simplification to facilitate trade.

Article 5.5: Customs Valuation

The Parties shall apply the WTO Agreement on the Implementation of Article VII of GATT 1994 for the purposes of determining the customs value of goods traded between the Parties.

Article 5.6: Advance Rulings

1. Customs authorities of each Party, shall issue written advance ruling prior to the importation of a good into its territory upon written request of a person who intends to import in or export to its territory, on the basis of the facts and circumstances provided by the requester,

including a detailed description of the information required to process a request for an advance ruling, concerning:

(a) tariff classification;

(b) valuation method; or

(c) whether a good qualifies as an originating good under this Agreement.

2. The customs authorities shall issue advance rulings after receiving a written request, provided that the requester has submitted all necessary information. The issuance of advance ruling shall be made within one hundred and twenty (120) days.

3. Each Party shall provide that advance rulings shall be in force from their date of issuance, or such other specified by the ruling, for the period of time, in accordance with their domestic laws and regulations, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. The customs authorities may modify or revoke an advance ruling where facts or circumstances prove that the information on which the advance ruling is based is false or inaccurate.

5. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs authorities may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which an advance ruling was based.

6. Each Party shall make its advance rulings publicly available, subject to confidentiality requirements in its domestic law, for purposes of promoting the consistent application of advance rulings to other goods.

7. If a requester provides false information or omits relevant circumstances or facts in its request for an advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, penalties, or other sanctions in accordance with its domestic laws.

Article 5.7: Customs Clearance

1. Each Party shall endeavor to apply customs procedures in a predictable, consistent and transparent manner for the efficient release of goods in order to facilitate trade between the Parties.

2. For prompt release of goods traded between the Parties, to the extent possible each Party shall:

(a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws or regulations;

(b) make use of information and communications technology;

(c) adopt or maintain procedures allowing, to the extent possible, goods to be released at the point of arrival, without temporary transfer to warehouses or other locations;

(d) harmonise its customs procedures, as far as possible, with relevant international standards and best practices, such as those recommended by the WCO; and

(e) adopt or maintain procedures allowing the release of goods prior to, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes and fees, subject to domestic procedures.

Article 5.8: Risk Management

1. In order to facilitate release of goods traded between the countries of the Parties, the customs authority of each Party shall use risk management methodology.

2. The customs authority of each Party shall exchange information, including best practices, on risk management techniques and other enforcement techniques.

3. Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to concentrate inspection activities on high risk goods and that simplify the clearance and movement of low risk goods.

Article 5.9: Temporary Admission

1. The Parties shall facilitate movement of goods under temporary admission to the greatest extent possible.

2. The customs authorities of the Parties shall specify the period within which goods placed under the temporary admission procedure must be re-exported or placed under a subsequent customs procedure.

3. Where, in exceptional circumstances, the goods cannot be re-exported or placed under a subsequent customs procedure within the specified period, the customs authorities concerned may, at the request of the holder of the authorisation, extend those periods for a reasonable duration.

Article 5.10: Goods Re-entered after Repair and Alteration

1. The Parties may, in accordance with their customs laws, not apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily

exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its own territory.

2. The Parties may, in accordance with their customs laws, not apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

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

(a) destroys a good's essential characteristics or creates a new or commercially different good; or

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

Article 5.11: Duty-Free Entry of Commercial Samples and Printed Advertising Materials

Each Party shall, in accordance with its customs laws, grant duty-free entry to commercial samples and to printed advertising materials imported from the territory of the other Party regardless of their origin, but may require that:

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

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

Article 5.12: Use of Automated System and Paperless Trading

1. The customs authorities of the Parties shall make cooperative efforts to promote the use of information and communications technology in their customs procedures including sharing best practices, for the purpose of improving their customs procedures.

2. The customs authorities of each Party, in implementing initiatives which provide for the use of paperless trading, shall take into account the methods agreed by the WCO, including adoption of the WCO data model for the simplification and harmonisation of data.

3. The customs authorities of each Party shall work towards having electronic means for all its customs reporting requirements, as soon as practicable.

4. The introduction and enhancement of information technology shall, to the greatest extent possible, be carried out in consultation with all relevant parties including business directly affected.

Article 5.13: Review and Appeal

1. Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:

(a) administrative review issued by a superior official different from who took the determination; and

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

2. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 5.14: Publication and Enquiry Points

1. Each Party shall designate one or more enquiry points to address enquiries from the other Party concerning customs matters, and shall make available on the internet, or print form information concerning procedures for making such enquiries.

2. Each Party shall endeavor to publish on the internet or in print form statutory and regulatory provisions and procedures applicable or enforced by its customs authority.

3. Nothing in this Article shall require a Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting technologies.

Article 5.15: Confidentiality

1. Each Party's customs authority undertakes not to use any information received in accordance with this Chapter other than for the purpose for which the information was given, or to disclose any such information, except in cases where:

(a) the customs authority that furnished the information has expressly approved its use or disclosure for other purposes related to this Chapter; or

(b) the domestic laws and regulations of the receiving customs authority requires disclosure, in which case the receiving customs authority shall notify the customs authority that furnished the information of the relevant law.

2. Any information received in accordance with this Chapter shall be treated as confidential and will be subject to the same protection and confidentiality as the same kind of information is subject to under the national law of the customs authority where it is received.

3. Nothing in this Chapter shall be construed to require a Party to furnish or allow access to information the disclosure of which would:

(a) be contrary to the public interest as determined by its laws, rules or regulations;

(b) be contrary to any of its laws, rules and regulations including but not limited to those protecting personal privacy or the financial affairs and accounts of individuals;

(c) impede law enforcement; or

(d) prejudice legitimate commercial interest, which may include competitive position, particular juridical persons, whether public or private.

Article 5.16: Penalties and Sanctions

Each Party shall maintain measures for the imposition of civil or administrative penalties or sanctions and, where appropriate, criminal sanctions for violations of its customs laws and other laws relating to customs according to their domestic laws.

Article 5.17: Customs Cooperation and Mutual Assistance

The Parties agree to negotiate a memorandum of understanding on cooperation and mutual assistance in customs matters through their respective customs authorities no later than one (1) year after the entry into force of this Agreement.

Article 5.18: Committee on Customs Procedures

1. The Parties hereby establish a Committee on Customs Procedures (hereinafter referred to as "the Committee").

2. The functions of the Committee shall be:

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

(b) reporting the finding of the Committee to the Commission;

(c) identifying areas to be improved for facilitating trade between the Parties;

(d) consulting for the problems which could be found during the implementation of this Chapter; and

(e) carrying out other functions which may be delegated by the Commission.

3. The Committee shall be composed of representatives from the customs authorities of the Parties. The Committee shall meet at such venues and times as may be agreed by the Parties.

Chapter 6

Sanitary and Phytosanitary Measures

Article 6.1: Definitions

For the purposes of this Chapter:

(a) the definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form part of this Chapter, *mutatis mutandis*; and

(b) the relevant definitions developed by the Codex Alimentarius Commission (hereinafter referred to as "Codex"), World Organisation for Animal Health (hereinafter referred to as "OIE") and the International Plant Protection Convention (hereinafter referred to as "IPPC") apply to the implementation of this Chapter.

Article 6.2: Objectives

The objectives of this Chapter are to:

(a) facilitate bilateral trade in food, plants and animals, including their products, while protecting human, animal or plant life or health in the territory of each Party;

(b) strengthen the area of Sanitary and Phytosanitary Measures (SPS) with the views to protecting of human, animal health and controlling the spread of infectious diseases of animals and pests of plants from the territory of one Party to the territory of the other Party;

(c) ensure and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by the relevant international organizations;

(d) increase mutual understanding of each Party's national laws, regulations and procedures relating to the implementation of sanitary and phytosanitary measures; and

(e) provide means to improve communications, cooperation and solve sanitary and phytosanitary issues arising from the implementation of this Agreement.

Article 6.3: Scope and Coverage

This Chapter applies to all SPS measures of a Party that may, directly or indirectly, affect human, animal and plant health and trade between the Parties.

Article 6.4: General Obligations

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

2. The Parties may cooperate in relevant international bodies engaged in SPS issues, including the WTO Committee on SPS, Codex, OIE, and IPPC.

Article 6.5: Cooperation

1. The Parties agree to cooperate to facilitate the implementation of this Chapter.

2. The Parties shall explore opportunities for further cooperation, collaboration, and information exchange on SPS matters of mutual interest, consistent with the provisions of this Chapter.

Article 6.6: Equivalence

1. The Parties recognise the application of equivalence as an important tool for trade facilitation for the mutual benefit of both Parties.

2. Upon request, the Parties may enter into discussions with the aim of achieving bilateral recognition of the equivalence of specified SPS measures in line with the principle of equivalence in the SPS Agreement and other standards, guidelines or recommendations by the relevant international organizations.

Article 6.7: Risk Assessment

1. The Parties recognise the principle of risk assessment as provided for under the SPS Agreement. SPS measures adopted by the Parties will be based on assessment of the risk existing for human, animal health and infectious diseases of animals and pests of plants in accordance with the risk analysis techniques adopted by the relevant organizations.

2. The initiation of a risk assessment process should not interrupt the bilateral trade of that product, except in case of a justified emergency situation.

Article 6.8: Consultations on SPS Measures

1. At the request of a Party for consultations on any matter arising under this Chapter, the Parties shall agree to enter into consultations by notifying the contact points listed in Annex 6.10.

2. Consultations will be carried out within thirty (30) days of receiving the notification, unless otherwise agreed by the Parties. Such consultations may be conducted via teleconferencing, videoconferencing, or any other means mutually agreed by the Parties.

3. If the consultations have failed to achieve resolution the matter is subsequently referred to the dispute settlement procedure contained in Chapter 14 (Dispute Settlement), the consultations under this Article shall replace those provided in Chapter 14 (Dispute Settlement).

Article 6.9: Relation to the Agreement of Technical Cooperation on Sanitary and Phytosanitary Measures

In the event of any inconsistency between a provision of this Chapter and a provision of the Agreement of Technical Cooperation on Sanitary and Phytosanitary Measures between the Government of the Republic of Chile and the Government of the Kingdom of Thailand, done in Bangkok on August 15, 2012, the former shall prevail to the extent of the inconsistency.

Article 6.10: Competent Authorities and Contact Points

1. The competent authorities responsible for the implementation of the measures referred to in this Chapter are listed in Section A of Annex 6.10. The contact points that have the responsibility relating to communications between the Parties are set out in Section B of Annex 6.10.

2. The Parties shall inform each other of any significant changes in the structure and organisation of the competent authorities or contact points.

Article 6.11: Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby agree to establish a Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as "the Committee") with the objective of ensuring the implementation of this Chapter. The Committee shall be comprised of representatives of each Party who have responsibilities for the development, implementation, and enforcement of SPS measures.

2. The Parties shall establish the Committee as soon as possible and no later than one (1) year after the date of entry into force of this Agreement through an exchange of letters.

3. The Committee shall seek to enhance and ensure cooperation between the Parties' agencies with responsibility for SPS measures.

4. The functions of the Committee shall be to provide a forum for:

(a) enhancing mutual understanding of each Party's SPS measures and the regulatory processes related to those measures;

(b) discussing matters related to the development or application of SPS measures of a Party that may, directly or indirectly, affect human, animal and plant health and trade between the Parties;

(c) addressing any bilateral issues arising from the implementation of SPS measures between the Parties;

(d) reviewing progress on addressing bilateral issues arising from the implementation of SPS measures between the Parties;

(e) exchanging information on: relevant laws and regulations; the occurrence and control of infectious diseases of animals and pests of plants; and notifying emerging situations;

(f) coordinating technical cooperation programmes on SPS measures; and

(g) consulting on issues relating to the meetings of the WTO Committee on SPS, Codex, OIE and IPPC.

5. Unless otherwise agreed by the Parties, the Committee shall meet annually in person, if it's necessary. It may meet via teleconference, video conference, or through any other means, as mutually determined by the Parties.

6. To guide its operation, the Committee shall establish its own rules of procedure at its first meeting. These rules may be revised or further developed at any time.

7. The Committee may agree to establish *ad hoc* technical working groups in accordance with its rules of procedure.

Chapter 7

Technical Barriers to Trade

Article 7.1: Definitions

For the purposes of this Chapter, the definitions of Annex 1 of the TBT Agreement shall apply.

Article 7.2: Objectives

The objectives of this Chapter are to increase and facilitate trade through the improvement of the implementation of the TBT Agreement, the elimination of unnecessary technical barriers to trade and the enhancement of bilateral cooperation.

Article 7.3: Scope and Coverage

For the mutual benefit of the Parties, this Chapter applies to all standards, technical regulations and conformity assessment procedures of the Parties that may, directly or indirectly, affect trade in goods between the Parties except:

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

(b) sanitary or phytosanitary measures as defined in Chapter 6 (Sanitary and Phytosanitary Measures).

Article 7.4: Affirmation of the TBT Agreement

The Parties affirm their rights and obligations with respect to each other Party under the TBT Agreement.

Article 7.5: Standards

1. With respect to the preparation, adoption and application of standards, each Party shall ensure that its standardising body or bodies accept and comply with Annex 3 of the TBT Agreement.

2. Each Party should encourage the standardising body or bodies in its territory to cooperate with the standardising body or bodies of other Party. Such cooperation may include:

(a) exchange of information on standards;

(b) exchange of information relating to standard setting procedures; and

(c) cooperation in the work of international standardising bodies in areas of mutual interest.

Article 7.6: International Standards

In determining whether an international standard, guide or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.9, 8 September 2008, Annex B Part I (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement), issued by the WTO Committee on Technical Barriers to Trade.

Article 7.7: Trade Facilitation

The Parties shall work cooperatively in the fields of standards, technical regulations and conformity assessment procedures with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify trade facilitating bilateral initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include:

(a) cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards;

(b) alignment with international standards; and

(c) use of the approaches as defined in Article 7.9.

Article 7.8: Technical Regulations

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

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, upon request of the other Party, explain the reasons for its decision.

Article 7.9: Conformity Assessment Procedures

1. Each Party should seek to enhance the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party with a view to increasing efficiency, avoiding duplication and ensuring cost effectiveness of the conformity assessments. In this regard, each Party may choose, depending on the situation of the Party and the specific sectors involved, a broad range of approaches. These may include:

(a) recognition by a Party of the results of conformity assessments performed in the other Party's territory;

(b) recognition of arrangements between accreditation bodies in the territories of the Parties;

(c) Mutual Recognition Agreements (MRAs) for conformity assessment to specific regulations: agreements on mutual acceptance of the results of conformity assessment procedures conducted by bodies located in the territory of the other Party;

(d) use of accreditation to qualify conformity assessment bodies located in the territory of the other Party;

(e) use of existing international multilateral recognition agreements and arrangements;

(f) designating conformity assessment bodies located in the territory of the other Party;

(g) suppliers' declaration of conformity; and

(h) voluntary arrangements between conformity assessments bodies located in each Party's territory.

2. The Parties shall exchange information on these and other similar approaches with a view to facilitating acceptance of conformity assessment results.

3. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of that other Party, explain the reasons for its decision.

4. Each Party may accredit, approve, license, or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory. Where a Party accredits, approves, licenses, or otherwise recognises a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license, or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request of that other Party, explain the reasons for its decision.

5. Where a Party declines a request from the other Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of that other Party, explain the reasons for its decision.

Article 7.10: Transparency

1. Each Party affirms its commitment to ensuring that information regarding proposed new or amended standards, technical regulations and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement.

2. Each Party shall ensure that the information relating to standards, technical regulations and conformity assessment procedures is published. Such information should be made available in printed form and, where possible, in electronic form. In the case of

voluntary standards, the access to the text is dependent upon the conditions of the standardisation bodies.

3. The Parties acknowledge the importance of transparency in decision-making, including providing a meaningful opportunity for persons to provide comments on proposed technical regulations and conformity assessment procedures. Where a Party publishes a notice under Article 2.9 or 5.6 of the TBT Agreement, it shall:

(a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and

(b) transmit the proposal electronically to the other Party through the enquiry point the Party has established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.

Each Party should allow at least sixty (60) days after it transmits a proposal under subparagraph (b) for the public and the other Party to make comments in writing on the proposal.

4. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification to the other Party electronically through the enquiry point referenced in subparagraph 3 (b).

5. Each Party is encouraged to make available, upon request and where possible, to the other Party, in print or electronically, its responses to significant comments it receives under paragraph 1 no later than the date it publishes the final technical regulation or conformity assessment procedure.

6. On request of a Party, the other Party shall provide information regarding the objective of, and rationale for, a standard, technical regulation or conformity assessment procedure that it has adopted or is proposing to adopt.

Article 7.11: Technical Cooperation

With a view to fulfill the objectives of this Chapter, the Parties shall, on the request of the other Party, cooperate in mutually determined terms and conditions. This may include:

(a) exchanging legislation, regulations, rules and other information and periodicals published by the national bodies responsible for technical regulations, standards, conformity assessment procedures, metrology and accreditation;

(b) providing technical advice, information, assistance and exchanging experience to enhance the other Party's system for standards, technical regulations and conformity assessment procedures, and related activities;

(c) examining the compatibility and/or equivalence of their respective technical regulations, standards and conformity assessment procedures;

(d) cooperation between conformity assessment bodies, both governmental and non-governmental, in the territory of each Party, enhancing infrastructure in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;

(e) increasing their bilateral cooperation in the relevant international organizations and fora dealing with the issues covered by this Chapter;

(f) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures such as:

(i) cooperation in the development and promotion of good regulatory practice; and

(ii) transparency, including ways to promote improved access to information on standards, technical regulations and conformity assessment procedures;

(g) giving favourable consideration, on request of the other Party, to any sector specific proposal for further cooperation; and

(h) informing the other Party, as requested, about the agreements or programmes subscribed at international level in relation to Technical Barriers to Trade issues.

Article 7.12: Consultations

1. Each Party shall give prompt and positive consideration to any request from the other Party for consultations on issues relating to the implementation of this Chapter.

2. Where a matter covered under this Chapter cannot be clarified or resolved as a result of consultations, the Party concerned may refer the matter to the Committee on Technical Barriers to Trade.

Article 7.13: Committee on Technical Barriers to Trade

1. The Parties hereby agree to establish a Committee on Technical Barriers to Trade (hereinafter referred to as "the Committee"), which shall be composed of representatives of the Parties. The Committee shall report to the Commission of its activities.

2. For the purposes of this Article, the Committee shall be coordinated by:

(a) in the case of Chile, the General Directorate of International Economic Affairs, Ministry of Foreign Affairs, or its successor; and

(b) in the case of Thailand, the Secretary-General of Thai Industrial Standards Institute, Ministry of Industry, or its successor.

3. In order to facilitate the communications, the Parties will designate a contact point no later than two (2) months following the date of entry into force of this Agreement.

4. Each Party shall ensure that its contact point or contact points facilitate the exchange of information between the Parties on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from a Party.

5. The Committee may address any matter related to the effective functioning of this Chapter. The responsibilities and functions of the Committee shall include:

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

(b) promptly addressing any issue that a Party raises related to the preparation, adoption and application of standards, technical regulations or conformity assessment procedures;

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

(d) providing a forum for discussions and exchanging information on Parties' systems for standards, technical regulations, and conformity assessment procedures;

(e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standardisation and conformity assessment procedures;

(f) exploring any means aimed at improving access to the Parties' respective markets and enhancing the functioning of this Chapter;

(g) consulting on any matter arising under this Chapter, upon a Party's request; and

(h) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments.

6. Where the Parties have had recourse to consultations under paragraph 5 (g) such consultations shall, on the agreement of the Parties, constitute consultations under Article 14.3 (Consultations).

7. The Committee shall meet at least once a year, unless otherwise agreed by the Parties. Meetings may be held through any means, as mutually determined by the Parties. By mutual agreement, *ad hoc* working groups may be established if necessary.

8. The terms of reference of the Committee shall be determined on its first meeting.

Chapter 8

Trade Remedies

Part I

General Trade Remedies

Article 8.1: Anti-Dumping Measures

1. Each Party retains its rights and obligations under Article VI of GATT 1994 and the WTO Agreement on Implementation of Article VI of GATT 1994 with regard to the application of antidumping duties, or any amendments or provisions that supplement or replace them.

2. No provision of this Agreement, including the provisions of Chapter 14 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to anti-dumping measures.

Article 8.2: Countervailing Measures

1. Each Party retains its rights and obligations regarding countervailing measures[4] under Article VI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, or any amendments or provisions that supplement or replace them.

2. No provision of this Agreement, including the provisions of Chapter 14 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to countervailing measures.

Article 8.3: Global Safeguards

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards and any other relevant provisions in the WTO Agreement, or any amendments or provisions that supplement or replace them.

2. Except for the circumstance specified in Article 8.6.4, no provision of this Agreement, including the provisions of Chapter 14 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to global safeguard measures.

[4] For greater certainty, countervailing measures and subsidies have the same meaning as defined in the WTO Agreement.

Part II

Bilateral Safeguards

Article 8.4: Definitions

For the purposes of this Part:

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

preferential tariff rate means the rate of customs duty for an imported good pursuant to Annex 3.4;

provisional measure means a provisional safeguard measure described in Article 8.8;

safeguard measure means a transitional safeguard measure described in Article 8.5;

serious injury means a significant overall impairment in the position of a domestic industry;

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

transition period means the five (5) year period beginning on the date of entry into force of this Agreement, except in the case of a product where the liberalization process occurs over a longer period of time, the transition period shall be equal to the period in which such a product reaches zero tariff according to the Tariff Schedule as specified in Annex 3.4.

Article 8.5: Application of a Transitional Safeguard Measure

If, as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good of a Party is being imported into the other Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing a like or directly competitive good, the other Party may, to the minimum extent necessary to prevent or remedy serious injury and facilitate adjustment, apply a safeguard measure, consisting of:

(a) the suspension of the further reduction of any rate of customs duty provided for under this Agreement on the good from the date on which the action to apply the safeguard measure is taken; or

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

(i) the most-favoured-nation (MFN) applied rate of customs duty in effect on the date on which the action to apply the safeguard measure is taken; or

(ii) the MFN applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

Article 8.6: Scope and Duration of Transitional Safeguard Measures

1. A Party shall apply a safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. A Party may apply a safeguard measure for an initial period of no longer than two (2) years. The period of a safeguard measure may be extended by up to one (1) year provided that the conditions of this Chapter are met and that the safeguard measure continues to be applied to the minimum extent necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting. The total period of a safeguard measure, including any extensions thereof, shall not exceed three (3) years. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a good shall terminate at the end of the transition period for such good. No new safeguard measure may be applied to a good after that date.

2. In order to facilitate adjustment in a situation where the proposed duration of a safeguard measure is over one (1) year, the Party applying the measure shall progressively liberalise it at regular intervals during the application of the measure, including at the time of any extension.

3. No safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a safeguard measure, for a period of time equal to the duration of the previous safeguard measure or one (1) year, whichever is longer.

4. A Party shall not apply a safeguard or provisional measure on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards**.**

5. On the termination of a safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in its Tariff Schedule as specified in Annex 3.4 (Elimination of Customs Duties) on the date of termination as if the safeguard measure had never been applied.

Article 8.7: Investigation

1. A Party shall apply or extend a safeguard measure only following an investigation by the Party's competent authorities to examine the effect of increased imports of an originating good of the other Party on the domestic industry, as reflected in changes in such relevant economic variables as production, productivity, levels of sales, utilisation of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, none of which is necessarily decisive. When factors other than increased imports of an originating good of the other Party resulting from the reduction or elimination

of a customs duty pursuant to this Agreement are simultaneously causing injury to the domestic industry, such injury shall not be attributed to such increased imports.

2. An investigation under paragraph 1 shall only take place in accordance with Article 3 and 4.2 (c) of the WTO Agreement on Safeguards; and to this end Article 3 and 4.2 (c) are incorporated into and made a part of this Agreement, *mutatis mutandis*.

Article 8.8: Provisional Measures

1. In highly unusual and critical circumstances where delay would cause injury which would be difficult to repair, a Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party as a result of the reduction or elimination of a duty pursuant to this Agreement have caused or are threatening to cause serious injury. The duration of such a provisional measure shall not exceed one hundred and fifty (150) days, during which period the pertinent requirements of Articles 8.5, 8.6, and 8.7 shall be met. The duration of any such provisional measure shall be counted as part of the total period referred to in Article 8.6.1. Any additional customs duties collected as a result of such a provisional measure shall be promptly refunded if the subsequent investigation referred to in Article 8.7 does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry. In such a case, the Party that applied the measure shall apply the rate of customs duty set out in its Tariff Schedule as specified in Annex 3.4 as if the provisional measure had never applied.

2. In determining whether such highly unusual and critical circumstances exist, a Party shall have regard to the rate of increase of imports of an originating good of the other Party, both in absolute and relative terms, and the overall level of the Party's imports of the good from the other Party as a share of total imports of the good, as a result of the reduction or elimination of a duty on the good pursuant to this Agreement.

Article 8.9: Notification and Consultation

1. A Party shall promptly notify the other Party, in writing, on:

   (a) initiating an investigation under Article 8.7;

   (b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty on the good pursuant to this Agreement;

   (c) taking a decision to apply or extend a safeguard measure, or to apply a provisional measure; and

   (d) taking a decision to progressively liberalise a safeguard measure previously applied.

2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 8.7 immediately as it is available.

3. In making a notification pursuant to paragraph 1, the Party applying or extending a safeguard measure shall also provide evidence of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement, a precise description of the good involved, the details of the proposed measure including as appropriate the grounds for not selecting the measure described in Article 8.5 (a), the date of introduction, duration, and timetable for progressive liberalisation of the measure, if such timetable is applicable. In the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided. Upon request, the Party applying or extending a safeguard measure shall provide additional information as the other Party may consider necessary.

4. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, *inter alia*, reviewing the information provided under paragraph 3, exchanging views on the measure and reaching an agreement on compensation as set forth in Article 8.10.

5. Where a Party applies a provisional measure referred to in Article 8.8, on request of the other Party, consultations shall be initiated immediately after such application.

6. The provisions on notification in this Chapter shall not require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular juridical persons, public or private.

7. The Parties shall provide an English translation of notifications under this Article and any other communications between parties.

Article 8.10: Compensation

1. A Party applying a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in the form of substantially equivalent concessions. Such consultations shall begin within thirty (30) days of the application of the safeguard measure.

2. If the Parties are unable to reach agreement on compensation within thirty (30) days after the consultations commence, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first year that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Chapter.

4. A Party shall notify the other Party in writing at least thirty (30) days before suspending concessions under paragraph 2.

5. The obligation to provide compensation under paragraph 1 and the right to suspend substantially equivalent concessions under paragraph 2 shall terminate on the date of the termination of the safeguard measure.

Chapter 9

Trade in Services

Article 9.1: Definitions

For the purpose of this Chapter:

a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;

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

airport operation services means passenger air terminal services and ground services on air fields, including runway operating services, on a fee or contract basis covered under CPC 7461, excluding airport security services and services covered in ground-handling services;

commercial presence means any type of business or professional establishment, including, *inter alia*, through the constitution, acquisition or maintenance of a juridical person, as well as branches or representative offices within the territory of a Party for the purpose of supplying a service;

computer reservation system services means services provided by computerised systems that contain information about air carrier's schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued (part of CPC 7523);

juridical person means any legal entity duly constituted or otherwise organised under applicable law, whether for profit, including governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central, regional, or local governments and authorities; and

(b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

natural person of a Party means a natural person who resides in the territory of a Party and who under the law of that Party is a national of that Party;

selling and marketing of air transport services has the same meaning as such term is defined in paragraph 6 (b) of GATS Annex on Air Transport Services, except that the term marketing shall be limited to market research, advertising and distribution;

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

services means any service in any sector except services supplied in the exercise of governmental authority;

specialty air services means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services;

state enterprise means a juridical person that is owned, or controlled through ownership interests by a Party; and

trade in services means the supply of a service:

(a) from the territory of a Party into the territory of the other Party (mode 1);

(b) in the territory of a Party by a person of that Party to a person of the other Party (mode 2);

(c) by a service supplier of a Party, through commercial presence in the territory of the other Party (mode 3); and

(d) by a service supplier of a Party through presence of natural persons in the territory of the other Party (mode 4).

Article 9.2: Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services by a service supplier of the other Party, including those related to:

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

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

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

(d) the presence in its territory of a service supplier of the other Party.

2. This Chapter shall not apply to:

(a) financial services as defined in Article 10.1 (Definitions);

(b) government procurement;

(c) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees, and insurance;

(d) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services, other than:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system (CRS) services;

(iv) specialty air services;

(v) airport operation services; and

(vi) ground handling services; and

(e) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding citizenship, residence or employment on a permanent basis.

3. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to a Party under the terms of a specific commitment[5].

Article 9.3: Market Access[6]

1. With respect to market access through the modes of supply identified in Article 9.1, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule referred to in Article 9.6.

[5] The sole fact of requiring a visa shall not be regarded as nullifying or impairing benefits under a specific commitment.

[6] Nothing in this Article should be interpreted to impede a Party to adopt or mantain non-discriminatory quantative restrictions related to parragraphs 2 (a) and 2 (e).

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt, unless otherwise specified in its Schedule referred to in Article 9.6, are defined as:

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[7]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or a requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entities or joint ventures through which a service supplier of the other Party may supply a service; and

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

Article 9.4: National Treatment

1. In the sectors inscribed in its Schedule referred to in Article 9.6, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[8]

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

[7] Paragraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

[8] 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 9.5: Additional Commitment

Where a Party undertakes specific commitments on measures affecting trade in services not subject to scheduling under Articles 9.3 and 9.4, such commitments are inscribed in its Schedule as additional commitments.

Article 9.6: Schedule of Specific Commitments

1. The specific commitments undertaken by each Party under Articles 9.3 and 9.4 are set out in the Schedule included in Annex 9.6. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

(d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 9.3 and 9.4 are inscribed in the column relating to Article 9.3. In this case, the inscription will be considered to provide a condition or qualification to Article 9.4 as well.

Article 9.7: Modification of Schedules

Any modification or withdrawal of specific commitments on trade in services shall be made in accordance with of Article 16.2 (Amendments). In the negotiations for such modification or withdrawal, the Parties shall enter into negotiations with a view to reaching an agreement on any necessary compensatory adjustment. In such negotiations and agreements, the Parties shall maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in their Schedules in Annex 9.6 prior to such negotiations.

Article 9.8: Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute, as soon as practicable, judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of and, where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, including that such measures are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

4. Where a Party maintains measures relating to qualification requirements and procedures, technical standards and licensing requirements, the Party shall:

(a) make publicly available:

(i) information on requirements and procedures to obtain, renew or retain any licences or professional qualifications; and

(ii) information on technical standards;

(b) where any form of authorisation is required for the supply of a service, ensure that it will:

(i) within a reasonable period of time after the submission of an application deemed complete under its domestic laws and regulations, consider the application and make a decision as to whether or not to grant the relevant authorisation;

(ii) promptly inform the applicant of the decision whether or not to grant the relevant authorisation;

(iii) upon the request of the applicant, provide without undue delay, information concerning the status of the application; and

(iv) where practicable, upon the written request of an unsuccessful applicant, provide written reasons for a decision not to grant the relevant authorisation; and

(c) provide for adequate procedures to verify the competency of professionals of the other Party.

5. Notwithstanding subparagraph (b) of the definition of **measures adopted or maintained by a Party** in Article 9.1, paragraphs 1 to 3 shall not apply where the relevant measures are the responsibility of non-governmental bodies. However, each Party shall encourage such non-governmental bodies to comply with the requirements of paragraphs 1 to 3.

6. If the results of the negotiations related to Article VI.4 of GATS (or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations as appropriate.

Article 9.9: Recognition

1. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in this Chapter shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

2. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

Article 9.10: Emergency Safeguard Measures

The Parties take note of the multilateral negotiations pursuant to Article X of GATS on the question of emergency safeguard measures. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

Article 9.11: Denial of Benefits

Subject to prior notification, a Party may deny the benefits of this Chapter to:

(a) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party and the juridical person has no substantial business activities in the territory of the other Party; or

(b) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of the denying Party and the juridical person has no substantial business activities in the territory of the other Party.

Article 9.12: Review

Three (3) years after the entry into force of this Agreement or upon request of a Party and in pursuit of the objectives and purposes of this Chapter, the Commission may review this Chapter, taking into account the developments and regulations on trade in services of the Parties as well as the progress made at the WTO, including discussions

regarding Emergency Safeguard Measures and other specialised forums, where both Parties are members.

Article 9.13: Committee on Trade in Services

1. The Parties hereby establish a Committee on Trade in Services (hereinafter referred to as "the Committee").

2. The functions of the Committee shall be:

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

(b) exchanging information on domestic laws and regulations;

(c) discussing any issues related to this Chapter as may be agreed upon;

(d) reporting the findings of the Committee to the Commission; and

(e) carrying out other functions which may be delegated by the Commission pursuant to Article 13.1.4 (Free Trade Commission).

Chapter 10

Trade in Financial Services

Article 10.1: Definitions

For the purposes of this Chapter:

a financial service supplier means any natural or juridical person that seeks to supply or supplies financial services but the term **financial service supplier** does not include a public entity;

commercial presence means any type of business or professional establishment, including through:

(a) the constitution, acquisition or maintenance of a juridical person; or

(b) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a financial service;

financial service means any service of a financial nature, offered by a financial service supplier of a Party. Financial services comprise the following activities:

Insurance and Insurance-related Services

(a) direct insurance (including co-insurance):

(i) life

(ii) non-life

(b) reinsurance and retrocession;

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

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

Banking and other financial services (excluding insurance)

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

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

(g) financial leasing;

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

(i) guarantees and commitments;

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

(i) money market instruments (including cheques, bills, certificates of deposits);

(ii) foreign exchange;

(iii) derivative products including, but not limited to, futures and options;

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

(v) transferable securities;

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

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

(l) money broking;

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

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

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

(p) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

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

juridical person of a Party means a juridical person which is either:

(a) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in financial services in the territory of that Party; or

(b) in the case of supply of a financial service through commercial presence in the territory of the other Party, is owned or controlled by:

(i) natural persons of that Party; or

(ii) juridical persons of that Party identified under subparagraph (a);

additionally, in the case of Thailand, such **juridical person** is:

(c) owned by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;

(d) controlled by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; and

(e) affiliated with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

measures adopted or maintained by a Party means measures taken by:

(a) central, regional or local governments and authorities; and

(b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities; and

natural person means a national of Chile or of Thailand according to their respective legislation;

public entity means:

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

(b) a private entity performing functions normally performed by a central bank or monetary authority when exercising those functions.

Article 10.2: Scope

1. This Chapter applies to measures adopted or maintained by the Parties affecting trade in financial services.

2. For the purposes of this Chapter, trade in financial services is defined as the supply of a financial service through the following modes:

(a) from the territory of a Party into the territory of the other Party (mode 1);

(b) in the territory of a Party to the financial service consumer of the other Party (mode 2);

(c) by a financial service supplier of a Party through commercial presence in the territory of the other Party (mode 3); and

(d) by a financial service supplier of a Party through presence of natural persons in the territory of the other Party (mode 4).

3. This Chapter shall not apply to measures affecting:

(a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(b) activities forming part of a statutory system of social security or public retirement plans; and

(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

4. For greater certainty, nothing in this Chapter shall be construed to impose any obligation with respect to:

(a) government procurement; or

(b) subsidies or grants including government-supported loans, guarantees, and insurance, provided by a Party or to any conditions attached to the receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers.

Article 10.3: Market Access

1. With respect to market access through the modes of supply identified in Article 10.2, each Party shall accord financial services and financial service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule referred to in Article 10.5.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of financial services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

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

(c) limitations on the total number of financial service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test[16];

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

(e) measures which restrict or require specific types of legal entities or joint ventures through which a financial service supplier of the other Party may supply a financial service; and

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

Article 10.4: National Treatment

1. In the sectors inscribed in its Schedule referred to in Article 10.5, and subject to the conditions and qualifications set out therein, each Party shall accord to financial services and financial service suppliers of the other Party, in respect of all measures affecting the supply of financial services, treatment no less favourable than that it accords to its own like financial services and financial service suppliers.[17]

2. A Party may meet the requirement of paragraph 1 by according to financial services and financial service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like financial services and financial service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of financial services or financial service suppliers of a Party compared to like financial services or financial service suppliers of the other Party.

Article 10.5: Schedule of Specific Commitments

[16] Subparagraph 2 (c) does not cover measures of a Party which limit inputs for the supply of services.

[17] Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

1. The specific commitment undertaken by each Party under Articles 10.3 and 10.4 are set out in the Schedule included in Annex II. With respect to sectors where such commitments are undertaken, each Schedule specifies:

(a) terms, limitations and conditions on market access; and

(b) conditions and qualifications on national treatment.

2. Measures inconsistent with both Articles 10.3 and 10.4 are inscribed in the column relating to Article 10.3. In this case, the inscription is considered to provide a condition or qualification to Article 10.4 as well.

Article 10.6: Regulatory Transparency

1. Each Party shall ensure that measures of general application adopted or maintained by a Party are promptly published or otherwise made publicly available.[18]

2. Each Party shall, to the extent practicable, provide in advance to interested persons any measure of general application that the Party proposes to adopt, in order to allow an opportunity for such persons to comment on the measure.

3. Each Party's appropriate financial regulatory authority shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

4. On the request of an applicant in writing, the appropriate financial regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

5. Each Party shall make its best endeavour to implement and apply in its territory internationally agreed standards for regulation and supervision in the financial services sector.

Article 10.7: Data Processing in the Financial Services Sector

1. In sectors where specific commitments are undertaken, each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other forms, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.

2. Nothing in paragraph 1 shall:

(a) restrict the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts including in accordance with its domestic laws and regulations so long as such right shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement;

[18] For greater certainty, the Parties agree that such information may be published in each Party's chosen language.

(b) prevent a regulator of a Party for regulatory or prudential reasons from requiring a financial service supplier in its territory to comply with domestic regulation in relation to data management and storage, and system maintenance, as well as to retain within its territory copies of records; or

(c) be construed to require a Party to allow the cross-border supply or the consumption abroad of services in relation to which it has not made specific commitments including to allow non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, the provision and transfer of financial information and financial data processing as referred to in subparagraph (o) of Article 10.1.

Article 10.8: Confidential Information

Nothing in this Chapter shall:

(a) require any of the Parties to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular juridical persons, whether public or private; and

(b) be construed to require a Party to disclose information relating to the financial affairs and accounts of individual customers, or any confidential or proprietary information in the possession of public entities.

Article 10.9: Prudential Carve-out

Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity, soundness and stability of the financial system. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

Article 10.10: Recognition

1. A Party may recognise prudential measures of the other Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement with a third party such as those referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreement or arrangement, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the Parties to the agreement or

arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

Article 10.11: Committee on Financial Services

1. The Parties hereby establish a Committee on Financial Services (hereinafter referred to as "the Committee"). The Committee shall be composed of representatives of the Parties. The principal representative of each Party shall be an official of the Party's Ministry of Finance or authorities designated by the Ministry of Finance.

2. The functions of the Committee shall include supervising the implementation of this Chapter and considering issues regarding financial services that are referred to it by a Party.

3. The Committee shall meet upon request of a Party on a date and with an agenda agreed in advance by both Parties.

Article 10.12: Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex I.

3. Nothing in this Article shall be construed to require financial authorities participating in consultations to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

4. Where a financial authority of a Party requires information for supervisory purposes concerning a financial service supplier in the other Party's territory, such financial authority may approach the competent financial authority in the other Party's territory to seek the information. The provision of such information may be subject to the terms, conditions and limitations contained in the other Party's relevant law or to the requirement of a prior agreement or arrangement between the respective financial authorities.

Article 10.13: Specific Provisions on Dispute Settlement

1. Except as otherwise provided in this Article, any disputes under this Chapter shall be settled in accordance with the provisions of Chapter 14 (Dispute Settlement).

2. Consultations held under Article 10.12 shall be deemed to constitute the consultations referred to in Article 14.3 (Consultations), unless the Parties otherwise agree. If the matter has not been resolved within sixty (60) days after the starting date of the consultations under Article 10.12 or ninety (90) days after the receipt of the request for consultations under Article 10.12.1, whichever is earlier, the complaining Party may request in writing the establishment of an arbitral panel. The Parties shall report the results of their consultations directly to the Commission.

3. Arbitrators of arbitral panels constituted for disputes arising under this Chapter shall meet the requirements set out in Article 14.7 (Composition of Arbitral Panels) and shall also have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

4. Consistent with Article 14.14 (Non-Implementation – Compensation and Suspension of Concessions or other Obligations), in any dispute where an arbitral panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector to the same extent that such measure have an effect on 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.

Chapter 11

Economic Cooperation

Article 11.1: General Objectives

1. The Parties agree to establish a framework for collaborative activities as a means to expand and enhance the benefits of this Agreement for building a strategic economic partnership.

2. The Parties will establish close cooperation aimed, *inter alia*, at:

(a) strengthening and building on existing cooperative relationships between the Parties, including a focus on promoting economic and social development, fostering innovation and encouraging research and development;

(b) creating new opportunities for trade and investment, promoting competitiveness and innovation;

(c) supporting the important role of the private sector in promoting and building strategic alliances to encourage mutual economic growth and development;

(d) encouraging the presence of the Parties and their goods and services in their respective markets of Asia Pacific and Latin America;

(e) reinforce and expand cooperation, collaboration and mutual exchange in the cultural and educational areas; and

(f) increasing the level of and deepening cooperation activities between the Parties in areas of mutual interest.

Article 11.2: Scope

1. The Parties affirm the importance of all forms of cooperation, including, but not limited to, the fields of cooperation enlisted in Article 11.3 and any other fields that the Parties agree or include.

2. Cooperation between the Parties should contribute to achieving the objectives of this Agreement through the identification and development of innovative cooperation programmes capable of providing added value to their relationships.

3. Cooperative activities will be agreed between the Parties and may include, though not limited to, those enlisted in Article 11.4

4. Cooperation between the Parties under this Chapter will complement the cooperation and cooperative activities between the Parties set out in other Chapters of this Agreement.

Article 11.3: Fields of Cooperation

Fields of cooperation and capacity building under this Chapter may include, among others:

(a) Trade and Investment Promotion;

(b) Science, Innovation, Research and Development;

(c) Agriculture, Aquaculture and Fishery, Food Industry and Forestry;

(d) Mining;

(e) Energy;

(f) Small and Medium-sized Enterprises;

(g) Tourism;

(h) Education, and Human Capital Development;

(i) Community Development and Cultural Cooperation;

(j) Trade-related Gender Issues;

(k) Logistics and International Transportation;

(l) Environment;

(m) Labour Issues;

(n) Government Procurement;

(o) Information and Communication Technology (ICT);

(p) E-commerce; and

(q) Geographical Indications.

Article 11.4: Activities of Cooperation

1. Areas and forms of cooperation under this Chapter shall be set forth in the implementing arrangements consistent with the objectives set in Article 11.1.

2. Parties will encourage and facilitate, as mutually agreed by both Parties, the following activities, including, but not limited to:

(a) exchange of people, information, documentation, experiences;

(b) cooperation in regional and multilateral fora;

(c) direct cooperative activities;

(d) technical assistance;

(e) dialogues, conferences, seminars and training programmes with experts; and

(f) any other activity the Cooperation Committee might define.

Article 11.5: Environmental Issues

1. Recognising the importance of strengthening capacity to promote sustainable development with their three (3) interdependent and mutually reinforcing components: economic growth, social development and environmental protection, the Parties agree to cooperate in the field of environment.

2. The Parties agree that it is inappropriate to set or use their environmental laws, regulations, policies and practices for trade protectionist purposes; as well as it is inappropriate to relax, or fail to enforce or administer, their environmental laws and regulations to encourage trade and investment.

3. Each Party shall endeavour to promote public awareness of its environmental laws, regulations, policies and practices domestically.

4. The Parties shall endeavour to cooperate in the field of the environment as mutually agreed by both Parties. The aim of cooperation will be the prevention and/or reduction of pollution and degradation of natural resources and ecosystems, and rational use of the latter; through developing and endorsing special programmes and projects dealing, *inter alia*, with the transfer of knowledge and technology.

5. Cooperation on environment may include:

(a) climate change;

(b) biodiversity and conservation of natural resources;

(c) management of hazardous chemicals;

(d) air quality;

(e) water management;

(f) waste management;

(g) marine and coastal ecological conservation and pollution control;

(h) strategic environmental impact assessment;

(i) improvement of environmental awareness, including environmental education and public participation; and

(j) green technology.

6. New areas of cooperation may be developed through existing agreements and through appropriate implementing arrangements.

7. In order to facilitate communication for purposes of this Article, each Party will designate a contact point no later than six (6) months from the date of entry into force of this Agreement. Each Party will notify the other Party promptly of any change of contact point.

Article 11.6: Labour Issues

1. In accordance with Article 11.3 the Parties hereby reaffirm their commitment to establish cooperation on labour.

2. Parties will cooperate on labour and employment-related matters in the areas of mutual interest and benefit, which may include, but not limited to promotion of decent work, labour policies, best practices of the labour systems, the development and management of human capital for enhanced employability, business excellence and greater productivity for the benefit of workers and employers.

3. The cooperation will be carried out through mutually agreed activities, which may include exchanges of information and expertise, and joint organisation of seminars, workshops and meetings for experts, regulatory authorities and other persons concerned.

4. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws.

5. In order to facilitate communication for purposes of this Article, each Party will designate a contact point no later than six (6) months from the date of entry into force of this Agreement. Each Party will notify the other Party promptly of any change of contact point.

Article 11.7: Electronic Commerce

1. Recognizing the global nature of electronic commerce, the Parties shall endeavour to:

(a) work together to assist small and medium enterprises to overcome obstacles encountered in its use;

(b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:

(i) personal data protection;

(ii) online consumer protection including means for consumer redress and building consumer confidence;

(iii) unsolicited commercial electronic messages;

(iv) security in electronic communications;

(v) e-authentication; and

(vi) e-government;

(c) participate actively in regional and multilateral fora to promote the development of electronic commerce;

(d) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms;

(e) encourage interoperability of electronic authentication and digital certificates in the business and government sectors, work towards the mutual recognition of digital certificates at government level, based on internationally accepted standards, and maintain domestic legislation for electronic authentication that:

(i) permits parties to electronic transactions to determine the appropriate authentication technologies and implementation models for their electronic transactions, without limiting the recognition of such technologies and implementation models; and

(ii) permits parties to electronic transactions to have the opportunity to prove in court that their electronic transactions comply with any legal requirements;

(f) facilitate cross-border electronic transactions and paperless trading:

(i) each Party shall accept the electronic format of trade administration documents as the legal equivalent of paper documents except where:

- there is a domestic or international legal requirement to the contrary; or

- doing so would reduce the effectiveness of the trade administration process; and

(ii) the Parties shall cooperate bilaterally and in international fora to enhance acceptance of electronic versions of trade administration documents;

(g) encourage cooperation in research and training that would enhance the development of electronic commerce including by sharing best practices on electronic commerce development;

(h) encourage development of domestic frameworks which are compatible with evolving international norms and standards;

(i) provide an environment which promotes trust and confidence among electronic commerce participants;

(j) take appropriate measures and take into account international standards on personal data protection:

(i) notwithstanding the differences in existing systems for personal data protection in the territories of the Parties, each Party shall take such measures as it considers appropriate and necessary to protect the personal data of users of electronic commerce; and

(ii) in the development of data protection standards, each Party shall, to the extent possible, take into account international standards and the criteria of relevant international organizations; and

(k) provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under their respective laws, regulations, and policies, to the extent possible and in a manner considered appropriate by each Party.

2. In order to facilitate communication for purposes of this Article, each Party will designate a contact point no later than six (6) months from the date of entry into force of this Agreement. Each Party will notify the other Party promptly of any change of contact point.

Article 11.8: Government Procurement

1. The Parties recognise the importance of government procurement to their economies.

2. The Parties shall endeavour to promote transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination in their government procurement procedures.

3. The Parties will cooperate on government procurement-related matters in the areas of mutual interest and benefit.

4. The cooperation will be carried out through mutually agreed activities, which may include the exchange of information on their respective laws and regulations, policies and practices on government procurement, as well as on any reforms to their existing government procurement regimes.

5. For the purposes of this Article, the Parties hereby establish a Working Group on Government Procurement. This Working Group shall report to the Commission on the outcomes of its discussions.

Article 11.9: Geographical Indications[27]

1. Each Party shall ensure, in accordance with its laws and regulations and in conformity with the WTO TRIPS Agreement, protection of geographical indications with regard to any goods. Each Party shall accept applications without the requirement for intercession by a Party on behalf of its persons.

2. The Parties shall cooperate to exchange views on issues relating to protection of geographical indications, including any strengthening of such protection.

3. The terms listed in Annex 11.9 are geographical indications of Chile and Thailand, within the meaning of paragraph 1 of Article 22 of the WTO TRIPS Agreement[28].

4. At the request of a Party, the Commission may decide to add or remove geographical indications from Annex 11.9.

5. In the case of homonymous geographical indications, each Party shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, subject to respective domestic laws and regulations of each Party.

Article 11.10: Cooperation Committee

1. For the purpose of this Agreement, the Parties hereby establish the Cooperation Committee comprising representatives of each Party.

2. The Cooperation Committee shall be coordinated and co-chaired by:

[27] Parties acknowledge that this article does not create an obligation for either Party to amend their respective laws and regulations, nor does it affect the implementation thereof.

[28] For greater certainty, geographical indications will be recognised and protected in Chile and Thailand, only to the extent permitted by and in accordance with the terms and conditions set out in their respective domestic laws and regulations, in a manner that is consistent with the TRIPS Agreement.

(a) in the case of Chile, the Ministry of Foreign Affairs through the General Directorate for International Economic Affairs, or its successor; and

(b) in the case of Thailand, the Ministry of Commerce through the Department of Trade Negotiations, or its successor.

3. In order to facilitate the communications and ensure the proper functioning of the Cooperation Committee, the Parties will designate a contact person no later than nine (9) months following the date of entry into force of this Agreement. Each Party will notify the other Party promptly of any change of contact point.

4. The Cooperation Committee shall meet at least once a year unless the Parties otherwise agree. During the first meeting, the Cooperation Committee shall agree its specific terms of reference.

5. The Cooperation Committee's functions shall include:

(a) to determine the fields of cooperation and the cooperative activities;

(b) to oversee the implementation of the strategic collaboration agreed by the Parties;

(c) to encourage the Parties to undertake cooperation activities under this Chapter; and

(d) to maintain updated information regarding any cooperation agreements, arrangements or instruments between the Parties.

6. The Cooperation Committee may agree to establish ad hoc working groups in accordance with the Cooperation Committee's terms of reference.

7. The Cooperation Committee may interact, where appropriate, with the relevant entities to address specific matters.

8. The Cooperation Committee shall report periodically to the Commission the results of its meetings. Consequently, the Commission may formulate recommendations regarding cooperation activities under this Chapter in accordance with the strategic priorities of the Parties.

Article 11.11: Non-application of Dispute Settlement

The dispute settlement procedure provided for in Chapter 14 (Dispute Settlement) shall not apply to this Chapter, with the exception of Article 11.9.

Article 11.12: Costs of Cooperation

1. The implementation of cooperation under this Chapter shall be subject to the availability of funds and the applicable laws and regulations of each Party.

2. Costs of cooperation under this Chapter shall be borne by the Parties within the limits of their own capacities and through their own channels**,** in an equitable manner to be mutually agreed by the Parties.

Chapter 12

Transparency

Article 12.1: Definition

For the purposes of this Chapter, **administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and factual situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative 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 12.2: Contact Points

1. The contact point referred in Annex 12.2 shall facilitate communications between the Parties on any matter covered by this Agreement.

2. On the request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the requesting Party.

Article 12.3: Publication

1. Each Party shall ensure, wherever possible in electronic form, that its laws, regulations, procedures and administrative rulings of general application in respect of any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such laws, regulations, procedures and administrative rulings of general application referred to in paragraph 1 that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 12.4: Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure that the requesting Party considers might materially affect the operation of this Agreement or otherwise

substantially affect its interests under this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

3. Any notification, request or information under this Article shall be provided to the other Party through the relevant contact points.

4. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 12.5: Administrative Proceedings

With a view to administering, in a consistent, impartial and reasonable manner, its measures referred to in Article 12.3, each Party shall ensure that in its administrative proceedings in which these measures are applied to particular persons, goods or services of the other Party in specific cases that it:

(a) provides wherever possible, persons of the other Party that are directly affected by a proceeding reasonable notice, in accordance with its domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) affords such persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) follows its procedures in accordance with domestic law.

Article 12.6: Review and Appeal

1. Each Party shall establish or maintain judicial, or administrative tribunals or procedures for the purpose of prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action that is the subject of the decision.

Chapter 13

Administration and Institutional Provisions

Article 13.1: Free Trade Commission

1. The Parties hereby establish a Free Trade Commission (hereinafter referred to as "the Commission").

2. The Commission shall be composed of relevant government officials of each Party and shall be co-chaired by:

(a) in the case of Chile, the Director-General of International Economic Affairs of the Ministry of Foreign Affairs for Chile or their respective designee; and

(b) in the case of Thailand, the Director-General of the Department of Trade Negotiations of the Ministry of Commerce for Thailand, or their respective designee.

3. The Commission shall:

(a) review the general functioning of this Agreement;

(b) review, consider and, as appropriate, decide on specific matters relating to the operation, application and implementation of this Agreement, including matters reported by committees or working groups established under this Agreement;

(c) supervise and coordinate the work of committees, working groups and contact points established under this Agreement;

(d) provide assistance in order to resolve disputes that may arise regarding the interpretation, implementation or application of this Agreement; and

(e) take such other action as the Parties may agree.

4. The Commission may:

(a) establish, refer matters and delegate responsibilities to any committee or working group;

(b) consider and adopt any modifications[30] of:

(i) the Schedules attached to Annex 3.4 (Reduction and/or Elimination of Customs Duties), by accelerating tariff elimination; and

[30] The acceptance of any modification by a Party is subject to the completion of any necessary domestic legal procedures of that Party. Chile shall implement the actions of the Commission through *Acuerdos de Ejecución*, in accordance with Article 54, number 1, fourth paragraph, of the *Constitución Política de la República de Chile*.

(ii) the rules of origin established in Annex 4.2 (Product Specific Rules);

(iii) the Geographical Indications listed in Annex 11.9 (List of Geographical Indications);

(c) issue interpretations of this Agreement; and

(d) seek the opinion of non-governmental persons or groups on matters covered by this Agreement.

Article 13.2: Procedures of the Commission

1. The Commission shall convene at least once a year in regular session. The Commission shall meet alternately in the territory of each Party, unless the Parties otherwise agree.

2. The Commission shall also meet in special session within thirty (30) days of the request of a Party, with such sessions to be held in the territory of the other Party or at such location as may be agreed by the Parties.

3. All decisions of the Commission shall be taken by mutual agreement.

4. The Commission shall establish its rules and procedures at its first meeting.

Chapter 14

Dispute Settlement

Article 14.1: Scope

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the implementation, interpretation or application of this Agreement, which includes wherever a Party considers that:

(a) a measure of the other Party is inconsistent with its obligations under this Agreement; or

(b) the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 14.2: Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another free trade agreement to which both Parties are parties or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others.

Article 14.3: Consultations

1. Either Party may request in writing consultations with the other Party concerning any matter on the implementation, interpretation or application of this Agreement, including a matter relating to a measure that the other Party proposes to adopt.

2. The requesting Party shall deliver the request to the other Party, setting out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and providing sufficient information to enable an examination of the matter.

3. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations of any matter raised in accordance with this Article.

4. In consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

5. The consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 14.4: Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin and be terminated at any time.

2. Good offices, conciliation or mediation may continue while procedures of an arbitral panel established in accordance with this Chapter are in progress.

Article 14.5: Referral of Matters to the Commission

1. If the consultations fail to resolve the matter within forty (40) days of the delivery of a Party's request for consultations under Article 14.3.2, or twenty (20) days in cases of urgency including those which concern perishable goods, the complaining Party may refer the matter to the Commission by delivering written notification to the other Party. The Commission shall endeavour to resolve the matter.

2. The Commission may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary;

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures; or

(c) make recommendations;

as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

Article 14.6: Establishment of Arbitral Panels

1. The complaining Party that requested consultations under Article 14.3 may request in writing the establishment of an arbitral panel, if the Parties fail to resolve the matter within:

(a) forty-five (45) days after the date of receipt of the request for consultation if there is no referral to the Commission under Article 14.5;

(b) thirty (30) days of the Commission convening pursuant to Article 14.5, or fifteen (15) days in cases of urgency, including those which concern perishable goods; or

(c) sixty (60) days after a Party has delivered a request for consultation under Article 14.3, or thirty (30) days in cases of urgency, including those which concern perishable goods, if the Commission has not convened after a referral under Article 14.5.

2. The establishment of an arbitral panel shall not be requested on any matter relating to a proposed measure, as referred to in Article 14.3.1.

3. Any request to establish an arbitral panel pursuant to this Article shall identify:

(a) the specific measure at issue;

(b) the legal basis of the complaint including any provision of this Agreement alleged to have been breached and any other relevant provisions; and

(c) the factual basis for the complaint.

4. The arbitral panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

5. The date of the establishment of an arbitral panel shall be the date on which the chair is appointed.

Article 14.7: Composition of Arbitral Panels

1. An arbitral panel shall comprise three panelists.

2. Each Party shall, within forty (40) days after the date of receipt of the request for the establishment of an arbitral panel, appoint one panelist who may be its national and propose up to three candidates to serve as the third panelist who shall be the chair of the arbitral panel. The third panelist shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

3. The Parties shall agree on and appoint the third panelist within fifty (50) days after the date of receipt of the request for the establishment of an arbitral panel, taking into account the candidates proposed pursuant to paragraph 2.

4. If a Party has not appointed a panelist pursuant to paragraph 2 or if the Parties fail to agree on and appoint the third panelist pursuant to paragraph 3, the panelist or panelists not yet appointed shall be chosen within seven (7) days by lot from the candidates proposed pursuant to paragraph 2.

5. All panelists shall:

(a) have expertise or experience in law, international trade or other matters covered by this Agreement;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment;

(c) be independent of, and not be affiliated with or receive instructions from, the government of either Party; and

(d) comply with a code of conduct to be agreed by the Parties after the entry into force of this Agreement.

6. If a panelist appointed under this Article dies, becomes unable to act or resigns, a successor shall be appointed within twenty (20) days in accordance with the appointment procedure provided for in paragraphs 2, 3 and 4, which shall be applied respectively, *mutatis mutandis*. The successor shall have all the powers and duties of the original panelist. The work of the arbitral panel shall be suspended for a period beginning on the date the original panelist dies, becomes unable to act or resigns. The work of the arbitral panel shall resume on the date the successor is appointed.

Article 14.8: Functions of Arbitral Panels

1. An arbitral panel established under Article 14.7:

   (a) shall make its report in accordance with this Agreement and applicable rule of international law;

   (b) shall set out, in its report, its findings of facts and law, together with its reasons therefore; and

   (c) may, in addition to its findings of facts and law, include in its report, recommendations for the Parties to consider in implementing the findings.

2. The report of the arbitral panel shall be final and binding on the Parties.

3. The arbitral panel shall attempt to make its decision, including its report, by consensus but may also make such decisions by majority vote.

Article 14.9: Terms of Reference of Arbitral Panels

Unless the Parties otherwise agree within twenty (20) days from the date of receipt of the request for the establishment of the arbitral panel, the terms of reference of the arbitral panel shall be:

> "To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral panel pursuant to Article 14.6, to make findings of facts and law, and determinations on whether the measure is not in conformity with the Agreement together with the reasons therefore, and to issue a written report for the resolution of the dispute. If the Parties agree, the arbitral panel may make recommendations for resolution of the dispute."

Article 14.10: Proceedings of Arbitral Panels

1. The arbitral panel shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral panel to appear before it.

2. The deliberations of the arbitral panel and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing to the public statements of its own positions or its submissions, but a Party shall not disclose and treat as confidential, information or written submissions submitted by the other Party to the arbitral panel which the latter Party has designated as confidential. Where a Party has

provided information or written submissions designed to be confidential, that Party shall provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

3. The arbitral panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory settlement of the dispute.

4. The Parties shall transmit to the arbitral panel written submissions in which they present the facts of their cases and their arguments and shall do so within the following time limits:

(a) for the Party which requested the establishment of the arbitral panel, within thirty (30) days of the establishment of that panel; and

(b) for the other Party, within thirty (30) days of the transmission of the written submission of the Party which requested the establishment of the arbitral panel.

5. Each Party's written submissions, including any comments on the draft report made in accordance with Article 14.12.3, written versions of oral statements and responses to questions put by the arbitral panel shall be made available to the other Party.

6. At the request of a Party, or on its own initiative, the arbitral panel may seek information and technical advice from any person or body that it deems appropriate, and subject to such terms and conditions as the Parties may set. The arbitral panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.

7. The arbitral panel shall, in consultation with the Parties, regulate its own procedures governing the rights of Parties to be heard and its own deliberations where such procedures are not otherwise set out in this Chapter and in Annex 14.10.

8. Any time period or other rules and procedures for arbitral panels provided for in this Chapter, including Annex 14.10, may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Chapter.

Article 14.11: Suspension or Termination of Proceedings

1. Where the Parties agree, an arbitral panel may suspend its work at any time for a period not exceeding twelve (12) months. In the event of such a suspension, all relevant time-frames set out in this Chapter and in Annex 14.10 shall be extended by the amount of time that the work was suspended. If the work of the arbitral panel has been suspended for more than twelve (12) months, the arbitral panel's authority for considering the dispute shall lapse unless the Parties agree otherwise.

2. The Parties may agree at any time to terminate the proceedings of the arbitral panel established under this Chapter by jointly notifying the chair of that arbitral panel.

Article 14.12: Report

1. The report of the arbitral panel shall be drafted without the presence of the Parties. The arbitral panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the arbitral panel.

2. The arbitral panel shall, within one hundred and twenty (120) days, or within sixty (60) days in cases of urgency, including those which concern perishable goods, after the date of its establishment, submit to the Parties its draft report.

3. The draft report shall contain both the descriptive part summarising the submissions and arguments of the Parties, and the findings and determinations of the arbitral panel. If the Parties agree, the arbitral panel may make recommendations for resolution of the dispute in its report. The findings and determinations of the arbitral panel and, if applicable, any recommendations cannot add to or diminish the rights and obligations of the Parties provided in this Agreement.

4. When the arbitral panel considers that it cannot submit its draft report within the aforementioned one hundred and twenty (120) or sixty (60) day period, it may extend that period with the consent of the Parties.

5. A Party may provide written comments to the arbitral panel on its draft report within fifteen (15) days after the date of submission of the draft report.

6. After considering any written comments on the draft report, the arbitral panel may reconsider its draft report and make any further examination it considers appropriate.

7. The arbitral panel shall issue its final report, within thirty (30) days after the date of submission of the draft report. The report shall include any separate opinions on matters not unanimously agreed, not disclosing which panelists are associated with majority or minority opinions.

8. The final report of the arbitral panel shall be available to the public within fifteen (15) days after the date of issuance, subject to the requirement to protect confidential information.

Article 14.13: Implementation of the Report

1. Unless the Parties agree otherwise, the Party complained against shall eliminate the non-conformity as determined in the report of the arbitral panel immediately, or if this is not practicable, within a reasonable period of time.

2. The Parties shall continue to consult at all times on the possible development of a mutually satisfactory resolution.

3. The reasonable period of time referred to in paragraph 1 shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within forty five (45) days after the date of issuance of the report of the arbitral panel

referred to in Article 14.12, either Party may refer the matter to an arbitral panel as provided for in Article 14.14.7, which shall determine the reasonable period of time.

4. Where there is disagreement between the Parties as to whether the Party complained against eliminated the non-conformity, as determined in the report of the arbitral panel, within the reasonable period of time as determined pursuant to paragraph 3, either Party may refer the matter to an arbitral panel as provided for in Article 14.14.7.

Article 14.14: Non-Implementation – Compensation and Suspension of Concessions or other Obligations

1. If the Party complained against notifies the complaining Party that it is impracticable, or the arbitral panel to which the matter is referred pursuant to Article 14.13.4 confirms that the Party complained against has failed to eliminate the non-conformity as determined in the report of the arbitral panel within the reasonable period of time as determined pursuant to Article 14.13.3, the Party complained against shall, if so requested, enter into negotiations with the complaining Party with a view to reaching mutually satisfactory compensation.

2. If there is no agreement on satisfactory compensation within twenty (20) days after the date of receipt of the request mentioned in paragraph 1, the complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement, after giving notification of such suspension thirty (30) days in advance. Such notification may only be given twenty (20) days after the date of receipt of the request mentioned in paragraph 1.

3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the report of the arbitral panel. The suspension shall only be applied until such time as the non-conformity is fully eliminated or a mutually satisfactory solution is reached.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the report of the arbitral panel referred to in Article 14.12 has found a failure to comply with the obligations under this Agreement; and

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may suspend concessions or other obligations with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based.

5. The level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

6. If the Party complained against considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraph 2, 3, 4 or 5 have not been met, it may refer the matter to an arbitral panel.

7. The arbitral panel that is established for the purposes of this Article or Article 14.13 shall have, wherever possible, as its panelists, the panelists of the original arbitral panel. If this is not possible, then the panelists to the arbitral panel that is established for the purposes of this Article or Article 14.13 shall be appointed pursuant to Article 14.7. The arbitral panel established under this Article or Article 14.13 shall issue its report within sixty (60) days after the date when the matter is referred to it. When the arbitral panel considers that it cannot issue its report within the aforementioned sixty (60) day period, it may extend that period for a maximum of thirty (30) days with the consent of the Parties. The report shall be available to the public within fifteen (15) days after the date of issuance, subject to the requirement to protect confidential information. The report shall be final and binding on the Parties.

Chapter 15

Exceptions

Article 15.1: General Exceptions

1. For the purposes of Chapters 3 to 7 (Trade in Goods, Rules of Origin, Customs Procedures, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX (b) of GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX (g) of GATT 1994 applies to measures relating to the conservation of living and nonliving exhaustible natural resources.

2. For the purposes of Chapters 9 (Trade in Services), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV (b) of GATS include environmental measures necessary to protect human, animal, or plant life or health.

3. Nothing in this Agreement shall be construed to prevent a Party from taking action authorised by the WTO Dispute Settlement Body. This is referring to a suspension of concession. A Party taking such action shall inform the Commission to the fullest extent possible of measures taken and of their termination.

Article 15.2: Security Exceptions

1. Nothing in this Agreement shall be construed:

   (a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests;

   (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

      (i) relating to fissionable materials or the materials from which they are derived;

      (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment; or

      (iii) taken in time of war or other emergency in international relations; or

   (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. A Party taking action under paragraphs 1(b) and (c) shall inform the Commission to the fullest extent possible of measures taken and of their termination.

Article 15.3: Taxation

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention or other arrangement on taxation in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such convention or other arrangement on taxation, the latter shall prevail to the extent of the inconsistency.

3. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall be referred to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention or arrangement prevails. If within twelve (12) months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention or arrangement prevails, no procedures concerning that measure may be initiated under Chapter 14 (Dispute Settlement). Neither may such procedures be initiated during the period the issue is under consideration by the designated authorities.

4. Article 3.3 (National Treatment) and other provisions of such Chapter as are necessary to give effect to that Article shall apply to taxation measures to the same extent as covered by GATT 1994.

5. Articles 9.4 (National Treatment) and 10.4 (National Treatment) shall apply to taxation measures to the same extent as covered by GATS.

6. For the purposes of this Article, **taxation measure** means any measure relating to direct or indirect taxes, but does not include:

(a) a customs duty; or

(b) the measures listed in paragraphs (b) and (c) of the definition of customs duties in Article 2.1.

7. For the purposes of paragraph 2, **designated authority** means:

(a) in the case of Chile, the *Director del Servicio de Impuestos Internos, Ministerio de Hacienda*, or an authorised representative of the *Ministro de Hacienda*; and

(b) in the case of Thailand, the Fiscal Policy Office, Ministry of Finance, or authorised representatives of the Ministry of Finance.

Article 15.4: Temporary Measures

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining temporary restrictive measures with regard to trade in goods and services and with regard to payments and capital movements:

(a) in the event of serious balance of payments or external financial difficulties or threat thereof; or

(b) where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary policy or exchange rate policy in either Party.

2. Measures referred to in paragraph 1 shall:

(a) be in accordance with the rights and obligations established in the WTO Agreement and consistent with the Articles of Agreement of the International Monetary Fund (IMF), as applicable;

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

(c) not exceed those necessary to deal with the circumstances set out in paragraph 1;

(d) be temporary and be phased out or eliminated as soon as situation specified in paragraph 1 improves; and

(e) be non-discriminatory.

3. Nothing in this Agreement shall be regarded to affect the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the IMF.

4. A Party shall publish or notify to the other Party of any restrictions adopted or maintained under paragraph 1, or any changes therein, to the extent that it does not duplicate the process under the WTO and the IMF.

Article 15.5: Confidentiality and Disclosure of Information

1. Unless otherwise provided in this Agreement, each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information designated as confidential by the other Party pursuant to this Agreement.

2. Nothing in this Agreement shall be construed as requiring a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, whether public or private.

Chapter 16

Final Provisions

Article 16.1: Annexes and Footnotes

The Annexes and footnotes to this Agreement constitute an integral part of this Agreement.

Article 16.2: Amendments

1. The Parties may agree, in writing, on any modification of or addition to this Agreement.

2. When so agreed, and approved in accordance with the necessary domestic legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement. Such amendment shall enter into force sixty (60) days after the date of the last written communication in which the Parties notify that such procedures have been completed or after such other period as the Parties may agree.

Article 16.3: Amendment of the WTO Agreement

Unless otherwise provided in this Agreement, if any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult on whether to amend this Agreement.

Article 16.4: Future Work Programme

Unless otherwise agreed by the Parties, no later than two (2) years after the entry into force of this Agreement, the Parties shall initiate negotiations on investment and review relevant Articles of this Agreement as necessary.

Article 16.5: Entry into Force and Termination

1. The entry into force of this Agreement is subject to the completion of necessary domestic legal procedures by each Party.

2. This Agreement shall enter into force sixty (60) days after the date of the last written communication in which the Parties notify that such procedures have been completed, or after such other period as the Parties may agree.

3. Either Party may terminate this Agreement by written notification to the other Party. This Agreement shall expire one hundred and eighty (180) days after the date of such notification.

Article 16.6: Authentic Texts

The English, Spanish and Thai texts of this Agreement are equally authentic. In the case of diversion, the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective governments, have signed this Agreement.

DONE at XXXXXXX, in triplicate, this XXXXXXXX.

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND	FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE

Department of Trade Negotiations
กรมเจรจาการค้าระหว่างประเทศ

กรมเจรจาการค้าระหว่างประเทศ กระทรวงพาณิชย์

44/100 ถ.นนทบุรี 1 ตำบลบางกระสอ อำเภอเมือง จังหวัดนนทบุรี 11000

โทร 02 507 7506 โทรสาร 02 547 5616

Department of Trade Negotiations, Ministry of Commerce

44/100 Nonthaburi 1 Rd. Bangkrasor, Amphoe Muang, Nonthaburi 11000

Tel.(66) 2507 7506 Fax.(66) 2547 5616

www.dtn.go.th, www.thaifta.com, www.thailandaec.com