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THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONSISTENT WITH THE TRADE ACT OF 2002, LEGISLATION AND SUPPORTING DOCUMENTS TO IMPLEMENT THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT

Volume 1 of 2

APRIL 8, 2008.—Message and accompanying papers referred to the Committee on Ways and Means and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

41–659 WASHINGTON : 2008

To the Congress of the United States:

I am pleased to transmit legislation and supporting documents to implement the United States-Colombia Trade Promotion Agreement (the "Agreement"). The Agreement represents an historic development in our relations with Colombia, which has shown its commitment to advancing democracy, protecting human rights, and promoting economic opportunity. Colombia's importance as a steadfast strategic partner of the United States was recognized by President Clinton's support for an appropriation in 2000 to provide funding for Plan Colombia, and my Administration has continued to stand with Colombia as it confronts violence, terror, and drug traffickers.

This Agreement will increase opportunity for the people of Colombia through sustained economic growth and is therefore vital to ensuring that Colombia continues on its trajectory of positive change. Under the leadership of President Alvaro Uribe, Colombia has made a remarkable turnaround since 1999 when it was on the verge of being a failed state. This progress is in part explained by Colombia's success in demobilizing tens of thousands of paramilitary fighters. The Colombian government reports that since 2002, kidnappings, terrorist attacks, and murders are all down substantially, as is violence against union members.

The Government of Colombia, with the assistance of the United States, is continuing its efforts to further reduce the level of violence in Colombia and to ensure that those responsible for violence are quickly brought to justice. To speed prosecutions of those responsible for violent crimes, the Prosecutor General's Office plans to hire this year 72 new prosecutors and more than 110 investigators into the Human Rights Unit. These additions are part of the increase of more than 2,100 staff that will be added to the Prosecutor General's Office in 2008 and 2009. To support these additional personnel and their activities, Colombia has steadily increased the budget for the Prosecutor General's Office, including by more than $40 million this year, bringing the total outlay for that office to nearly $600 million.

In negotiating this Agreement, my Administration was guided by the objectives set out by the Congress in the Trade Act of 2002. My Administration has complied fully with the letter and spirit of Trade Promotion Authority—from preparation for the negotiations, to consultations with the Congress throughout the talks, to the content of the Agreement itself. In addition, my Administration has conducted several hundred further consultations, led congressional trips to Colombia, and last year renegotiated key labor, environmental, investment, and intellectual property rights provisions in the Agreement at the behest of the Congress. By providing for the effective enforcement of labor and environmental laws, combined with strong remedies for noncompliance, the Agreement will con-

tribute to improved worker rights and higher levels of environmental protection in Colombia. The result is an Agreement that all of us can be proud of and that will create significant new opportunities for American workers, farmers, ranchers, businesses, and consumers by opening the Colombian market and eliminating barriers to U.S. goods, services, and investment.

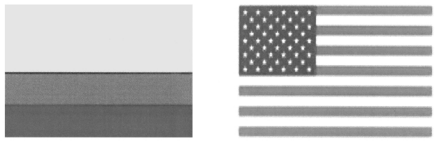
Under the Agreement, tariffs on over 80 percent of U.S. industrial and consumer goods exported to Colombia will be eliminated immediately, with tariffs on the remaining goods eliminated within 10 years. The Agreement will allow 52 percent of U.S. agricultural exports, by value, to enter Colombia duty-free immediately, with the remaining agricultural tariffs phased out over time. This will help to level the playing field, as 91 percent of U.S. imports from Colombia already enjoy duty-free access to our market under U.S. trade preference programs.

My Administration looks forward to continuing to work with the Congress on a bipartisan path forward to secure approval of this legislation that builds on the positive spirit of the May 10, 2007, agreement on trade between the Administration and the House and Senate leadership, and the strong bipartisan support demonstrated by both Houses of Congress in overwhelmingly approving the United States-Peru Trade Promotion Agreement last year. The United States-Colombia Trade Promotion Agreement represents an historic step forward in U.S. relations with a key friend and ally in Latin America. Congressional approval of legislation to implement the Agreement is in our national interest, and I urge the Congress to act favorably on this legislation as quickly as possible.

GEORGE W. BUSH.

THE WHITE HOUSE, *April 7, 2008.*

COLOMBIA
TRADE PROMOTION AGREEMENT



The United States - Colombia
Trade Promotion Agreement

THE UNITED STATES – COLOMBIA TRADE PROMOTION AGREEMENT
IMPLEMENTING LEGISLATION AND SUPPORTING DOCUMENTATION

Consistent with the provisions of section 2105(a)(1)(A) and (B) of the Trade Act of 2002 (19 U.S.C. § 3805(a)(1)(A) and (B)) ("the Act"):

- On August 24, 2006, the President notified the House of Representatives and the Senate of the President's intention to enter into a free trade agreement with Colombia (42 Wkly. Comp. of Pres. Docs. 1505 (2006)).

- On August 28, 2006, the President published in the *Federal Register* a notice of the President's intention to enter into a free trade agreement with Colombia (71 Fed. Reg. 51093 (2006)).

- On November 22, 2006, the Deputy United States Trade Representative entered into a free trade agreement with Colombia ("Agreement").

- On January 17, 2007, the United States Trade Representative transmitted to the Congress a description of changes to existing U.S. laws required to comply with the Agreement.

- On June 28, 2007, the United States Trade Representative and Colombia's Minister of Trade, Industry and Tourism entered into a Protocol amending the Agreement.

The following documents are submitted to the Congress under section 2105 of the Act. Submitted herewith or within these documents are:

- a copy of the final legal text of the Agreement incorporating the June 2007 amendments and two Understandings related to the Agreement (Tab 1);

- a draft of an implementing bill described in section 2103(b)(3) of the Act (Tab 2);

- a statement of administrative action proposed to implement the Agreement, which includes an explanation as to how the implementing bill and proposed administrative action will change or affect existing law and administrative practice, whether and how the Agreement changes provisions of an agreement previously negotiated, and how the implementing bill meets the standards set forth in section 2103(b)(3) of the Act (Tab 3);

- a statement setting forth the reasons of the President regarding how and to what extent the Agreement makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Act (Tab 4); and

- a statement setting forth the reasons of the President regarding how the Agreement serves the interest of U.S. commerce (Tab 5).

Additionally, a summary of the Agreement (Tab 6), as required by section 162 of the Trade Act of 1974 (19 U.S.C. § 2212), and seven letters related to the Agreement (Tab 7) are submitted herewith to the Congress.

TAB 1: UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT

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PREAMBLE

The Government of the United States of America and the Government of the Republic of Colombia, resolved to:

STRENGTHEN the special bonds of friendship and cooperation between them and promote regional economic integration;

PROMOTE broad-based economic development in order to reduce poverty and generate opportunities for sustainable economic alternatives to drug-crop production;

CREATE new employment opportunities and improve labor conditions and living standards in their respective territories;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable legal and commercial framework for business and investment;

AGREE that foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement;

RECOGNIZE that Article 226 of the Colombian Constitution provides that Colombia shall promote its international relations based on the principle of reciprocity;

RECOGNIZE that Articles 13 and 100 of the Colombian Constitution provide that foreigners and nationals are protected under the general principle of equality of treatment;

AVOID distortions to their reciprocal trade;

FOSTER creativity and innovation and promote trade in the innovative sectors of our economies;

PROMOTE transparency and prevent and combat corruption, including bribery, in international trade and investment;

PROTECT, enhance, and enforce basic workers' rights, strengthen their cooperation on labor matters, and build on their respective international commitments on labor matters;

IMPLEMENT this Agreement in a manner consistent with environmental protection and conservation, promote sustainable development, and strengthen their cooperation on environmental matters;

PRESERVE their ability to safeguard the public welfare;

CONTRIBUTE to hemispheric integration and provide an impetus toward establishing the Free Trade Area of the Americas;

BUILD on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and agreements to which they are both parties; and

RECOGNIZE that Colombia is a member of the Andean Community and that Decision 598 of the Andean Community requires Andean countries negotiating trade agreements to preserve the Andean Legal System in relations between the Andean Community Member Countries under the Cartagena Agreement;

HAVE AGREED as follows:

Chapter One

Initial Provisions and General Definitions

Section A: Initial Provisions

Article 1.1: Establishment of a Free Trade Area

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

Article 1.2: Relation to Other Agreements

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

Section B: General Definitions

Article 1.3: Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

central level of government means:

(a) for Colombia, the national level of government[1]; and

(b) for the United States, the federal level of government;

Commission means the Free Trade Commission established under Article 20.1 (The Free Trade Commission);

covered investment means, with respect to a Party, an investment, as defined in Article 10.28 (Definitions), in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

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

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

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

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

[1] For greater certainty, "departamentos" are at the local level of government.

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

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

days means calendar days;

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

enterprise of a Party means an enterprise constituted or organized under the law of a Party;

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

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

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

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

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

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

national means a natural person who has the nationality of a Party according to Annex 1.3 or a permanent resident of a Party;

originating means qualifying under the rules of origin set out in Chapter Three (Textiles and Apparel) and Chapter Four (Rules of Origin and Origin Procedures);

person means a natural person or an enterprise;

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

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

procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or with a view to use in the production or supply of goods or services for commercial sale or resale;

regional level of government means for the United States, a state of the United States, the District of Columbia, or Puerto Rico. For Colombia, as a unitary Republic, the term "regional level of government" is not applicable;

Safeguards Agreement means the WTO *Agreement on Safeguards*;

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

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

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

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

territory means for a Party the territory of that Party as set out in Annex 1.3;

TRIPS Agreement means the WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights*;[2]

WTO means the World Trade Organization; and

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

[2] For greater certainty, "TRIPS Agreement" includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

Annex 1.3

Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

natural person who has the nationality of a Party means:

(a) with respect to Colombia, Colombians by birth or naturalization, in accordance with Article 96 of the *Constitución Política de Colombia*; and

(b) with respect to the United States, "national of the United States" as defined in the existing provisions of the *Immigration and Nationality Act*; and

territory means:

(a) with respect to Colombia, in addition to its continental territory, the archipelago of San Andrés, Providencia and Santa Catalina, the island of Malpelo, and all the other islands, islets, keys, headlands and shoals that belong to it, as well as air space and the maritime areas over which it has sovereignty or sovereign rights or jurisdiction in accordance with its domestic law and international law, including applicable international treaties; and

(b) with respect to the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) the foreign trade zones located in the United States and Puerto Rico, and

(iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

Chapter Two

National Treatment and Market Access for Goods

Article 2.1: Scope and Coverage

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

Section A: National Treatment

Article 2.2: National Treatment

1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the GATT 1994, including its interpretive notes, and to this end Article III of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

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

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2.2.

Section B: Tariff Elimination

Article 2.3: Tariff Elimination

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

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods, in accordance with its Schedule to Annex 2.3.

3. For greater certainty, paragraph 2 shall not prevent Colombia from granting identical or more favorable tariff treatment to a good as provided for under the legal instruments of the Andean integration, provided that the goods meet the rules of origin under those instruments.

4. On the request of any Party, the requesting Party and one or more other Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 2.3. The consulting Parties shall notify the other Parties of the goods that will be subject to the consultations, and shall afford the other Parties an opportunity to participate in the consultations. Notwithstanding Article 20.1.3(b) (Free Trade Commission), an agreement between two or more Parties to accelerate the elimination of a customs duty on a good shall supercede any duty rate or staging category determined pursuant to their Schedules to Annex 2.3 for that good when approved by each involved Party in accordance with its applicable legal procedures. Within 30 days after two or more Parties conclude an agreement under this paragraph, they shall notify the other Parties of the terms of the agreement.

5. For greater certainty, a Party may:

(a) raise a customs duty to the level established in its Schedule to Annex 2.3 following a unilateral reduction; or

(b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

Section C: Special Regimes

Article 2.4: Waiver of Customs Duties

1. No Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. No Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

Article 2.5: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:

(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;

(b) goods intended for display or demonstration;

(c) commercial samples and advertising films and recordings; and

(d) goods admitted for sports purposes.

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

3. No Party may condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that the good:

(a) be used solely by or under the personal supervision of a national or resident of another Party in the exercise of the business activity, trade, profession, or sport of that person;

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

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

(d) be capable of identification when exported;

(e) be exported on the departure of the person referenced in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish, or within one year, unless extended;

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

(g) be otherwise admissible into the Party's territory under its law.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalties provided for under its law.

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

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

7. Each Party shall provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services):

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

(b) no Party may require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;

(c) no Party may condition the release of any obligation, including any security, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and

(d) no Party may require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes the container to the territory of another Party.

9. For purposes of paragraph 8, **vehicle** means a truck, a truck tractor, a tractor, a trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

Article 2.6: Goods Re-entered After Repair or Alteration

1. No Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of another Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration.

2. No Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.

3. For purposes of this Article, **repair or 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 2.7: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of another 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; or

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

Section D: Non-Tariff Measures

Article 2.8: Import and Export Restrictions

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

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

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

(b) import licensing conditioned on the fulfillment of a performance requirement, except as provided in a Party's Schedule to Annex 2.3; or

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

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2.2.

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

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

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

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

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

6. No Party may, as a condition for engaging in importation or for the import of a good, require a person of another Party to establish or maintain a contractual or other relationship with a distributor in its territory.

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

8. For purposes of paragraph 6:

distributor means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of another Party;

Article 2.9: Import Licensing

1. No Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after entry into force of this Agreement, each Party shall notify the other Parties of any existing import licensing procedures, and thereafter shall notify the other Parties of any new import licensing procedure and any modification to its existing import licensing procedures, within 60 days before it takes effect. A notification provided under this Article shall:

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

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

3. No Party may apply an import licensing procedure to a good of another Party unless it has provided notification in accordance with paragraph 2.

Article 2.10: Administrative Fees and Formalities

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

2. No Party may require consular transactions, including related fees and charges, in connection with the importation of any good of another Party.

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

4. The United States shall eliminate its Merchandise Processing Fee on originating goods of Colombia upon the entry into force of this Agreement.

Article 2.11: Export Taxes

Except as otherwise provided in this Agreement, no Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless the duty, tax, or charge is also adopted or maintained on the good when destined for domestic consumption.

Section E: Other Measures

Article 2.12: Distinctive Products

1. Colombia shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Accordingly, Colombia shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.

2. At the request of a Party, the Committee on Trade in Goods shall consider whether to recommend that the Parties amend the Agreement to designate a good as a distinctive product for the purposes of this Article.

Section F: Institutional Provisions

Article 2.13: Committee on Trade in Goods

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

2. The Committee shall meet on the request of a Party or the Commission to consider any matter arising under this Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration and Trade Facilitation).

3. The Committee's functions shall include, *inter alia*:

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

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

(c) providing to the Committee on Trade Capacity Building advice and recommendations on technical assistance needs regarding matters relating to this Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration and Trade Facilitation);

(d) reviewing conversion to the Harmonized System 2007 nomenclature and its subsequent revisions to ensure that each Party's obligations under this Agreement are not altered, and consulting to resolve any conflicts between:

(i) the Harmonized System 2007 or subsequent nomenclature and Annex 2.3; and

(ii) Annex 2.3 and national nomenclatures; and

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

Section G: Agriculture

Article 2.14: Scope and Coverage

This Section applies to measures adopted or maintained by a Party relating to trade in agricultural goods.

Article 2.15: Administration and Implementation of Tariff-Rate Quotas

1. Each Party shall implement and administer the tariff-rate quotas for agricultural goods set out in Appendix I to its Schedule to Annex 2.3 (hereafter "TRQs") in accordance with Article XIII of the GATT 1994, including its interpretive notes, and the Import Licensing Agreement.

2. Each Party shall ensure that:

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

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

(c) it does not, under its TRQs:

(i) allocate any portion of an in-quota quantity to a producer group;

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

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

(d) solely government authorities administer its TRQs and government authorities do not delegate administration of its TRQs to producer groups or other non-governmental organizations, except as otherwise provided in this Agreement; and

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

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

4. No Party may condition application for, or use of, an in-quota quantity allocation under a TRQ on the re-export of an agricultural good.

5. No Party may count food aid or other non-commercial shipments in determining whether an in-quota quantity under a TRQ has been filled.

6. On request of the exporting Party, the importing Party shall consult with the exporting Party regarding the administration of the importing Party's TRQs.

Article 2.16: Agricultural Export Subsidies

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

2. Except as provided in paragraph 3, no Party may adopt or maintain any export subsidy on any agricultural good destined for the territory of another Party.

3. Where the exporting Party considers that a non-Party is exporting an agricultural good to the territory of another Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports. If the importing Party adopts the agreed-on measures, the exporting Party shall refrain from applying any subsidy to its exports of the good to the territory of the importing Party.

Article 2.17: Export State Trading Enterprises

The Parties shall work together toward an agreement on export state trading enterprises in the WTO that:

(a) eliminates restrictions on the right to export;

(b) eliminates any special financing granted directly or indirectly to state trading enterprises that export for sale a significant share of their country's total exports of an agricultural good; and

(c) ensures greater transparency regarding the operation and maintenance of export state trading enterprises.

Article 2.18: Agricultural Safeguard Measures

1. Notwithstanding Article 2.3, a Party may apply a measure in the form of an additional import duty on an originating agricultural good listed in that Party's Schedule to Annex 2.18, provided that the conditions in paragraphs 2 through 8 are met. The sum of any such additional import duty and any other customs duty on such good shall not exceed the least of:

(a) the base tariff rate provided in the Schedule to Annex 2.3;

(b) the most-favored-nation (MFN) applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement;

(c) the prevailing MFN applied rate of duty; or

(d) the level of duty described in subparagraph 2(c) of Appendix I to Colombia's Schedule to Annex 2.3, if applicable.

2. A Party may apply an agricultural safeguard measure during any calendar year on an originating agricultural good if the quantity of imports of the good during such year exceeds the trigger level for that good set out in its Schedule to Annex 2.18.

3. The additional duty under paragraph 1 shall be set according to each Party's Schedule to Annex 2.18.

4. No Party may apply an agricultural safeguard measure and at the same time apply or maintain:

(a) a safeguard measure under Chapter Eight (Trade Remedies); or

(b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement;

with respect to the same good.

5. No Party may apply or maintain an agricultural safeguard measure on a good:

(a) on or after the date that the good is subject to duty-free treatment under the Party's Schedule to Annex 2.3; or

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

6. A Party shall implement an agricultural safeguard measure in a transparent manner. Within 60 days after applying such a measure, the Party applying the measure shall notify the Party whose good is subject to the measure, in writing, and shall provide it relevant data concerning the measure. On request, the Party applying the measure shall consult with the Party whose good is subject to the measure regarding application of the measure.

7. A Party may maintain an agricultural safeguard measure only until the end of the calendar year in which the Party imposes the measure.

8. Originating goods from any Party shall not be subject to any duties applied pursuant to any agricultural safeguard measure taken under the WTO Agreement on Agriculture or any successor provisions thereof.

9. For purposes of this Article and Annex 2.18, **agricultural safeguard measure** means a measure described in paragraph 1.

Article 2.19: Sugar Compensation Mechanism

1. In any year, the United States may, at its option, apply a mechanism that results in compensation to a Party's exporters of sugar goods in lieu of according duty-free treatment to some or all of the duty-free quantity of sugar goods established for that Party in Appendix I to the Schedule of the United States to Annex 2.3. Such compensation shall be equivalent to the estimated economic rents the Party's exporters would have obtained on exports to the United States of any such amounts of sugar goods and shall be provided within 30 days after the United States exercises this option. The United States shall notify the Party at least 90 days before it exercises this option and, on request, shall enter into consultations with the Party regarding application of the mechanism.

2. For purposes of this Article, **sugar good** means a good provided for in the subheadings listed in subparagraph 9(c) of Appendix I to the Schedule of the United States to Annex 2.3.

Article 2.20: Consultations on Trade in Chicken

The Parties shall consult on, and review the implementation and operation of the Agreement as it relates to, trade in chicken in the ninth year after the date of entry into force of this Agreement.

Article 2.21: Committee on Agricultural Trade

1. No later than 180 days after the date of entry into force of this Agreement, the Parties shall establish a Committee on Agricultural Trade, comprising representatives of each Party.

2. The Committee shall provide a forum for:

(a) monitoring and promoting cooperation on the implementation and administration of this Section;

(b) consultation between the Parties on matters related to this Section in coordination with other committees, subcommittees, working groups, or other bodies established under this Agreement; and

(c) undertaking any additional work that the Commission may assign.

3. The Committee shall meet at least once a year unless it decides otherwise. Meetings of the Committee shall be chaired by the representatives of the Party hosting the meeting.

4. All decisions of the Committee shall be taken by consensus, unless the Committee otherwise decides.

Section H: Definitions

Article 2.22: Definitions

For purposes of this Chapter:

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

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

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

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

consular transactions means requirements that goods of a Party intended for export to the territory of another 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;

consumed means

(a) actually consumed; or

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

duty-free means free of customs duty;

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

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

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

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

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

performance requirement means a requirement that:

(a) a given level or percentage of goods or services be exported;

(b) domestic goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods;

(c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;

(d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services, in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or

(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;

but does not include a requirement that an imported good be:

(f) subsequently exported;

(g) used as a material in the production of another good that is subsequently exported;

(h) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or

(i) substituted by an identical or similar good that is subsequently exported;

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by

trade associations, tourist promotional materials, and posters, that are used to promote, publicize, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge; and

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

Annex 2.2

National Treatment and Import and Export Restrictions

Section A: Measures of Colombia

Articles 2.2 and 2.8 shall not apply to:

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

(b) measures relating to the taxation of alcoholic beverages pursuant to the *Impuesto al Consumo* provided for in Law No. 788 of 27 December 2002 and Law No. 223 of 22 December 1995, until four years after the date of entry into force of this Agreement;

(c) controls on the importation of used and imperfect goods, remainings, scraps, wastes, and residues pursuant to Resolution No. 001 of 2 January 1995;[2]

(d) controls on the importation of automotive vehicles, including used vehicles and new vehicles whose importation occurs more than two years following their date of production, in accordance with Resolution No. 001 of 2 January 1995; and

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

Section B: Measures of the United States

Articles 2.2 and 2.8 shall not apply to:

(a) controls on the export of logs of all species;

(b) (i) measures under existing provisions of the *Merchant Marine Act of 1920*, 46 App. U.S.C. § 883; the *Passenger Vessel Act*, 46 App. U.S.C. §§ 289, 292, and 316; and 46 U.S.C. § 12108, to the extent that such measures were mandatory legislation at the time of the accession of the United States to the General Agreement on Tariffs and Trade 1947 (GATT 1947) and have not been amended so as to decrease their conformity with Part II of the GATT 1947;

(ii) the continuation or prompt renewal of a non-conforming provision of any statute referred to in clause (i); and

(iii) the amendment to a non-conforming provision of any statute referred to in clause (i) to the extent that the amendment does not decrease the conformity of the provision with Articles 2.2 and 2.8; and

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

[2] The controls identified in this subparagraph do not apply to remanufactured goods.

Annex 2.3

Tariff Elimination

1. Except as otherwise provided in a Party's Schedule to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article 2.3.2:

(a) duties on originating goods provided for in the items in staging category A in a Party's Schedule shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force;

(b) duties on originating goods provided for in the items in staging category B in a Party's Schedule shall be removed in five equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year five;

(c) duties on originating goods provided for in the items in staging category C in a Party's Schedule shall be removed in ten equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year ten;

(d) duties on originating goods provided for in the items in staging category D in a Party's Schedule shall be removed in 15 equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year 15;

(e) duties on originating goods provided for in the items in staging category E in a Party's Schedule shall remain at base rates during years one through ten. Beginning on January 1 of year 11, duties shall be reduced in seven equal annual stages, and such goods shall be duty-free, effective January 1 of year 17;

(f) originating goods provided for in the items in staging category F in a Party's Schedule shall continue to receive duty-free treatment; and

(g) duties on originating goods provided for in the items in staging category T in a Party's Schedule shall be removed in 11 equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year 11.

2. The base rate of customs duty and staging category for determining the interim rate of customs duty at each stage of reduction for an item are indicated for the item in each Party's Schedule.

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

4. For purposes of this Annex and a Party's Schedule, **year one** means the year this Agreement enters into force as provided in Article 23.4 (Entry into Force).

5. For purposes of this Annex and a Party's Schedule, beginning in year two, each annual stage of tariff reduction shall take effect on January 1 of the relevant year.

Annex 2.11

Export Taxes

With respect to Colombia, Article 2.11 shall not apply to:

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

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

Annex 2.18

Agricultural Safeguard Measures

General Notes

1. For each good listed in a Party's Schedule to this Annex for which the agricultural safeguard trigger level is set out in that Schedule as a percentage of the applicable tariff-rate quota (TRQ), the trigger level in any year shall be determined by multiplying the in-quota quantity for that good for that year, as set out in Appendix I to the Party's Schedule to Annex 2.3, by the applicable percentage.

2. For purposes of this Annex, **prime and choice beef** shall mean prime and choice grades of beef as defined in the United States Standards for Grades of Carcass Beef, promulgated pursuant to the *Agricultural Marketing Act of 1946* (7 U.S.C. §§ 1621-1627), as amended.

Schedule of Colombia

Subject Goods and Trigger Levels

1. For purposes of paragraphs 1 and 2 of Article 2.18, U.S. goods that may be subject to an agricultural safeguard measure and the trigger level for each such good are set out below:

Good	Tariff Classification	Trigger Level
Standard Quality Beef	02012000.B, 02013000.B, 02022000.B, 02023000.B	140% of TRQ
Spent Fowl (Chickens)	02071100.A, 02071200.A	130% of TRQ
Chicken Leg Quarters	02071300.A, 02071400.A, 16023200.A	130% of TRQ
Dried Beans	07133190, 07133290, 07133391, 07133392, 07133399, 07133991, 07133992, 07133999	130% of TRQ
Rice	10061090, 10062000, 10063000, 10064000	120% of TRQ

Additional Import Duty

2. For purposes of paragraph 3 of Article 2.18, the additional import duty shall be:

(a) For beef other than prime and choice beef ("standard quality beef") as listed in this Schedule:

(i) in years one through four, less than or equal to 100 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3;

(ii) in years five through seven, less than or equal to 75 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3; and

(iii) in years eight through nine, less than or equal to 50 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3.

(b) For spent fowl (chickens) as listed in this Schedule:

(i) in years one through six, less than or equal to 100 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3;

(ii) in years seven through 12, less than or equal to 75 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3; and

(iii) in years 13 through 17, less than or equal to 50 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3.

(c) For chicken leg quarters as listed in this Schedule:

(i) in years one through six, less than or equal to 100 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3;

(ii) in years seven through 12, less than or equal to 75 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3; and

(iii) in years 13 through 17, less than or equal to 50 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3.

(d) For dried beans as listed in this Schedule:

(i) in years one through three, less than or equal to 100 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3;

(ii) in years four through six, less than or equal to 75 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3; and

(iii) in years seven through nine, less than or equal to 50 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3.

(e) For rice as listed in this Schedule:

(i) in years one through six, less than or equal to 100 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3;

(ii) in years seven through 12, less than or equal to 75 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3; and

(iii) in years 13 through 18, less than or equal to 50 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in paragraph 2 of Appendix I to Colombia's Schedule to Annex 2.3.

Schedule of the United States

Subject Goods and Trigger Levels

1. For purposes of paragraphs 1 and 2 of Article 2.18, Colombia goods that may be subject to an agricultural safeguard measure and the trigger level for each such good are set out below:

Good	Tariff Classification	Trigger Level
Beef	02011050, 02012080, 02013080, 02021050, 02022080, 02023080	140% of TRQ

Additional Import Duty

2. For purposes of paragraph 3 of Article 2.18, for beef as listed in this Schedule, the additional import duty shall be:

(a) in years one through four, less than or equal to 100 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in the Schedule of the United States to Annex 2.3;

(b) in years five through seven, less than or equal to 75 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in the Schedule of the United States to Annex 2.3; and

(c) in years eight through nine, less than or equal to 50 percent of the difference between the limit provided in Article 2.18.1 and the applicable tariff rate provided in the Schedule of the United States to Annex 2.3.

Chapter Three

Textiles and Apparel[1]

Article 3.1: Textile Safeguard Measures

1. Subject to the following paragraphs, and during the transition period only, if, as a result of the reduction or elimination of a duty provided for in this Agreement, a textile or apparel good benefiting from preferential tariff treatment is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent necessary to prevent or remedy such damage and to facilitate adjustment, apply a textile safeguard measure to that good, consisting of an increase in the rate of duty on the good to a level not to exceed the lesser of:

(a) the most-favored-nation (MFN) applied rate of duty in effect at the time the measure is applied; and

(b) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.

2. In determining serious damage, or actual threat thereof, the importing Party:

(a) shall examine the effect of increased imports of the good of the exporting Party or Parties on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and losses, and investment, none of which, either alone or combined with other factors, shall necessarily be decisive; and

(b) shall not consider changes in consumer preference or changes in technology in the importing Party as factors supporting a determination of serious damage or actual threat thereof.

3. The importing Party may apply a textile safeguard measure only following an investigation by its competent authority.

4. The investigations referred to in this Article shall be carried out according to procedures established by each Party, which shall be notified to the Parties upon entry into force of this Agreement or before a Party initiates an investigation.

5. The importing Party shall deliver to the exporting Party or Parties, without delay, written notice of the initiation of the investigation, as well as of its intent to apply or extend a textile safeguard measure and, on request of the exporting Party or Parties, shall enter into consultations with that Party or Parties.

6. The following conditions and limitations apply to any textile safeguard measure:

(a) no Party may maintain a textile safeguard measure for a period exceeding two years, except that the period may be extended for up to one year;

[1] For greater certainty, the obligations in Chapter Two (National Treatment and Market Access for Goods) with respect to trade in goods between the Parties apply to trade in textile and apparel goods between the Parties.

(b) no Party may apply a textile safeguard measure to the same good of another Party more than once;

(c) on termination of the textile safeguard measure, the Party applying the measure shall apply the rate of duty set out in its Schedule to Annex 2.3 (Tariff Elimination) as if the measure had never been applied; and

(d) no Party may maintain a textile safeguard measure beyond the transition period.

7. The Party applying a textile safeguard measure shall provide to the Party or Parties against whose good the measure is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the textile safeguard measure. Such concessions shall be limited to textile or apparel goods, unless the consulting Parties otherwise agree.

8. If the consulting Parties are unable to agree on compensation within 30 days of application of a textile safeguard measure, the Party or Parties against whose good the measure is taken may take tariff action having trade effects substantially equivalent to those of the textile safeguard measure. Such tariff action may be taken against any good of the Party applying the textile safeguard measure. The Party taking the tariff action shall apply it only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's or Parties' right to take tariff action shall terminate when the textile safeguard measure terminates.

9. (a) Each Party maintains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.

(b) No Party may apply, with respect to the same good at the same time, a textile safeguard measure and:

(i) a safeguard measure under Chapter Eight (Trade Remedies); or

(ii) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

Article 3.2: Customs Cooperation and Verification of Origin

1. The competent authorities of the Parties shall cooperate for purposes of:

(a) enforcing or assisting in the enforcement, and deterring circumvention, of the laws, regulations, and procedures of each Party, and international agreements affecting trade in textile or apparel goods, and;

(b) ensuring the accuracy of claims of origin for textile or apparel goods.

The Parties recognize that, in accordance with paragraph 10, providing technical or other assistance to advance these purposes is an essential part of this Article.

2. A Party's request for cooperation under this Article shall identify the relevant laws, regulations, or procedures pertaining to that request.

3. (a) On the written request of the importing Party, an exporting Party shall conduct a verification for purposes of enabling the importing Party to determine:

(i) that a claim of origin for a textile or apparel good is accurate; or

(ii) that the exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including:

(A) laws, regulations, and procedures that the exporting Party adopts and maintains pursuant to this Agreement; and

(B) laws, regulations, and procedures of the importing Party and the exporting Party implementing other international agreements regarding trade in textile or apparel goods.

(b) A request under subparagraph (a) shall include specific information regarding the reason the importing Party is requesting the verification and the determination the importing Party is seeking to make.

(c) The exporting Party shall conduct a verification under subparagraph (a)(i), regardless of whether an importer claims preferential tariff treatment for the textile or apparel good for which a claim of origin has been made.

(d) The exporting Party may conduct a verification of enterprises within its territory on its own initiative.

4. The importing Party, through its competent authority, may assist in a verification conducted under paragraph 3(a), including by conducting, along with the competent authority of the exporting Party, visits in the territory of the exporting Party to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from the territory of the exporting Party to the territory of the importing Party. At the request of the exporting Party, the importing Party may undertake such verification.

5. (a) The competent authority of the importing Party shall provide a written request to the competent authority of the exporting Party 20 days before the proposed date of a visit under paragraph 4. The request shall identify the competent authority making the request, the names and titles of the authorized personnel that will conduct the visit; the reason for the visit, including a description of the type of goods that are the subject of the verification; and the proposed dates of the visit.

(b) The competent authority of the exporting Party shall respond within ten days of receipt of the request, and shall indicate the date on which authorized personnel of the importing Party may perform the visit. The exporting party shall seek, in accordance with its laws, regulations, and procedures, permission from the enterprise to conduct the visit. If consent is not provided, the importing Party may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification, except that the importing Party may not deny preferential tariff treatment to such goods based solely on a postponement of the visit, if there is adequate reason for such postponement.

(c) Authorized personnel of the importing and exporting Parties shall conduct the visit in accordance with the laws, regulations, and procedures of the exporting Party.

(d) On completion of the visit, the importing Party shall provide the exporting Party with an oral summary of the results of the visit and provide it with a written report of the results of the visit within approximately 45 days of the visit. The written report shall include:

(i) the name of the enterprise visited;

(ii) particulars of the shipments that were checked;

(iii) observations made at the enterprise relating to circumvention, if any; and

(iv) an assessment of whether the enterprise's production records and other documents support its claims of origin, for:

(A) a textile or apparel good subject to a verification conducted under subparagraph 3(a)(i); or

(B) in the case of a verification conducted under subparagraph 3(a)(ii), any textile or apparel good exported or produced by the enterprise.

6. In accordance with its laws, each Party shall provide to the other Party production, trade, and transit documents and other information necessary to conduct verifications under paragraph 3(a). Each Party shall treat any documents or information exchanged in the course of such verification in accordance with Article 5.6 (Confidentiality). Nothwithstanding the foregoing, a Party may publish the name[2] of an enterprise if the Party has determined, consistent with its laws, that such enterprise:

(a) has engaged in circumvention of the laws, regulations, or procedures of that Party or of international agreements affecting trade in textile or apparel goods; or

(b) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

7. (a) (i) If, during a verification conducted under subparagraph 3(a), the information to support a claim for preferential tariff treatment is insufficient, the importing Party may take the actions it considers appropriate, which may include suspending the application of such treatment to:

(A) in the case of a verification conducted under subparagraph 3(a)(i), the textile or apparel good for which a claim for preferential tariff treatment has been made; and

(B) in the case of a verification conducted under subparagraph 3(a)(ii), any textile or apparel good exported or produced by the enterprise subject to that verification for which a claim of preferential tariff treatment has been made.

(ii) If, on completion of a verification conducted under subparagraph 3(a), the information to support a claim for preferential tariff treatment is insufficient, the importing Party may take the actions it considers appropriate, which may include denying the application of such treatment to any textile or apparel good described in clauses (i)(A) and (B).

(iii) If, during or on completion of a verification conducted under subparagraph 3(a), the importing Party discovers that an enterprise has provided incorrect information to support a claim for preferential tariff

[2] The Party shall provide advance notice to the other Parties of the procedures by which such publication is to be made.

treatment, the importing Party may take the actions it considers appropriate, which may include denying the application of such treatment to any textile or apparel good described in clauses (i)(A) and (B).

(b) (i) If, during a verification conducted under subparagraph 3(a), the information to determine the country of origin is insufficient, the importing Party may take the actions it considers appropriate, which may include detention of any textile or apparel good exported or produced by the enterprise subject to the verification.

(ii) If, on completion of a verification conducted under subparagraph 3(a), the information to determine the country of origin is insufficient, the importing Party may take the actions it considers appropriate, which may include denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification.

(iii) If, during or on completion of a verification conducted under subparagraph 3(a), the importing Party discovers that an enterprise has provided incorrect information as to the country of origin, the importing Party may take appropriate action, which may include denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification.

(c) The importing Party may continue to take the actions it considers appropriate under this paragraph only until it receives information sufficient to enable it to make the determination in subparagraphs 3(a)(i) or (ii), as the case may be.

8. No later than 45 days after it completes a verification conducted under subparagraph 3(a), the exporting Party shall provide the importing Party a written report on the results of the verification. The report shall include all documents and facts supporting any conclusion that the exporting Party reaches. After receiving the report, the importing Party shall notify the exporting Party of any action it will take under subparagraph 7(a)(ii) or (iii) or 7(b)(ii) or (iii), based on the information provided in the report.

9. On the written request of a Party, two or more Parties shall enter into consultations to resolve any technical or interpretive difficulties that may arise or to discuss ways to improve customs cooperation regarding the application of this Article. Unless the consulting Parties otherwise agree, consultations shall begin within 30 days after delivery of the request and conclude within 90 days after delivery.

10. A Party may request technical or other assistance from any other Party in implementing this Article. The Party receiving such a request shall make every effort to respond promptly and favorably to it.

Article 3.3: Rules of Origin, Origin Procedures, and Related Matters

1. Except as provided in this Article and the Annexes to this Chapter, Chapter Four (Rules of Origin and Origin Procedures) applies with respect to textile and apparel goods.

Consultations on Rules of Origin

2. On request of a Party, the Parties shall, within 30 days after the request is delivered, consult on whether the rules of origin applicable to a particular textile or apparel good should be revised.

3. Where the consultations referred to in paragraph 2 concern an input not available in commercial quantities, each Party shall consider all data that a Party presents demonstrating that there is substantial production in its territory of such input. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the input to the Parties in a timely manner.

4. The Parties shall endeavor to conclude the consultations within 90 days after delivery of the request. If the Parties reach an agreement to revise a rule of origin for a particular good, the agreement shall supersede that rule of origin when modified by the Commission in accordance with Article 20.1.3(b).

Fabrics, Yarns, and Fibers Not Available in Commercial Quantities

5. (a) At the request of an interested entity, the United States shall, within 30 business days of receiving the request, add a fabric, fiber, or yarn in an unrestricted or restricted quantity to the list in Annex 3-B, if the United States determines, based on information supplied by interested entities, that the fabric, fiber, or yarn is not available in commercial quantities in a timely manner in the territory of any Party, or if no interested entity objects to the request.

(b) If there is insufficient information to make the determination in subparagraph (a), the United States may extend the period within which it must make that determination by no more than 14 business days, in order to meet with interested entities to substantiate the information.

(c) If the United States does not make the determination in subparagraph (a) within 15 business days of the expiration of the period within which it must make that determination, as specified in subparagraph (a) or (b), the United States shall grant the request.

(d) The United States may, within six months after adding a restricted quantity of a fabric, fiber, or yarn to the list in Annex 3-B pursuant to subparagraph (a), modify or eliminate the restriction.

(e) If the United States determines before the date of entry into force of this Agreement that any fabrics or yarns not listed in Annex 3-B are not available in commercial quantities in the United States pursuant to section 112(b)(5)(B) of the *African Growth and Opportunity Act* (19 U.S.C. § 3721(b)), section 204(b)(3)(B)(ii) of the *Andean Trade Preference Act* (19 U.S.C. § 3203(b)(3)(B)(ii)), or section 213(b)(2)(A)(v)(II) of the *Caribbean Basin Economic Recovery Act* (19 U.S.C. § 2703(b)(2)(A)(v)(II)), the United States may, after consultation with the Parties, add such fabrics or yarns in an unrestricted quantity to the list in Annex 3-B.

6. At the request of an interested entity made no earlier than six months after the United States has added a fabric, yarn, or fiber in an unrestricted quantity to Annex 3-B pursuant to paragraph 5, the United States may, within 30 business days after it receives the request:

(a) delete the fabric, yarn, or fiber from the list in Annex 3-B; or

(b) introduce a restriction on the quantity of the fabric, yarn, or fiber added to Annex 3-B;

if the United States determines, based on the information supplied by interested entities, that the fabric, yarn, or fiber is available in commercial quantities in a timely manner in the territory of any Party. Such deletion or restriction shall not take effect until six months after the United

States publishes its determination.

7. Promptly after the date of entry into force of this Agreement, the United States shall publish the procedures it will follow in considering requests under paragraphs 5 and 6. After publication of such procedures, a Party or Parties may request consultations with respect to those procedures.

De Minimis

8. A textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo the applicable change in tariff classification set out in Annex 3-A, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than ten percent of the total weight of that component.[3]

9. Notwithstanding paragraph 8, a good containing elastomeric yarns[4] in the component of the good that determines the tariff classification of the good shall be originating only if such yarns are wholly formed in the territory of a Party.[5]

Treatment of Sets

10. Notwithstanding the specific rules of origin in Annex 3-A textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the Harmonized System, shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the adjusted value of the set.

Treatment of Nylon Filament Yarn

11. A textile or apparel good that is not an originating good because certain yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3-A shall nonetheless be considered to be an originating good if the yarns are those described in Section 204(b)(3)(B)(vi)(IV) of the *Andean Trade Preference Act* (19 U.S.C. § 3203(b)(3)(B)(vi)(IV)).

Duty-free Treatment for Certain Goods

12. An importing and an exporting Party may identify at any time particular textile or apparel goods of the exporting Party that they mutually agree are:

(a) hand-loomed fabrics;

(b) hand-made goods made of such hand-loomed fabrics;

(c) traditional folklore handicraft goods; or

(d) handmade goods that substantially incorporate a historical or traditional regional design or motif.

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[3] For greater certainty, when the good is a fiber, yarn, or fabric, the "component of the good that determines the tariff classification of the good" is all of the fibers in the yarn, fabric, or group of fibers.

[4] For greater certainty, the term "elastomeric yarns" does not include latex.

[5] For purposes of this paragraph, "wholly formed" means that all the production process and finishing operations, starting with the extrusion of all filaments, strips, films, or sheets, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of the Party.

A historical or traditional regional design or motif includes, but is not limited to, depictions of traditional geometric patterns or native objects, landscapes, animals, or people.

13. The importing Party shall grant duty-free treatment to goods identified pursuant to paragraph 12, if the competent authority of the exporting Party certifies such identification.

Regional Cumulation

14. In the light of their desire to promote regional integration, the Parties shall enter into discussions, within six months of the date of entry into force of this Agreement, or at a time to be determined by the Parties, with a view to deciding, subject to their applicable domestic legal requirements (such as a requirement to consult with the legislature and domestic industry), whether materials that are goods of countries in the region may be counted for purposes of satisfying the origin requirement under this Chapter as a step toward achieving regional integration.

Article 3.4: Committee on Textile and Apparel Trade Matters

The Parties hereby establish a Committee on Textile and Apparel Trade Matters. The Committee on Textile and Apparel Trade Matters shall meet upon the request of any Party or the Free Trade Commission to consider any matter arising under this Chapter.

Article 3.5: Definitions

For purposes of this Chapter:

claim of origin means a claim that a textile or apparel good is an originating good or satisfies the non-preferential rules of origin of a Party;

exporting Party means the Party from whose territory a textile or apparel good is exported;

importing Party means the Party into whose territory a textile or apparel good is imported;

input means a fiber, yarn, or fabric used in the production of a textile or apparel good;

interested entity means a Party, an actual or potential purchaser of a textile or apparel good, or an actual or potential supplier of a textile or apparel good;

textile or apparel good means a good listed in the Annex to the WTO Agreement on Textiles and Clothing, except for those goods listed in Annex 3-C;

textile safeguard measure means a measure applied under Article 3.1; and

transition period means the five-year period beginning on the date of entry into force of this Agreement.

Annex 3-A

Textile and Apparel Specific Rules of Origin for Chapters 42, 50 through 63, 66, 70, and 94

General Interpretative Notes

1. For goods covered in this Annex, a good is an originating good if:

   (a) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in this Annex as a result of production occurring entirely in the territory of one or more of the Parties, or the good otherwise satisfies the applicable requirements of this Chapter where a change in tariff classification for each non-originating material is not required; and

   (b) the good satisfies any other applicable requirements of this Chapter and Chapter Four (Rules of Origin and Origin Procedures).

2. For purposes of interpreting the rules of origin set out in this Annex:

   (a) the specific rule, or specific set of rules, that applies to a particular heading or subheading is set out immediately adjacent to the heading or subheading;

   (b) a rule applicable to a subheading shall take precedence over a rule applicable to the heading that is parent to that subheading;

   (c) a requirement of a change in tariff classification applies only to non-originating materials; and

   (d) the following definitions apply:

   chapter means a chapter of the Harmonized System;

   heading means the first four digits in the tariff classification number under the Harmonized System; and

   subheading means the first six digits in the tariff classification number under the Harmonized System.

3. For purposes of these rules, the term **wholly** means that the good is entirely of the named material.

4. For goods of Chapters 42, 50 through 63, and 94, a good shall be originating if the good satisfies:

   (a) Rule 1, 2, 3, or 4 of this Annex, if applicable to such good; or

   (b) any applicable requirement of this Chapter, as discussed in Note 1.

Rule 1: A textile good of Chapters 50 through 60 of the Harmonized System shall be considered originating if it is wholly formed in the territory of one or more of the Parties from:

   (a) one or more fibers and yarns listed in Annex 3-B; or

(b) a combination of the fibers and yarns referred to in subparagraph (a) and one or more fibers and yarns originating under this Annex.

The originating fibers and yarns referred to in subparagraph (b) may contain up to ten percent by weight of fibers and yarns that do not undergo an applicable change in tariff classification set out in this Annex. Any elastomeric yarn contained in the originating yarns referred to in subparagraph (b) must be formed in the territory of one or more of the Parties.

Rule 2: An apparel good of Chapter 61 or 62 of the Harmonized System shall be considered originating if it is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and if the fabric of the outer shell, exclusive of collars and cuffs, where applicable, is wholly of:

(a) one or more fabrics listed in Annex 3-B;

(b) one or more fabrics or knit to shape components formed in the territory of one or more of the Parties from one or more of the yarns listed in Annex 3-B;

(c) any combination of the fabrics referred to in subparagraph (a), the fabrics or knit to shape components referred to in subparagraph (b), or one or more fabrics or knit to shape components originating under this Annex.

The originating fabrics referred to in subparagraph (c) may contain up to ten percent by weight of fibers or yarns that do not undergo an applicable change in tariff classification set out in this Annex. Any elastomeric yarn contained in an originating fabric or knit to shape component referred to in subparagraph (c) must be formed in the territory of one or more of the Parties.

Rule 3: A textile good of Chapter 42, 63, or 94 of the Harmonized System shall be considered originating if it is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and if the component that determines the tariff classification of the good is wholly of:

(a) one or more fabrics listed in Annex 3-B;

(b) one or more fabrics or knit to shape components formed in the territory of one or more of the Parties from one or more of the yarns listed in Annex 3-B; or

(c) any combination of the fabrics referred to in subparagraph (a), the fabrics or knit to shape components referred to in subparagraph (b), or one or more fabrics or knit to shape components originating under this Annex.

The originating fabrics referred to in subparagraph (c) may contain up to ten percent by weight of fibers or yarns that do not undergo an applicable change in tariff classification set out in this Annex. Any elastomeric yarn contained in an originating fabric or knit to shape component referred to in subparagraph (c) must be formed in the territory of one or more of the Parties.

Rule 4: An apparel good of Chapter 61 or 62 shall be considered originating regardless of the origin of any visible lining fabric described in Chapter Rule 1, narrow fabrics described in Chapter Rule 3, sewing thread described in Chapter Rule 4, or pocketing fabric described in Chapter Rule 5 if any such material is identified in Annex 3-B and the good meets all other applicable requirements for preferential tariff treatment under this Agreement.

Chapter 42 – Luggage

4202.12	A change to goods of subheading 4202.12 with an outer surface of textile materials from any other chapter, except from headings 54.07, 54.08, or 55.12 through 55.16 or tariff items 5903.10.aa, 5903.10.bb, 5903.10.cc, 5903.10.dd, 5903.20.aa, 5903.20.bb, 5903.20.cc, 5903.20.dd, 5903.90.aa, 5903.90.bb, 5903.90.cc, 5903.90.dd, 5906.99.aa, 5906.99.bb, 5907.00.aa, 5907.00.bb, or 5907.00.cc.
4202.22	A change to goods of subheading 4202.22 with an outer surface of textile materials from any other chapter, except from headings 54.07, 54.08, or 55.12 through 55.16 or tariff items 5903.10.aa, 5903.10.bb, 5903.10.cc, 5903.10.dd, 5903.20.aa, 5903.20.bb, 5903.20.cc, 5903.20.dd, 5903.90.aa, 5903.90.bb, 5903.90.cc, 5903.90.dd, 5906.99.aa, 5906.99.bb, 5907.00.aa, 5907.00.bb, or 5907.00.cc.
4202.32	A change to goods of subheading 4202.32 with an outer surface of textile materials from any other chapter, except from headings 54.07, 54.08, or 55.12 through 55.16 or tariff items 5903.10.aa, 5903.10.bb, 5903.10.cc, 5903.10.dd, 5903.20.aa, 5903.20.bb, 5903.20.cc, 5903.20.dd, 5903.90.aa, 5903.90.bb, 5903.90.cc, 5903.90.dd, 5906.99.aa, 5906.99.bb, 5907.00.aa, 5907.00.bb, or 5907.00.cc.
4202.92	A change to goods of subheading 4202.92 with an outer surface of textile materials from any other chapter, except from headings 54.07, 54.08, or 55.12 through 55.16 or tariff items 5903.10.aa, 5903.10.bb, 5903.10.cc, 5903.10.dd, 5903.20.aa, 5903.20.bb, 5903.20.cc, 5903.20.dd, 5903.90.aa, 5903.90.bb, 5903.90.cc, 5903.90.dd, 5906.99.aa, 5906.99.bb, 5907.00.aa, 5907.00.bb, or 5907.00.cc.

Chapter 50 – Silk

50.01-50.03	A change to heading 50.01 through 50.03 from any other chapter.
50.04-50.06	A change to heading 50.04 through 50.06 from any heading outside that group.
50.07	A change to heading 50.07 from any other heading.

Chapter 51 – Wool, Fine or Coarse Animal Hair; Horsehair Yarn and Woven Fabric

51.01-51.05	A change to heading 51.01 through 51.05 from any other chapter.
51.06-51.10	A change to heading 51.06 through 51.10 from any heading outside that group.
51.11-51.13	A change to heading 51.11 through 51.13 from any heading outside that group, except from heading 51.06 through 51.10, 52.05 through 52.06, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.04, or heading 55.09 through 55.10.

Chapter 52 – Cotton

52.01-52.07	A change to heading 52.01 through 52.07 from any other chapter, except from heading 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.05, or heading 55.01 through 55.07.

52.08-52.12	A change to heading 52.08 through 52.12 from any heading outside that group, except from heading 51.06 through 51.10, 52.05 through 52.06, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.04, or heading 55.09 through 55.10.

Chapter 53 – Other Vegetable Textile Fibers; Paper Yarn and Woven Fabrics of Paper Yarn

53.01-53.05	A change to heading 53.01 through 53.05 from any other chapter.
53.06-53.08	A change to heading 53.06 through 53.08 from any heading outside that group.
53.09	A change to heading 53.09 from any other heading, except from heading 53.07 through 53.08.
53.10-53.11	A change to heading 53.10 through 53.11 from any heading outside that group, except from heading 53.07 through 53.08.

Chapter 54 – Man-Made Filaments

54.01-54.06	A change to heading 54.01 through 54.06 from any other chapter, except from heading 52.01 through 52.03 or 55.01 through 55.07.
54.07	A change to tariff item 5407.61.aa, 5407.61.bb, or 5407.61.cc from tariff item 5402.43.aa or 5402.52.aa or from any other heading except from heading 51.06 through 51.10, 52.05 through 52.06, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or heading 55.09 through 55.10. A change to any other tariff item of heading 54.07 from any other heading except from heading 51.06 through 51.10, 52.05 through 52.06, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or heading 55.09 through 55.10.
54.08	A change to heading 54.08 from any other heading except from heading 51.06 through 51.10, 52.05 through 52.06, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.07, or heading 55.09 through 55.10.

Chapter 55 – Man-Made Staple Fibers

55.01-55.11	A change to heading 55.01 through 55.11 from any other chapter, except from heading 52.01 through 52.03, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, or 5403.42 through heading 54.05.
55.12-55.16	A change to heading 55.12 through 55.16 from any heading outside that group, except from heading 51.06 through 51.10, 52.05 through 52.06, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 5404, or heading 55.09 through 55.10.

Chapter 56 – Wadding, Felt and Non-Wovens; Special Yarns; Twine, Cordage, Ropes and Cables and Articles Thereof

56.01-56.09	A change to heading 56.01 through 56.09 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or Chapter 55.

Chapter 57 – Carpets and Other Textile Floor Coverings

57.01-57.05	A change to heading 57.01 through 57.05 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or heading 55.08 through 55.16.

Chapter 58 – Special Woven Fabrics; Tufted Textile Fabrics; Lace; Tapestries; Trimmings; Embroidery

5801.10-5806.10	A change to subheading 5801.10 through 5806.10 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or Chapter 55.
5806.20	A change to subheading 5806.20 from any other chapter, except from heading 52.08 through 52.12, 54.07 through 54.08, or 55.12 through 55.16.
5806.31-5811.00	A change to subheading 5806.31 through 5811.00 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or Chapter 55.

Chapter 59 – Impregnated, Coated, Covered, or Laminated Textile Fabrics; Textile Articles of a Kind Suitable For Industrial Use

59.01	A change to heading 59.01 from any other chapter, except from heading 51.11 through 51.13, 52.08 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.07 through 54.08, or 55.12 through 55.16.
59.02	A change to heading 59.02 from any other heading, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.06 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or Chapter 55.
59.03-59.08	A change to heading 59.03 through 59.08 from any other chapter, except from heading 51.11 through 51.13, 52.08 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.07 through 54.08, or 55.12 through 55.16.
59.09	A change to heading 59.09 from any other chapter, except from heading 51.11 through 51.13, 52.08 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20,

	5403.33 through 5403.39, 5403.42 through heading 54.08, or heading 55.12 through 55.16.
59.10	A change to heading 59.10 from any other heading, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or Chapter 55.
59.11	A change to heading 59.11 from any other chapter, except from heading 51.11 through 51.13, 52.08 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.07 through 54.08, or 55.12 through 55.16.

Chapter 60 – Knitted or Crocheted Fabrics

60.01	A change to heading 60.01 from any other chapter, except from heading 51.06 through 51.13, Chapter 52, heading 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or Chapter 55.
60.02	A change to heading 60.02 from any other chapter.
60.03-60.06	A change to heading 60.03 through 60.06 from any other chapter, except from heading 51.06 through 51.13, Chapter 52, heading 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or Chapter 55.

Chapter 61 – Articles of Apparel and Clothing Accessories, Knitted or Crocheted

Chapter Rule 1: *Except for fabrics classified under tariff item 5408.22.aa, 5408.23.aa, 5408.23.bb, or 5408.24.aa, the fabrics identified in the following headings and subheadings, when used as visible lining material in certain men's and women's suits, suit-type jackets, skirts, overcoats, carcoats, anoraks, windbreakers, and similar articles, must be both formed from yarn and finished in the territory of one or more of the Parties:*

51.11 through 51.12, 5208.31 through 5208.59, 5209.31 through 5209.59, 5210.31 through 5210.59, 5211.31 through 5211.59, 5212.13 through 5212.15, 5212.23 through 5212.25, 5407.42 through 5407.44, 5407.52 through 5407.54, 5407.61, 5407.72 through 5407.74, 5407.82 through 5407.84, 5407.92 through 5407.94, 5408.22 through 5408.24, 5408.32 through 5408.34, 5512.19, 5512.29, 5512.99, 5513.21 through 5513.49, 5514.21 through 5515.99, 5516.12 through 5516.14, 5516.22 through 5516.24, 5516.32 through 5516.34, 5516.42 through 5516.44, 5516.92 through 5516.94, 6001.10, 6001.92, 6005.31 through 6005.44, or 6006.10 through 6006.44.

Chapter Rule 2: *For purposes of determining whether a good of this chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good. If the rule requires that the good must also satisfy the tariff change requirements for visible lining fabrics listed in Chapter Rule 1,*

such requirement shall only apply to the visible lining fabric in the main body of the garment, excluding sleeves, which covers the largest surface area, and shall not apply to removable linings.

Chapter Rule 3: *Notwithstanding Chapter Rule 2, a good of this chapter containing fabrics of subheading 5806.20 or heading 60.02 shall be considered originating only if such fabrics are both formed from yarn and finished in the territory of one or more of the Parties.*

Chapter Rule 4: *Notwithstanding Chapter Rule 2, a good of this chapter containing sewing thread of heading 52.04 or 54.01 shall be considered originating only if such sewing thread is both formed and finished in the territory of one or more of the Parties.*

Chapter Rule 5: *Notwithstanding Chapter Rule 2, if a good of this chapter contains a pocket or pockets, the pocket bag fabric must be formed and finished in the territory of one or more of the Parties from yarn wholly formed in one or more of the Parties.*

6101.10-6101.30 A change to subheading 6101.10 through 6101.30 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6101.90 A change to subheading 6101.90 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6102.10-6102.30 A change to subheading 6102.10 through 6102.30 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6102.90 A change to subheading 6102.90 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6103.11-6103.12 A change to subheading 6103.11 through 6103.12 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6103.19 A change to tariff item 6103.19.aa or 6103.19.bb from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6103.19 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6103.21-6103.29 A change to subheading 6103.21 through 6103.29 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) with respect to a garment described in heading 61.01 or a jacket or a blazer described in heading 61.03, of wool, fine animal hair, cotton, or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6103.31-6103.33 A change to subheading 6103.31 through 6103.33 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6103.39 A change to tariff item 6103.39.aa or 6103.39.bb from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6103.39 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

6103.41-6103.49 A change to subheading 6103.41 through 6103.49 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06,

provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6104.11-6104.13

A change to subheading 6104.11 through 6104.13 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6104.19

A change to tariff item 6104.19.aa or 6104.19.bb from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6104.19 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6104.21-6104.29

A change to subheading 6104.21 through 6104.29 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) with respect to a garment described in heading 61.02, a jacket or a blazer described in heading 61.04, or a skirt described in heading 61.04, of wool, fine animal hair, cotton or man-made fibers, imported as part of an

ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6104.31-6104.33 A change to subheading 6104.31 through 6104.33 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6104.39 A change to tariff item 6104.39.aa from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6104.39 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6104.41-6104.49 A change to subheading 6104.41 through 6104.49 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6104.51-6104.53 A change to subheading 6104.51 through 6104.53 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6104.59	A change to tariff item 6104.59.aa or 6104.59.bb from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties. A change to any other tariff item of subheading 6104.59 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that: (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.
6104.61-6104.69	A change to subheading 6104.61 through 6104.69 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.
61.05-61.11	A change to heading 61.05 through 61.11 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.
6112.11-6112.19	A change to subheading 6112.11 through 6112.19 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6112.20 A change to subheading 6112.20 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) with respect to a garment described in heading 61.01, 61.02, 62.01, or 62.02, of wool, fine animal hair, cotton or man-made fibers, imported as part of a ski-suit of this subheading, any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

6112.31-6112.49 A change to subheading 6112.31 through 6112.49 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

61.13-61.17 A change to heading 61.13 through 61.17 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

Chapter 62 – Articles of Apparel and Clothing Accessories, Not Knitted or Crocheted

Chapter Rule 1: *Except for fabrics classified under tariff item 5408.22.aa, 5408.23.aa, 5408.23.bb, or 5408.24.aa, the fabrics identified in the following headings and subheadings, when used as visible lining material in certain men's and women's suits, suit-type jackets, skirts, overcoats, carcoats, anoraks, windbreakers, and similar articles, must be both formed from yarn and finished in the territory of one or more of the Parties:*

51.11 through 51.12, 5208.31 through 5208.59, 5209.31 through 5209.59, 5210.31 through 5210.59, 5211.31 through 5211.59, 5212.13 through 5212.15, 5212.23 through 5212.25, 5407.42 through 5407.44, 5407.52 through 5407.54, 5407.61, 5407.72 through 5407.74, 5407.82 through 5407.84, 5407.92 through 5407.94, 5408.22 through 5408.24, 5408.32 through 5408.34, 5512.19, 5512.29, 5512.99, 5513.21 through 5513.49, 5514.21 through 5515.99, 5516.12 through 5516.14, 5516.22 through 5516.24, 5516.32 through 5516.34, 5516.42 through 5516.44, 5516.92 through 5516.94, 6001.10, 6001.92, 6005.31 through 6005.44, or 6006.10 through 6006.44.

Chapter Rule 2: *For purposes of determining whether a good of this chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the*

good and such component must satisfy the tariff change requirements set out in the rule for that good. If the rule requires that the good must also satisfy the tariff change requirements for visible lining fabrics listed in Chapter Rule 1, such requirement shall only apply to the visible lining fabric in the main body of the garment, excluding sleeves, which covers the largest surface area, and shall not apply to removable linings.

Chapter Rule 3: *Notwithstanding Chapter Rule 2, a good of this chapter, other than a good of subheading 6212.10, containing fabrics of heading 60.02 or subheading 5806.20 shall be considered originating only if such fabrics are both formed from yarn and finished in the territory of one or more of the Parties.*

Chapter Rule 4: *Notwithstanding Chapter Rule 2, a good of this chapter containing sewing thread of heading 52.04 or 54.01 shall be considered originating only if such sewing thread is both formed and finished in the territory of one or more of the Parties.*

Chapter Rule 5: *Notwithstanding Chapter Rule 2, if a good of this chapter contains a pocket or pockets, the pocket bag fabric must be formed and finished in the territory of one or more of the Parties from yarn wholly formed in one or more of the Parties.*

6201.11-6201.13 A change to subheading 6201.11 through 6201.13 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6201.19 A change to subheading 6201.19 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6201.91-6201.93 A change to subheading 6201.91 through 6201.93 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6201.99 A change to subheading 6201.99 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6202.11-6202.13 A change to subheading 6202.11 through 6202.13 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6202.19 A change to subheading 6202.19 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6202.91-6202.93 A change to subheading 6202.91 through 6202.93 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6202.99 A change to subheading 6202.99 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through

53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6203.11-6203.12 A change to subheading 6203.11 through 6203.12 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6203.19 A change to tariff item 6203.19.aa or 6203.19.bb from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6203.19 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6203.21-6203.29 A change to subheading 6203.21 through 6203.29 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) with respect to a garment described in heading 62.01 or a jacket or a blazer described in heading 62.03, of wool, fine animal hair, cotton, or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6203.31-6203.33 A change to subheading 6203.31 through 6203.33 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6203.39 A change to tariff item 6203.39.aa or 6203.39.bb from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6203.39 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6203.41-6203.49 A change to subheading 6203.41 through 6203.49 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6204.11-6204.13	A change to subheading 6204.11 through 6204.13 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that: (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.
6204.19	A change to tariff item 6204.19.aa or 6204.19.bb from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties. A change to any other tariff item of subheading 6204.19 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that: (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.
6204.21-6204.29	A change to subheading 6204.21 through 6204.29 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that: (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and (b) with respect to a garment described in heading 62.02, a jacket or a blazer described in heading 62.04, or a skirt described in heading 62.04, of wool, fine animal hair, cotton, or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining

material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6204.31-6204.33 A change to subheading 6204.31 through 6204.33 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6204.39 A change to tariff item 6204.39.aa or 6204.39.bb from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6204.39 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6204.41-6204.49 A change to subheading 6204.41 through 6204.49 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6204.51-6204.53 A change to subheading 6204.51 through 6204.53 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through

heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and

(b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.

6204.59	A change to tariff item 6204.59.aa from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties. A change to any other tariff item of subheading 6204.59 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that: (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties; and (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.
6204.61-6204.69	A change to subheading 6204.61 through 6204.69 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.
6205.10 – 6205.90	A change to subheading 6205.10 through 6205.90 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.
62.06-62.10	A change to headings 62.06 through 62.10 from any other chapter, except from headings 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or

headings 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6211.11-6211.12	A change to subheading 6211.11 through 6211.12 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.
6211.20	A change to subheading 6211.20 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that: (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and (b) with respect to a garment described in heading 61.01, 61.02, 62.01, or 62.02, of wool, fine animal hair, cotton, or man-made fibers, imported as part of a ski-suit of this subheading, any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 62.
6211.31-6211.49	A change to subheading 6211.31 through 6211.49 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.
6212.10	A change to subheading 6212.10 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.
6212.20-6212.90	A change to subheading 6212.20 through 6212.90 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is both cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.
62.13-62.17	A change to heading 62.13 through 62.17 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading

5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

Chapter 63 – Other Made Up Textile Articles; Sets; Worn Clothing and Worn Textile Articles; Rags

Chapter Rule 1: *For purposes of determining whether a good of this chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good.*

Chapter Rule 2: *Notwithstanding Chapter Rule 1, a good of this chapter containing sewing thread of heading 52.04 or 54.01 shall be considered originating only if such sewing thread is wholly formed in the territory of one or more of the Parties.*

63.01-63.02 A change to heading 63.01 through 63.02 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

63.03 A change to tariff item 6303.92.aa from tariff item 5402.43.aa, 5402.52.aa, or any other chapter, except from heading 51.06 through 51.13, 5204 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of heading 63.03 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

63.04-63.05 A change to heading 63.04 through 63.05 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

63.06 A change to heading 63.06 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20,

	5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, 59.03 or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.
63.07-63.08	A change to heading 63.07 through 63.08 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.
63.09	A change to 63.09 from any other chapter, except from headings 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08 or 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or headings 55.08 through 55.16, 58.01 through 58.02 or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.
63.10	A change to heading 63.10 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

Chapter 66 – Umbrellas; Sun Umbrellas

66.01	A change to heading 66.01 from any other heading.

Chapter 70 – Glass Fiber Rovings and Yarns

70.19	A change to heading 70.19 from any other heading.

Chapter 94 – Comforters

9404.90	A change to subheading 9404.90 from any other chapter, except from heading 50.07, 51.06 through 51.13, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, or subheading 6307.90.

Annex 3-B

Short Supply List

1. 100 percent polyester crushed panne velour fabric of circular knit construction classified under tariff item 6001.92.aa

2. Cuprammonium rayon filament yarn classified under subheading 5403.39

3. Yarn of combed cashmere, combed cashmere blends, or combed camel hair, classified under tariff item 5108.20.aa

4. Fabrics classified under subheadings 5513.11 or 5513.21, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric

5. Fabrics classified under subheadings 5210.21 or 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric

6. Fabrics classified under subheadings 5407.81, 5407.82, or 5407.83, weighing less than 170 grams per square meter, having a dobby weave created by a dobby attachment, of average yarn number exceeding 135 metric

7. Fabrics classified under subheading 5208.51, of square construction, containing more than 75 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number 95 or greater metric

8. Fabrics classified under subheading 5208.41, with the warp colored with vegetable dyes, and the filling yarns white or colored with vegetable dyes, of average yarn number greater than 65 metric

9. Ring spun single yarn of English yarn numbers 30 and 50, containing 50 percent or more, but less than 85 percent, by weight of 0.9 denier or finer micro modal fiber, mixed solely with U.S. origin extra long pima cotton, classified under subheading 5510.30.0000

10. Micro-denier 30 and 36 singles solution dyed, open-end spun, staple spun viscose yarn, classified under subheading 5510.11.0000

11. Certain combed compact yarns, of wool or fine animal hair, classified under subheadings 5107.10, 5107.20, or 5108.20[6]

12. Fancy polyester filament fabric
    HTS tariff item: 5407.53.aa and 5407.53.bb
    Fiber Content: 100 percent Polyester
    Width: 58/60 inches
    Construction: Plain, twill and satin weaves, in combinations of 75 denier, 100 denier, 150 denier, and 300 denier yarn sizes, with mixes of 25 percent cationic/75 percent disperse, 50 percent cationic/50 percent disperse, and 100 percent cationic.
    Dyeing: Containing at least three different yarns, each of which is dyed a different color

13. Certain ring spun single yarns of English yarn number 30 and higher of 0.9 denier or

[6] Except South American camelidae fine hair.

finer micro modal fibers, classified under subheading 5510.11.0000

14. 100 percent cotton, 4-thread twill weave, flannel fabrics, of yarn-dyed, combed, and ring spun single yarns, of the specifications detailed below, classified under subheading 5208.43.0000
Fiber Content: 100 percent Cotton
Weight: 136 - 140 g/m2
Width: 148 - 150 centimeters
Thread Count: 38 - 40 warp ends per centimeter; 28 - 30 filling picks per centimeter; total: 66 - 70 threads per square centimeter
Yarn Number: 48 - 52 metric warp and filling, ring spun, combed; average yarn number 48 - 50 metric
Weave: 4-thread twill
Finish: Of two or more and up to eight yarns of different colors; napped on both sides

15. 100 percent cotton, 4-thread twill weave, flannel fabrics, of yarn-dyed, combed, and ring spun single yarns, of the specifications detailed below, classified under subheading 5208.43.0000
Fiber Content: 100 percent Cotton
Weight: 301 - 303 g/m2
Width: 142 - 145 centimeters
Thread Count: 25 - 26 warp ends per centimeter; 23 - 24 filling picks per centimeter; total: 48 - 50 threads per square centimeter
Yarn Number: 35/2 - 36/2 metric warp and filling, ring spun; overall average yarn number 32 - 34 metric
Weave: 4-thread twill; Herringbone twill
Finish: Of two or more yarns of different colors in the warp and filling; napped on both sides

16. 100 percent cotton, 4-thread twill weave, flannel fabrics, of yarn-dyed, combed, and ring spun single yarns, of the specifications detailed below, classified under subheading 5208.43.0000
Fiber Content: 100 percent Cotton
Weight: 325 - 327 g/m2
Width: 148 - 152 centimeters
Thread Count: 33 - 35 warp ends per centimeter; 57 - 59 filling picks per centimeter; total: 90 - 94 threads per square centimeter
Yarn Number: 50 -52 metric warp; 23 - 25 metric filling; overall average yarn number 28-30 metric
Weave: Double faced irregular 1 x 3 sateen
Finish: Printed on one side on yarns of different colors; napped on both sides; sanforized

17. 100 percent cotton, 4-thread twill weave, flannel fabrics, of yarn-dyed, combed, and ring spun single yarns, of the specifications detailed below, classified under subheading 5208.43.0000
Fiber Content: 100 percent cotton
Yarn Number: 39/1 - 41/1 metric combed ring spun warp; 39/1 - 41/1 carded ring spun filling; overall average yarn number: 38 - 40 metric
Thread Count: 43 - 45 warp ends per centimeter; 24 - 26 filling picks per centimeter; total 61 - 71 threads per square centimeter
Weave: three or four-thread twill
Weight: 176 - 182 grams per square meter
Width: 168 - 172 centimeters
Finish: (Piece) dyed, carbon emerized on both sides

18. 100 percent cotton, 4-thread twill weave, flannel fabrics, of yarn-dyed, combed, and ring spun single yarns, of the specifications detailed below, classified under subheading 5208.43.0000
Fiber Content: 100 percent cotton
Weight: 150 - 160 g/m2
Width: 148 - 152 centimeters
Thread Count: 50 - 52 warp ends per cm (25-26 x two plies)
45 - 46 filling picks per cm (21-23 x two plies)
92 - 98 thread per square cm (46-49 x two plies)
Yarn Number: 34 metric warp and filling, ring spun and combed, two ply, average yarn number 60-62 metric
Weave: 2 x 2 twill
Finish: Yarns of different colors; napped

Annex 3-C

Textile or Apparel Goods Not Covered by Chapter Three

HS No.	Product Description
3005.90	Wadding, gauze, bandages, and the like
ex 3921.12 ex 3921.13 ex 3921.90	Woven, knitted, or non-woven fabrics coated, covered, or laminated with plastics
ex 6405.20	Footwear with soles and uppers of wool felt
ex 6406.10	Footwear uppers of which 50 percent or more of the external surface is made of textile material
ex 6406.99	Leg warmers and gaiters of textile material
6501.00	Forms not blocked, hoods of felt; plateaux and manchons of felt for hats
6502.00	Hat shapes, plaited or made by assembling strips of any material
6503.00	Felt hats and other felt headgear
6504.00	Hats and other headgear plaited or made by assembling strips of any material
6505.90	Hats and other headgear knitted or made with lace or other textile material
8708.21	Safety belts for automobiles
8804.00	Parachutes; their spares and accessories
9113.90	Watch straps, bands, and bracelets made of textile materials
9502.91	Doll garments
ex 9612.10	Ribbons of synthetic fabric more than 30 millimeters wide and permanently placed in cartridges

Note: Whether or not a good is covered by this Chapter shall be determined in accordance with the Harmonized System. The descriptions provided in this Annex are for reference purposes only.

Appendix

Correlation Table for Textile and Apparel Goods

Tariff Item	United States	Colombia	Description
5108.20.aa	5108.20.60	ex 5108.20.00	Other than of Angora rabbit hair
5402.43.aa	5402.43.10	ex 5402.43.00	Wholly of polyester, measuring not less than 75 decitex but not more than 80 decitex, and having 24 filaments per yarn
5402.52.aa	5402.52.10	ex 5402.52.00	Wholly of polyester, measuring not less than 75 decitex but not more than 80 decitex, and having 24 filaments per yarn
5407.53.aa	5407.53.20.20	ex 5407.53.00	Other than - the thread count of which per cm (treating multiple (folded) or cabled yarns as single threads) is over 69 but not over 142 in the warp and over 31 but not over 71 in the filling; weighing not more than 170 g/m2; flat fabrics
5407.53.bb	5407.53.20.60	ex 5407.53.00	Other than - the thread count of which per cm (treating multiple (folded) or cabled yarns as single threads) is over 69 but not over 142 in the warp and over 31 but not over 71 in the filling; weighing more than 170 g/m2
5407.61.aa	5407.61.11	ex 5407.61.00	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, having 24 filaments per yarn and with a twist of 900 or more turns per meter
5407.61.bb	5407.61.21	ex 5407.61.00	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, having 24 filaments per yarn and with a twist of 900 or more turns per meter
5407.61.cc	5407.61.91	ex 5407.61.00	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, having 24 filaments per yarn and with a twist of 900 or more turns per meter
5408.22.aa	5408.22.10	ex 5408.22.00	Of cuprammonium rayon
5408.23.aa	5408.23.11	ex 5408.23.00	Of cuprammonium rayon
5408.23.bb	5408.23.21	ex 5408.23.00	Of cuprammonium rayon
5408.24.aa	5408.24.10	ex 5408.24.00	Of cuprammonium rayon
5903.10.aa	5903.10.15	ex 5903.10.00	Of man-made fibers, fabrics specified in note 9 to Section XI, over 60 percent by weight of plastics
5903.10.bb	5903.10.18	ex 5903.10.00	Of man-made fibers, fabrics specified in note 9 to Section XI, 60 percent or less by weight of plastics

Tariff Item	United States	Colombia	Description
5903.10.cc	5903.10.20	ex 5903.10.00	Of man-made fibers, other than fabrics specified in note 9 to Section XI, over 70 percent by weight of rubber or Plastics
5903.10.dd	5903.10.25	ex 5903.10.00	Of man-made fibers, other than fabrics specified in note 9 to Section XI, 70 percent or less by weight of rubber or Plastics
5903.20.aa	5903.20.15	ex 5903.20.00	Of man-made fibers, fabrics specified in note 9 to Section XI, over 60 percent by weight of plastics
5903.20.bb	5903.20.18	ex 5903.20.00	Of man-made fibers, fabrics specified in note 9 to Section XI, 60 percent or less by weight of plastics
5903.20.cc	5903.20.20	ex 5903.20.00	Of man-made fibers, other than fabrics specified in note 9 to Section XI, over 70 percent by weight of rubber or plastics
5903.20.dd	5903.20.25	ex 5903.20.00	Of man-made fibers, other than fabrics specified in note 9 to Section XI, 70 percent or less by weight of rubber or plastics
5903.90.aa	5903.90.15	ex 5903.90.00	Of man-made fibers, fabrics specified in note 9 to Section XI, over 60 percent by weight of plastics
5903.90.bb	5903.90.18	ex 5903.90.00	Of man-made fibers, fabrics specified in note 9 to Section XI, 60 percent or less by weight of plastics
5903.90.cc	5903.90.20	ex 5903.90.00	Of man-made fibers, other than fabrics specified in note 9 to Section XI, over 70 percent by weight of rubber or plastics
5903.90.dd	5903.90.25	ex 5903.90.00	Of man-made fibers, other than fabrics specified in note 9 to Section XI, 70 percent or less by weight of rubber or plastics
5906.99.aa	5906.99.20	ex 5906.99.00	Of man-made fibers, over 70 percent by weight of rubber or plastics
5906.99.bb	5906.99.25	ex 5906.99.00	Of man-made fibers, 70 percent or less by weight of rubber or plastics
5907.00.aa	5907.00.05	ex 5907.00.00	Laminated fabrics; fabrics specified in note 9 to Section XI: of man-made fibers: theatrical, ballet, and operatic scenery and properties, including sets
5907.00.bb	5907.00.15	ex 5907.00.00	Laminated fabrics; fabrics specified in note 9 to Section XI: of man-made fibers: other than theatrical, ballet, and operatic scenery and properties, including sets
5907.00.cc	5907.00.60	ex 5907.00.00	Of man-made fibers, other than laminated fabrics or fabrics specified in note 9 to Section XI
6001.92.aa	6001.92.00.30	ex 6001.92.00	Velour, not over 271 grams per square meter

Tariff Item	United States	Colombia	Description
6103.19.aa	6103.19.60	ex 6103.19.00	Containing 70 percent or more by weight of silk or silk waste
6103.19.bb	6103.19.90	ex 6103.19.00	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6103.39.aa	6103.39.40	ex 6103.39.00	Containing 70 percent or more by weight of silk or silk waste
6103.39.bb	6103.39.80	ex 6103.39.00	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6104.19.aa	6104.19.40	ex 6104.19.00	Containing 70 percent or more by weight of silk or silk waste
6104.19.bb	6104.19.80	ex 6104.19.00	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6104.39.aa	6104.39.20	ex 6104.39.00	Other than of wool or fine animal hair, cotton, or man-made fibers
6104.59.aa	6104.59.40	ex 6104.39.00	Containing 70 percent or more by weight of silk or silk waste
6104.59.bb	6104.59.80	ex 6104.59.00	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6203.19.aa	6203.19.50	ex 6203.19.00	Containing 70 percent or more by weight of silk or silk waste
6203.19.bb	6203.19.90	ex 6203.19.00	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6203.39.aa	6203.39.50	ex 6203.39.00	Containing 70 percent or more by weight of silk or silk waste
6203.39.bb	6203.39.90	ex 6203.39.00	Other (Not of wool or fine animal hair, cotton or man-made fiber; not containing 70 percent or more by weight of silk or silk waste)
6204.19.aa	6204.19.40	ex 6204.19.40	Containing 70 percent or more by weight of silk or silk waste
6204.19.bb	6204.19.80	ex 6204.19.00	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6204.39.aa	6204.39.20	ex 6204.39.00	Of artificial fibers; Containing 36 percent or more by weight of wool or fine animal hair
6204.39.bb	6204.39.60	ex 6204.39.00	Containing 70 percent or more by weight of silk or silk waste
6204.59.aa	6204.59.40	ex 6204.59.00	Other than wool or fine animal hair, cotton, or man-made fibers
6303.92.aa	6303.92.10	ex 6303.92.00	Made up from fabrics described in tariff items 5407.61.aa, 5407.61.bb, or 5407.61.cc

Note: The descriptions in this table are in summary form and are for reference purposes only. In case of any inconsistency between this Appendix and Annex 3-B (Short Supply List), the descriptions in Annex 3-B (Short Supply List) shall prevail.

Chapter Four

Rules of Origin and Origin Procedures

Section A: Rules of Origin

Article 4.1: Originating Goods

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating where:

(a) it is a good wholly obtained or produced entirely in the territory of one or more of the Parties;

(b) it is produced entirely in the territory of one or more of the Parties and

(i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1 or Annex 3-A (Textile and Apparel Specific Rules of Origin), or

(ii) the good otherwise satisfies any applicable regional value content or other requirements specified in Annex 4.1 or Annex 3-A (Textile and Apparel Specific Rules of Origin),

and the good satisfies all other applicable requirements of this Chapter; or

(c) it is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

Article 4.2: Regional Value Content

1. Where Annex 4.1 specifies a regional value content test to determine whether a good is originating, each Party shall provide that the importer, exporter, or producer may, for purposes of making a claim for preferential tariff treatment in accordance with Article 4.15, calculate regional value content based on one or the other of the following methods:

(a) Method Based on Value of Non-Originating Materials ("Build-down Method")

$$RVC = \frac{AV - VNM}{AV} \times 100$$

(b) Method Based on Value of Originating Materials ("Build-up Method")

$$RVC = \frac{VOM}{AV} \times 100$$

where,

RVC is the regional value content, expressed as a percentage;

AV is the adjusted value of the good;

VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self-produced; and

VOM is the value of originating materials acquired or self-produced, and used by the producer in the production of the good.

2. Each Party shall provide that all costs considered for the calculation of regional value content shall be recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.

3. Where Annex 4.1 specifies a regional value content test to determine if an automotive good[1] is originating, each Party shall provide that the importer, exporter, or producer shall, for purposes of making a claim for preferential tariff treatment in accordance with Article 4.15, calculate the regional value content of that good based solely on the following method:

Method for Automotive Products ("Net Cost Method")

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where,

RVC is the regional value content, expressed as a percentage;

NC is the net cost of the good; and

VNM is the value of non-originating materials acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self-produced.

4. Each Party shall provide that, for purposes of the regional value content method in paragraph 3, the importer, exporter, or producer may use a calculation averaged over the producer's fiscal year, using any one of the following categories, on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the Parties:

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

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

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

5. Each Party shall provide that, for purposes of calculating regional value content under paragraph 3 for automotive materials[2] produced in the same plant, an importer, exporter, or producer may use a calculation:

(a) averaged:

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[1] Paragraph 3 applies solely to goods classified under the following Harmonized System headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines) 87.01 through 87.05 (motor vehicles), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

[2] Paragraph 5 applies solely to automotive materials classified in the following Harmonized System headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

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

(ii) over any quarter or month; or

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

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

(b) in which the average in subparagraph (a) is calculated separately for such goods sold to one or more motor vehicle producers; or

(c) in which the average in subparagraph (a) or (b) is calculated separately for those goods that are exported to the territory of one or more of the Parties.

Article 4.3: Value of Materials

Each Party shall provide that, for purposes of Articles 4.2 and 4.6, the value of a material shall be:

(a) for a material imported by the producer of the good, the adjusted value of the material;

(b) for a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15 and the corresponding interpretative notes of the Customs Valuation Agreement, *i.e.*, in the same manner as for imported goods, with such reasonable modifications as may be required due to the absence of an importation by the producer; or

(c) for a material that is self-produced,

(i) all the expenses incurred in the production of the material, including general expenses, and

(ii) an amount for profit equivalent to the profit added in the normal course of trade.

Article 4.4: Further Adjustments to the Value of Materials

1. Each Party shall provide that, for originating materials, the following expenses, where not included under Article 4.3, may be added to the value of the material:

(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of two or more of the Parties to the location of the producer;

(b) duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

2. Each Party shall provide that, for non-originating materials, the following expenses, where included under Article 4.3, may be deducted from the value of the material:

(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of two or more of the Parties to the location of the producer;

(b) duties, taxes, and customs brokerage fees on the material paid in the territory of two or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and

(d) the cost of originating materials used in the production of the non-originating material in the territory of a Party.

Article 4.5: Accumulation

1. Each Party shall provide that originating goods or materials of one or more of the Parties, incorporated into a good in the territory of another Party, shall be considered to originate in the territory of the other Party.

2. Each Party shall provide that a good is originating where the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements in Article 4.1 and all other applicable requirements in this Chapter.

Article 4.6: De Minimis

Except as provided in Annex 4.6, each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 4.1 is nonetheless originating if the value of all non-originating materials used in the production of the good and that do not undergo the applicable change in tariff classification does not exceed ten percent of the adjusted value of the good, provided that the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement and that the good meets all other applicable requirements in this Chapter.

Article 4.7: Fungible Goods and Materials

1. Each Party shall provide that an importer may claim that a fungible good or material is originating where the importer, exporter, or producer has:

(a) physically segregated each fungible good or material; or

(b) used any inventory management method, such as averaging, last-in-first-out (LIFO) or first-in-first-out (FIFO), recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

2. Each Party shall provide that the inventory management method selected under paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout the fiscal year of the person that selected the inventory management method.

Article 4.8: Accessories, Spare Parts, and Tools

1. Each Party shall provide that a good's standard accessories, spare parts, or tools delivered with the good shall be treated as originating goods if the good is an originating good and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

(a) the accessories, spare parts, or tools are classified with and not invoiced separately from the good, regardless of whether they appear specified or separately identified in the invoice itself; and

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

2. If a good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools described in paragraph 1 shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.9: Sets of Goods

1. Each Party shall provide that if goods are classified as a set as a result of the application of rule 3 of the General Rules of Interpretation of the Harmonized System, the set is originating only if each good in the set is originating and both the set and the goods meet all other applicable requirements in this Chapter.

2. Notwithstanding paragraph 1, a set of goods is originating if the value of all the non-originating goods in the set does not exceed 15 percent of the adjusted value of the set.

Article 4.10: Packaging Materials and Containers for Retail Sale

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1 or Annex 3-A (Textile and Apparel Specific Rules of Origin).

2. If a good is subject to a regional value content requirement, the value of packaging materials and containers described in paragraph 1 shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.11: Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers for shipment shall be disregarded in determining whether a good is originating.

Article 4.12: Indirect Materials Used in Production

Each Party shall provide that an indirect material shall be considered to be an originating material without regard to where it is produced.

Article 4.13: Transit and Transshipment

Each Party shall provide that a good shall not be considered to be an originating good if the good:

(a) undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(b) does not remain under the control of customs authorities in the territory of a non-Party.

Article 4.14: Consultation and Modifications

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.

2. A Party that considers that a specific rule of origin set forth in Annex 4.1 requires modification to take into account developments in production processes, lack of supply of originating materials, or other relevant factors may submit a proposed modification along with supporting rationale and any studies to the other Parties for consideration.

3. On submission by a Party of a proposed modification under paragraph 2, the Commission may refer the matter to an *ad hoc* working group within 60 days or on such other date as the Commission may decide. The working group shall meet to consider the proposed modification within 60 days of the date of referral or on such other date as the Commission may decide.

4. Within such period as the Commission may direct, the working group shall provide a report to the Commission, setting out its conclusions and recommendations, if any.

5. On receipt of the report, the Commission may take appropriate action under Article 20.1.3(b).

6. With respect to a textile or apparel good, paragraphs 2 through 4 of Article 3.3 (Rules of Origin, Origin Procedures, and Related Matters) apply in place of paragraphs 2 through 5.

Section B: Origin Procedures

Article 4.15: Claims for Preferential Treatment

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment based on either:

(a) a written or electronic certification by the importer, exporter, or producer; or

(b) the importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

2. Each Party shall provide that a certification need not be made in a prescribed format, provided that the certification is in written or electronic form, including but not limited to the following elements:

(a) the name of the certifying person, including as necessary contact or other identifying information;

(b) tariff classification under the Harmonized System and a description of the good;

(c) information demonstrating that the good is originating;

(d) date of the certification; and

(e) in the case of a blanket certification issued as set out in paragraph 4(b), the period that the certification covers.

3. Each Party shall provide that a certification by the producer or exporter of the good may be completed on the basis of:

(a) the producer's or exporter's knowledge that the good is originating; or

(b) in the case of an exporter, reasonable reliance on the producer's written or electronic certification that the good is originating.

No Party may require an exporter or producer to provide a written or electronic certification to another person.

4. Each Party shall provide that a certification may apply to:

(a) a single shipment of a good into the territory of a Party; or

(b) multiple shipments of identical goods within any period specified in the written or electronic certification, not exceeding 12 months from the date of the certification.

5. Each Party shall provide that a certification shall be valid for four years after the date it was issued.

6. Each Party shall allow an importer to submit a certification in the language of the importing Party or the exporting Party. In the latter case, the importing Party may require the importer to submit a translation of the certification in the language of the importing Party.

Article 4.16: Exceptions

No Party may require a certification or information demonstrating that a good is originating where:

(a) the customs value of the importation does not exceed US$1,500 or the equivalent amount in the currency of the importing Party, or such higher amount as may be established by the importing Party, unless the importing Party considers the importation to be part of a series of importations carried out or planned for the purpose of evading compliance with the Party's laws governing claims for preferential treatment under this Agreement; or

(b) it is a good for which the importing Party does not require the importer to present a certification or information demonstrating origin.

Article 4.17: Record Keeping Requirements

1. Each Party shall provide that an exporter or a producer in its territory that provides a certification in accordance with Article 4.15 shall maintain, for a minimum of five years from the date the certification was issued, all records necessary to demonstrate that a good for

which the producer or exporter provided a certification was an originating good, including records concerning:

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

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

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

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain, for a minimum of five years from the date of importation of the good, all records necessary to demonstrate the good qualified for the preferential tariff treatment.

Article 4.18: Verification

1. For purposes of determining whether a good imported into its territory from the territory of another Party is an originating good, the importing Party may conduct a verification by means of:

(a) written requests for information from the importer, exporter, or producer;

(b) written questionnaires to the importer, exporter, or producer;

(c) visits to the premises of an exporter or producer in the territory of the other Party, to review the records referred to in Article 4.17 or observe the facilities used in the production of the good, in accordance with any guidelines that the Parties develop pursuant to Article 4.21.2; or

(d) such other procedures to which the importing and exporting Parties may agree.

2. A Party may deny preferential tariff treatment to an imported good where:

(a) the exporter, producer, or importer fails to respond to a written request for information or questionnaire within a reasonable period, as established in the importing Party's law;

(b) after receipt of a written notification for a verification visit to which the importing and exporting Parties have agreed, the exporter or producer does not provide its written consent within a reasonable period, as established by the importing Party's law; or

(c) the Party finds a pattern of conduct indicating that an importer, exporter, or producer has provided false or unsupported declarations or certifications that a good imported into its territory is an originating good.

3. A Party conducting a verification shall provide the importer a determination, in writing, of whether the good is originating. The Party's determination shall include factual findings and the legal basis for the determination.

4. If an importing Party makes a determination under paragraph 3 that a good is not originating, the Party shall not apply that determination to an importation made before the date of the determination where:

(a) the exporting Party issued an advance ruling regarding the tariff classification or valuation of one or more materials used in the good under Article 5.10 (Advance Rulings);

(b) the importing Party's determination is based on a tariff classification or valuation for such materials that is different than that provided for in the advance ruling referred to in subparagraph (a); and

(c) the exporting Party issued the advance ruling before the importing Party's determination.

5. Where an importing Party determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good imported into its territory is originating, the Party may suspend preferential tariff treatment to identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with this Chapter.

Article 4.19: Obligations Relating to Importations

1. Each Party shall grant any claim for preferential tariff treatment made in accordance with this Chapter, unless the Party issues a written determination that the claim is invalid as a matter of law or fact.

2. A Party may deny preferential tariff treatment to a good if the importer fails to comply with any requirement in this Chapter.

3. No Party may subject an importer to any penalty for making an invalid claim for preferential tariff treatment, if the importer:

(a) did not engage in negligence, gross negligence, or fraud in making the claim and pays any customs duty owing; or

(b) on becoming aware that such a claim is not valid, promptly and voluntarily corrects the claim and pays any customs duty owing.

4. Each Party may require that an importer who claims preferential tariff treatment for a good imported into its territory:

(a) declare in the importation document that the good is originating;

(b) have in its possession at the time the declaration referred to in subparagraph (a) is made a written or electronic certification as described in Article 4.15, if the certification forms the basis for the claim;

(c) provide a copy of the certification, on request, to the importing Party, if the certification forms the basis for the claim;

(d) when the importer has reason to believe that the declaration in subparagraph (a) is based on inaccurate information, correct the importation document and pay any customs duty owing;

(e) when a certification by a producer or exporter forms the basis for the claim, either provide or have in place, at the importer's option, an arrangement to have the producer or exporter provide, on request of the importing Party, all

information relied on by such producer or exporter in making such certification; and

(f) demonstrate, on request of the importing Party, that the good is originating under Article 4.1, including that the good satisfies the requirements of Article 4.13.

5. Each Party shall provide that, where a good was originating when it was imported into its territory, but the importer of the good did not make a claim for preferential tariff treatment at the time of importation, that importer may, no later than one year after the date of importation, make a claim for preferential tariff treatment and apply for a refund of any excess duties paid as a result of the good not having been accorded preferential tariff treatment, on presentation to the Party of:

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

(b) a copy of a written or electronic certification if a certification forms the basis for the claim, or other information demonstrating that the good was originating; and

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

6. Each Party may provide that the importer is responsible for complying with the requirements of paragraph 4, notwithstanding that the importer may have based its claim for preferential tariff treatment on a certification or information that an exporter or producer provided.

7. Nothing in this Article shall prevent a Party from taking action under Article 3.2.7.

Article 4.20: Obligations Relating to Exportations

1. Each Party shall provide that:

(a) an exporter or a producer in its territory that has provided a written or electronic certification in accordance with Article 4.15 shall, on request, provide a copy to the exporting Party;

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

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

2. No Party may impose penalties on an exporter or a producer for providing an incorrect certification if the exporter or producer voluntarily notifies in writing all persons to whom it has provided the certification that it was incorrect.

Article 4.21: Common Guidelines

1. The Parties shall agree on and publish common guidelines for the interpretation, application, and administration of this Chapter and the relevant provisions of Chapter Two (National Treatment and Market Access for Goods) and shall endeavor to do so by the date of entry into force of this Agreement. The Parties may agree to modify the common guidelines.

2. The Parties shall endeavor to develop guidelines for conducting verifications pursuant to Article 4.18.1(c).

Article 4.22: Implementation

Colombia shall:

(a) implement Article 4.15.1(a), with respect to electronic certifications, no later than three years after the date of entry into force of this Agreement; and

(b) implement Article 4.15.1(b) no later than three years after the date of entry into force of the Agreement.

Article 4.23: Definitions

For purposes of this Chapter:

adjusted value means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation;

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

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

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

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

(d) motor vehicles classified under subheading 8703.21 through 8703.90;

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

Generally Accepted Accounting Principles means recognized consensus or substantial authoritative support given 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. Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;

good means any merchandise, product, article, or material;

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

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

(b) live animals born and raised in the territory of one or more of the Parties;

(c) goods obtained in the territory of one or more of the Parties from live animals;

(d) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or more of the Parties;

(e) minerals and other natural resources not included in subparagraphs (a) through (d) extracted or taken from the territory of one or more of the Parties;

(f) fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or more of the Parties by vessels registered or recorded with a Party and flying its flag;

(g) goods produced on board factory ships from the goods referred to in subparagraph (f), provided such factory ships are registered or recorded with that Party and fly its flag;

(h) goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, provided that a Party has rights to exploit such seabed or subsoil;

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

(j) waste and scrap derived from:

    (i) manufacturing or processing operations in the territory of one or more of the Parties, or

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

(k) recovered goods derived in the territory of one or more of the Parties from used goods and utilized in the territory of one or more of the Parties in the production of remanufactured goods; and

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

identical goods means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating;

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

(a) fuel and energy;

(b) tools, dies, and molds;

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

(d) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;

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

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

(g) catalysts and solvents; and

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

material means a good that is used in the production of another good, including a part or an ingredient;

material that is self-produced means an originating material that is produced by a producer of a good and used in the production of that good;

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

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

net cost of the good means the net cost that can be reasonably allocated to the good under one of the following methods:

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

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

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

provided that the allocation of all such costs is consistent with the provisions regarding the reasonable allocation of costs set out in Generally Accepted Accounting Principles;

non-allowable interest costs means interest costs incurred by a producer that exceed 700 basis points above the yield on debt obligations of comparable maturities issued by the central level of government of the Party in which the producer is located;

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

packing materials and containers for shipment means the goods used to protect a good during its transportation and does not include the packaging materials and containers in which a good is packaged for retail sale;

producer means a person who engages in the production of a good in the territory of a Party;

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

reasonably allocate means to apportion in a manner appropriate under Generally Accepted Accounting Principles;

recovered goods means materials in the form of individual parts that are the result of: (a) the disassembly of used goods into individual parts; and (b) cleaning, inspecting, testing, or other processes as necessary for improvement to sound working condition;

remanufactured goods means industrial goods assembled in the territory of a Party classified under Harmonized System Chapter 84, 85, 87, or 90 or heading 94.02, except goods classified under Harmonized System heading 84.18 or 85.16, that:

(a) are entirely or partially comprised of recovered goods; and

(b) have a similar life expectancy and enjoy a factory warranty similar to such new goods;

total cost means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

used means utilized or consumed in the production of goods; and

value means the value of a good or material for purposes of calculating customs duties or for purposes of applying this Chapter.

Annex 4.6

Exceptions to Article 4.6

1. Article 4.6 shall not apply to:

   (a) a non-originating material classified under Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over ten percent by weight of milk solids classified under subheading 1901.90 or 2106.90, that is used in the production of a good classified under Chapter 4 of the Harmonized System;

   (b) a non-originating material classified under Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over ten percent by weight of milk solids classified under subheading 1901.90, that is used in the production of the following goods: infant preparations containing over ten percent in weight of milk solids classified under subheading 1901.10; mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, classified under subheading 1901.20; dairy preparations containing over ten percent by weight of milk solids, classified under subheading 1901.90 or 2106.90; heading 2105; beverages containing milk classified under subheading 2202.90; or animal feeds containing over ten percent by weight of milk solids classified under subheading 2309.90;

   (c) a non-originating material classified under heading 08.05 or subheading 2009.11 through 2009.39 that is used in the production of a good classified under subheading 2009.11 through 2009.39 or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, classified under subheading 2106.90 or 2202.90;

   (d) a non-originating material classified under heading 09.01 or 21.01, that is used in the production of a good classified under heading 09.01 or 21.01;

   (e) a non-originating material classified under Chapter 15 of the Harmonized System that is used in the production of a good classified under heading 15.01 through 15.08, and heading 15.11 through 15.15;

   (f) a non-originating material classified under heading 17.01 that is used in the production of a good classified under heading 17.01 through 17.03;

   (g) a non-originating material classified under Chapter 17 of the Harmonized System that is used in the production of a good classified under subheading 1806.10;

   (h) except as provided under subparagraphs (a) through (g) and in the specific rules of origin under Annex 4.1, a non-originating material used in the production of a good provided for in Chapters 1 through 24 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined;

   (i) a non-originating textile or apparel good, as defined in the Annex to the WTO Agreement on Textiles and Clothing, other than a textile or apparel good listed in Annex 3-C (Textile or Apparel Goods Not Covered by Chapter Three).

2. Each Party shall provide that, for years one through four:

(a) a good of subheading 2402.20 through 2402.90 and heading 24.03 that does not undergo a change in tariff classification pursuant to Annex 4.1 but otherwise meets all applicable requirements in this Chapter is nonetheless originating if the value of non-originating tobacco of heading 24.01 other than wrapper tobacco not threshed or similarly processed does not exceed the percentage of the adjusted value of the good set out below:

Year one	15 percent of the adjusted value of the good
Year two	14 percent of the adjusted value of the good
Year three	13 percent of the adjusted value of the good
Year four	12 percent of the adjusted value of the good.

(b) for purposes of making a claim for preferential tariff treatment an importer, exporter, or producer may use the rule set forth in paragraph (a) or Article 4.6, but not both.

Annex 4.1

Specific Rules of Origin

Part I – General Interpretative Notes

1. Each Party shall provide that, for purposes of interpreting the rules of origin set forth in this Annex:

(a) the specific rule, or specific set of rules, that applies to a particular heading or subheading is set out immediately adjacent to the heading or subheading;

(b) the requirement of a change in tariff classification applies only to non-originating materials;

(c) where a specific rule of origin is defined using the criterion of a change in tariff classification, and it is written to exclude tariff provisions at the level of a chapter, heading, or subheading of the Harmonized System, it shall be construed to mean that the rule of origin requires that materials classified in those excluded provisions be originating for the good to qualify as an originating good;

(d) when a heading or subheading is subject to alternative specific rules of origin, the rule will be considered to be met if a good satisfies one of the alternatives;

(e) when a single rule of origin is applicable to a group of headings or subheadings and that rule of origin specifies a change of heading or subheading, it shall be understood that the change in headings or subheadings may occur within a single heading or subheading or between headings or subheadings of the group. When, however, a rule refers to a change in heading or subheading "outside that group" this shall be understood to require that the change in heading or subheading must occur from a heading or subheading that is outside the group of headings or subheadings set out in the rule; and

(f) reference to weight in the rules for goods provided for in Chapter 1 through 24 of the Harmonized System means dry weight unless otherwise specified in the Harmonized System.

2. Each Party shall provide that the following definitions apply:

chapter means a chapter of the Harmonized System;

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

section means a section of the Harmonized System;

subheading means the first six digits in the tariff classification number under the Harmonized System.

Part II – Specific Rules of Origin

Section I
Live Animals; Animal Products (Chapter 1-5)

Chapter 1
Live Animals

01.01 – 01.06
A change to heading 01.01 through 01.06 from any other chapter.

Chapter 2
Meat and Edible Meat Offal

02.01 – 02.10
A change to heading 02.01 through 02.10 from any other chapter.

Chapter 3
Fish and Crustaceans, Molluscs and Other Aquatic Invertebrates

Note to Chapter 3:
Fish, crustaceans, molluscs and other aquatic invertebrates shall be deemed originating even if they were cultivated from non-originating fry[1] or larvae.

03.01 – 03.07
A change to heading 03.01 through 03.07 from any other chapter.

Chapter 4
Dairy Produce; Birds Eggs; Natural Honey; Edible Products of Animal Origin, Not Elsewhere Specified or Included

04.01 – 04.04
A change to heading 04.01 through 04.04 from any other chapter, except from subheading 1901.90.

04.05
A change to heading 04.05 from any other chapter, except from subheading 1901.90 or 2106.90.

04.06
A change to heading 04.06 from any other chapter, except from subheading 1901.90.

04.07 – 04.10
A change to heading 04.07 through 04.10 from any other chapter.

Chapter 5
Products of Animal Origin, Not Elsewhere Specified or Included

05.01 – 05.11
A change to heading 05.01 through 05.11 from any other chapter.

[1] "Fry" means immature fish at a post-larval stage and includes fingerlings, parr, smolts, and elvers.

Section II

Vegetable Products (Chapter 6-14)

Note to Section II

Agricultural and horticultural goods grown in the territory of a Party shall be treated as an originating good even if grown from seeds, bulbs, rootstock, cuttings, grafts, shoots, buds or other live parts of plants imported from a non-Party.

Chapter 6
Live Trees and Other Plants; Bulbs, Roots and the Like; Cut Flowers and Ornamental Foliage

06.01 – 06.04
A change to heading 06.01 through 06.04 from any other chapter.

Chapter 7
Edible Vegetables and Certain Roots and Tubers

07.01 – 07.14
A change to heading 07.01 through 07.14 from any other chapter.

Chapter 8
Edible Fruit and Nuts; Peel of Citrus Fruit or Melons

08.01 – 08.14
A change to heading 08.01 through 08.14 from any other chapter.

Chapter 9
Coffee, Tea, Mate and Spices

09.01
A change to heading 09.01 from any other chapter.

Note: Subject to the quantitative limitations set out below, an importing Party shall treat as an originating good roasted Arabica coffee of subheading 0901.21 or 0901.22 produced by roasting, in the United States, non-originating Arabica coffee beans of subheading 0901.11 and 0901.12. The quantitative limitations provided for in year 5 shall apply to all subsequent years.

Importing Party: Colombia

Year	Quantity (Metric tons)
1	130
2	135
3	140
4	145
5	150

0902.10 – 0902.40
A change to subheading 0902.10 through 0902.40 from any other subheading.

09.03
A change to heading 09.03 from any other chapter.

0904.11 – 0910.99
A change to crushed, ground, or powdered spices put up for retail sale of subheading 0904.11 through 0910.99 from spices that are not crushed, ground, or powdered of subheading 0904.11 through 0910.99, or from any other subheading; or

A change to mixtures of spices or any good of subheading 0904.11 through 0910.99 other than crushed, ground, or powdered spices put up for retail sale from any other subheading.

Chapter 10
Cereals

10.01 – 10.08
A change to heading 10.01 through 10.08 from any other chapter.

Chapter 11
Products of the Milling Industry; Malt; Starches; Inulin; Wheat Gluten

11.01 – 11.04
A change to heading 11.01 through 11.04 from any other chapter.

1105.10 – 1105.20
A change to subheading 1105.10 through 1105.20 from any other chapter, except from heading 07.01.

11.06 – 11.07
A change to heading 11.06 though 11.07 from any other chapter.

1108.11 – 1108.12
A change to subheading 1108.11 through 1108.12 from any other chapter.

1108.13
A change to subheading 1108.13 from any other chapter, except from heading 07.01.

1108.14 – 1108.20
A change to subheading 1108.14 through 1108.20 from any other chapter.

11.09
A change to heading 11.09 from any other chapter.

Chapter 12
Oil Seeds and Oleaginous Fruits; Miscellaneous Grains, Seeds and Fruit; Industrial or Medicinal Plants; Straw and Fodder

12.01 – 12.14
A change to heading 12.01 through 12.14 from any other chapter.

Chapter 13
Lac; Gums, Resins and Other Vegetable Saps and Extracts

13.01 – 13.02
A change to heading 13.01 through 13.02 from any other chapter.

Chapter 14
Vegetable Plaiting Materials; Vegetable Products Not Elsewhere Specified or Included

14.01 – 14.04

A change to heading 14.01 through 14.04 from any other chapter.

Section III

Animal or Vegetable Fats and Oils and Their Cleavage Products; Prepared Edible Fats; Animal or Vegetable Waxes (Chapter 15)

Chapter 15
Animal or Vegetable Fats and Oils and Their Cleavage Products; Prepared Edible Fats; Animal or Vegetable Waxes

15.01 – 15.18
A change to heading 15.01 through 15.18 from any other chapter.

15.20
A change to heading 15.20 from any other heading.

15.21 – 15.22
A change to heading 15.21 through 15.22 from any other chapter.

Section IV

Prepared Foodstuffs; Beverages, Spirits and Vinegar; Tobacco and Manufactured Tobacco Substitutes (Chapter 16-24)

Chapter 16
Preparations of Meat, of Fish or of Crustaceans, Molluscs or Other Aquatic Invertebrates

16.01 – 16.03
A change to heading 16.01 through 16.03 from any other chapter.

1604.11 – 1604.13
A change to subheading 1604.11 through 1604.13 from any other chapter.

1604.14
A change to tuna loins of subheading 1604.14 from any other chapter; or

A change to all other goods of subheading 1604.14 from any other heading, except from heading 03.01 through 03.04.

1604.15 – 1604.30
A change to subheading 1604.15 through 1604.30 from any other chapter.

16.05
A change to heading 16.05 from any other chapter.

Chapter 17
Sugars and Sugar Confectionery

17.01 – 17.03
A change to heading 17.01 through 17.03 from any other chapter.

17.04
A change to heading 17.04 from any other heading.

Chapter 18
Cocoa and Cocoa Preparations

18.01 – 18.02
A change to heading 18.01 through 18.02 from any other chapter.

18.03 – 18.05
A change to heading 18.03 through 18.05 from any other heading.

1806.10
A change to subheading 1806.10 from any other heading, provided that such goods of subheading 1806.10 containing 90 percent or more by dry weight of sugar do not contain non-originating sugar of Chapter 17 and such goods of subheading 1806.10 containing less than 90 percent by dry weight of sugar do not contain more than 35 percent by weight of non-originating sugar of Chapter 17.

1806.20
A change to subheading 1806.20 from any other heading.

1806.31 – 1806.90
A change to subheading 1806.31 through 1806.90 from any other subheading.

Chapter 19
Preparations of Cereals, Flour, Starch or Milk; Pastry Cooks Products

1901.10
A change to subheading 1901.10 from any other chapter, provided that such goods of subheading 1901.10 containing over 10 percent by weight of milk solids do not contain non-originating dairy goods of Chapter 4.

1901.20
A change to subheading 1901.20 from any other chapter, provided that such goods of subheading 1901.20 containing over 25 percent by weight of butterfat, not put up for retail sale, do not contain non originating dairy goods of Chapter 4.

1901.90
A change to subheading 1901.90 from any other chapter, provided that goods of subheading 1901.90 containing over 10 percent by weight of milk solids do not contain non-originating dairy goods of Chapter 4.

19.02 – 19.05
A change to headings 19.02 through 19.05 from any other chapter.

Chapter 20
Preparations of Vegetables, Fruit, Nuts or Other Parts of Plants

20.01
A change to heading 20.01 from any other chapter.

20.02 – 20.03
A change to heading 20.02 through 20.03 from any other chapter, except that goods that have been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be originating only if the fresh goods were goods wholly obtained or produced entirely in the territory of one or more of the Parties.

20.04
A change to heading 20.04 from any other chapter, except from heading 07.01, and provided that goods that have been prepared by freezing (including processing incidental to freezing) shall be originating only if the fresh goods were goods wholly obtained or produced entirely in the territory of one or more of the Parties.

20.05
A change to heading 20.05 from any other chapter, except that goods that have been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be originating only if the fresh goods were goods wholly obtained or produced entirely in the territory of one or more of the Parties.

20.06 – 20.07
A change to heading 20.06 through 20.07 from any other chapter.

2008.11
A change to subheading 2008.11 from any other chapter, except from heading 12.02.

2008.19
A change to subheading 2008.19 from any other chapter, except that nuts and seeds that have been prepared by roasting, either dry or in oil (including processing incidental to roasting), shall be originating only if the fresh nuts and seeds were goods wholly obtained or produced entirely in the territory of one or more of the Parties.

2008.20 – 2008.99
A change to subheading 2008.20 through 2008.99 from any other chapter, except that goods that have been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be originating only if the fresh goods were goods wholly obtained or produced entirely in the territory of one or more of the Parties.

2009.11 – 2009.39
A change to subheading 2009.11 through 2009.39 from any other chapter, except from heading 08.05.

2009.41 – 2009.80
A change to subheading 2009.41 through 2009.80 from any other chapter.

2009.90
A change to subheading 2009.90 from any other chapter; or

A change to subheading 2009.90 from any other subheading within Chapter 20, whether or not there is also a change from any other chapter, provided that a single juice ingredient, or juice ingredients from a single non-Party, constitute in single strength form no more than 60 percent by volume of the good.

Chapter 21
Miscellaneous Edible Preparations

21.01 – 21.02
A change to heading 21.01 through 21.02 from any other chapter.

2103.10
A change to subheading 2103.10 from any other chapter.

2103.20
A change to subheading 2103.20 from any other chapter, provided that tomato ketchup of subheading 2103.20 does not contain non-originating goods from subheading 2002.90.

2103.30
A change to subheading 2103.30 from any other chapter.

2103.90
A change to subheading 2103.90 from any other heading.

21.04
A change to heading 21.04 from any other heading.

21.05
A change to heading 21.05 from any other heading, except from Chapter 4 or from dairy preparations containing over 10 percent by weight of milk solids of subheading 1901.90.

21.06
A change to concentrated juice of any single fruit or vegetable fortified with vitamins or minerals of subheading 2106.90 from any other chapter, except from heading 08.05 or 20.09 or subheading 2202.90.

A change to mixtures of juices fortified with vitamins or minerals, of subheading 2106.90:

(A) from any other chapter, except from heading 08.05 or 20.09 or mixtures of juices of subheading 2202.90; or

(B) from any other subheading within Chapter 21, heading 20.09, or mixtures of juices of subheading 2202.90, whether or not there is also a change from any other chapter, provided that the juice of a single fruit or vegetable, or juice ingredients from a single non-Party, constitute in single strength form no more than 60 percent by volume of the good;

A change to compound alcoholic preparations of subheading 2106.90 from any other subheading, except from heading 22.03 through 22.09;

A change to sugar syrups of subheading 2106.90 from any other chapter, except from Chapter 17;

A change to goods containing over 10 percent by weight of milk solids of subheading 2106.90 from any other chapter except from Chapter 4 or from dairy preparations containing over 10 percent by weight of milk solids of subheading 1901.90; or

A change to other goods of heading 21.06 from any other chapter.

Chapter 22
Beverages, Spirits and Vinegar

22.01
A change to heading 22.01 from any other chapter.

2202.10
A change to subheading 2202.10 from any other chapter.

2202.90
A change to juice of any single fruit or vegetable fortified with vitamins or minerals, of subheading 2202.90, from any other chapter, except from heading 08.05 or 20.09 or from juice concentrates of subheading 2106.90;

A change to mixtures of juices fortified with vitamins or minerals, of subheading 2202.90:

(A) from any other chapter, except from heading 08.05 or 20.09 or from mixtures of juices of subheading 2106.90; or

(B) from any other subheading within Chapter 22, heading 20.09, or mixtures of juices of subheading 2106.90, whether or not there is also a change from any other chapter, provided that the juice of a single fruit or vegetable, or juice ingredients from a single non-Party, constitute in single strength form no more than 60 percent by volume of the good;

A change to beverages containing milk from any other chapter, except from Chapter 4 or from dairy preparations containing over 10 percent by weight of milk solids of subheading 1901.90; or

A change to all other goods of subheading 2202.90 from any other chapter.

22.03 – 22.08
A change to heading 22.03 through 22.08 from any other chapter, except from compound alcoholic preparations of subheading 2106.90.

22.09
A change to heading 22.09 from any other heading.

Chapter 23
Residues and Waste from the Food Industries; Prepared Animal Fodder

23.01 – 23.08
A change to heading 23.01 through 23.08 from any other chapter.

2309.10
A change to subheading 2309.10 from any other heading.

2309.90
A change to subheading 2309.90 from any other heading, except from Chapter 4 or subheading 1901.90.

Chapter 24
Tobacco and Manufactured Tobacco Substitutes

24.01
A change to heading 24.01 from any other chapter.

2402.10
A change to subheading 2402.10 from any other heading.

2402.20 – 2402.90
A change to subheading 2402.20 through 2402.90 from any other chapter or from wrapper tobacco not threshed or similarly processed of heading 24.01 or from homogenized or reconstituted tobacco suitable for use as wrapper tobacco of heading 24.03.

24.03
A change to homogenized or reconstituted tobacco for use as cigar wrapper of subheading 2403.91 from any other heading; or

A change to all other goods of heading 24.03 from any other chapter.

Section V
Mineral Products (Chapter 25-27)

Chapter 25
Salt; Sulphur; Earths and Stone; Plastering Materials, Lime and Cement

25.01 – 25.16
A change to heading 25.01 through 25.16 from any other heading.

2517.10 – 2517.20
A change to subheading 2517.10 through 2517.20 from any other heading.

2517.30
A change to subheading 2517.30 from any other subheading.

2517.41 – 2517.49
A change in subheading 2517.41 through 2517.49 from any other heading.

25.18 – 25.22
A change to heading 25.18 through 25.22 from any other heading.

25.23
A change to heading 25.23 from any other chapter.

25.24 – 25.30
A change to heading 25.24 through 25.30 from any other heading.

Chapter 26
Ores, Slag and Ash

26.01 – 26.21
A change to heading 26.01 through 26.21 from any other heading.

Chapter 27
Mineral Fuels, Mineral Oils and Products of their Distillation; Bituminous Substances; Mineral Waxes

Note:
For purposes of this chapter, a "chemical reaction" is a process (including a biochemical process) that results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following are not considered to be chemical reactions for the purposes of this definition:

(a) dissolving in water or other solvents;

(b) the elimination of solvents, including solvent water; or

(c) the addition or elimination of water of crystallization.

For purposes of heading 27.10, the following processes confer origin:

(a) Atmospheric distillation: A separation process in which petroleum oils are converted, in a distillation tower, into fractions according to boiling point and the vapor then condensed into different liquefied fractions.

(b) Vacuum distillation: Distillation at a pressure below atmospheric but not so low that it would be classed as molecular distillation.

27.01 – 27.09
A change to heading 27.01 through 27.09 from any other heading.

A change to subheading 2707.10 through 2707.99 from any other subheading, provided that the good resulting from such change is the product of a chemical reaction.

2710.11
A change to any good of subheading 2710.11 from any other good of subheading 2710.11 through 2710.99 provided that the good resulting from such change is the product of a chemical reaction, atmospheric distillation or vacuum distillation; or

A change to subheading 2710.11 from any other heading, except from heading 22.07.

2710.19
A change to any good of subheading 2710.19 from any other good of subheading 2710.11 through 2710.99, provided that the good resulting from such change is the product of a chemical reaction, atmospheric distillation or vacuum distillation; or

A change to Fuel Oil No. 6 of subheading 2710.19 from any other good of subheading 2710.19; or

A change to all other goods of subheading 2710.19 from any other heading, except from heading 22.07.

2710.91 – 2710.99
A change to any good of subheading 2710.91 through 2710.99 from any other good of subheading 2710.11 though 2710.99, provided that the good resulting from such change is the product of a chemical reaction, atmospheric distillation or vacuum distillation; or

A change to subheading 2710.91 through 2710.99 from any other heading, except from heading 22.07.

2711.11
A change to subheading 2711.11 from any other subheading, except from subheading 2711.21.

2711.12 – 2711.19
A change to subheading 2711.12 through 2711.19 from any other subheading, except from subheading 2711.29.

2711.21
A change to subheading 2711.21 from any other subheading, except from subheading 2711.11.

2711.29
A change to subheading 2711.29 from any other subheading, except from subheading 2711.12 through 2711.21.

27.12 – 27.14
A change to heading 27.12 through 27.14 from any other heading.

27.15
A change to heading 27.15 from any other heading, except from heading 27.14 or subheading 2713.20.

27.16
A change to heading 27.16 from any other heading.

Section VI
Products of the Chemical or Allied Industries (Chapter 28-38)

Notes to Section VI:

Note 1
Rules 1 through 7 of this Section confer origin to a good of any heading or subheading in this Section, except as otherwise specified in those rules.

Note 2
Notwithstanding Note 1, a good is an originating good if it meets the applicable change in tariff classification or satisfies the applicable value content requirement specified in the rules of origin in this Section.

Rule 1: Chemical Reaction

A good of Chapters 28 through 38, except ethyl isopropyl thionocarbamates of subheading 2930.20 and goods of heading 38.23, that results from a chemical reaction in the territory of one or more of the Parties shall be treated as an originating good.

Note: For purposes of this Section, a "chemical reaction" is a process (including a biochemical process) that results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following are not considered to be chemical reactions for the purposes of determining whether a good is originating:

(a) dissolution in water or in another solvent;

(b) the elimination of solvents, including solvent water; or

(c) the addition or elimination of water of crystallization.

Rule 2: Purification

A good of Chapters 28 through 38, that is subject to purification shall be treated as an originating good provided that the purification occurs in the territory of one or more of the Parties and results in the following:

(a) the elimination of 80 percent of the impurities; or

(b) the reduction or elimination of impurities resulting in a good suitable:

(i) as a pharmaceutical, medicinal, cosmetic, veterinary, or food grade substance;

(ii) as a chemical product or reagent for analytical, diagnostic, or laboratory uses;

(iii) as an element or component for use in micro-elements;

(iv) for specialized optical uses;

(v) for non-toxic uses for health and safety;

(vi) for biotechnical use;

(vii) as a carrier used in a separation process; or

(viii) for nuclear grade uses.

Rule 3: Mixtures and Blends

A good of Chapters 30, 31, or 33 through 38, except for heading 38.08, shall be treated as an originating good if the deliberate and proportionally controlled mixing or blending (including dispersing) of materials to conform to predetermined specifications, resulting in the production of a good having physical or chemical characteristics that are relevant to the purposes or uses of the good and are different from the input materials, occurs in the territory of one or more of the Parties.

Rule 4: Change in Particle Size

A good of Chapter 30, 31, or 33, shall be treated as an originating good if the deliberate and controlled modification in particle size of the good, including micronizing by dissolving a polymer and subsequent precipitation, other than by merely crushing or pressing, resulting in a good having a defined particle size, defined particle size distribution, or defined surface area, which is relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials, occurs in the territory of one or more of the Parties.

Rule 5: Standards Materials

A good of Chapters 28 through 38, shall be treated as an originating good if the production of standards materials occurs in the territory of one or more of the Parties.

For the purposes of this rule "standards materials" (including standard solutions) are preparations suitable for analytical, calibrating, or referencing uses, having precise degrees of purity or proportions that are certified by the manufacturer.

Rule 6: Isomer Separation

A good of Chapters 28 through 38, shall be treated as an originating good if the isolation or separation of isomers from mixtures of isomers occurs in the territory of one or more of the Parties.

Rule 7: Separation Prohibition

A good that undergoes a change from one classification to another in the territory of one or more of the Parties as a result of the separation of one or more materials from a man-made mixture shall not be treated as an originating good unless the isolated material underwent a chemical reaction in the territory of one or more of the Parties.

Chapter 28
Inorganic Chemicals; Organic or Inorganic Compounds of Precious Metals, of Rare- Earth Metals, of Radioactive Elements or of Isotopes

2801.10 – 2801.30
A change to subheading 2801.10 through 2801.30 from any other subheading.

28.02 – 28.03
A change to heading 28.02 through 28.03 from any other heading.

2804.10 – 2806.20
A change to subheading 2804.10 through 2806.20 from any other subheading.

28.07 – 28.08
A change to heading 28.07 through 28.08 from any other heading.

2809.10 – 2809.20
A change to subheading 2809.10 through 2809.20 from any other subheading.

28.10
A change to heading 28.10 from any other heading.

2811.11 – 2816.40
A change to subheading 2811.11 through 2816.40 from any other subheading.

28.17
A change to heading 28.17 from any other heading.

2818.10 – 2821.20
A change to subheading 2818.10 through 2821.20 from any other subheading.

28.22 – 28.23
A change to heading 28.22 through 28.23 from any other heading.

2824.10 – 2837.20
A change to subheading 2824.10 through 2837.20 from any other subheading.

28.38
A change to heading 28.38 from any other heading.

2839.11 – 2846.90
A change to subheading 2839.11 through 2846.90 from any other subheading.

28.47 – 28.48
A change to heading 28.47 through 28.48 from any other heading.

2849.10 – 2849.90
A change to subheading 2849.10 through 2849.90 from any other subheading.

28.50 – 28.51
A change to heading 28.50 through 28.51 from any other heading.

Chapter 29
Organic Chemicals

2901.10 – 2910.90
A change to subheading 2901.10 through 2910.90 from any other subheading.

29.11
A change to heading 29.11 from any other heading.

2912.11 – 2912.60
A change to subheading 2912.11 through 2912.60 from any other subheading.

29.13
A change to heading 29.13 from any other heading.

2914.11 – 2918.90
A change to subheading 2914.11 through 2918.90 from any other subheading.

29.19
A change to heading 29.19 from any other heading.

2920.10 – 2926.90
A change to subheading 2920.10 through 2926.90 from any other subheading.

29.27 – 29.28
A change to heading 29.27 through 29.28 from any other heading.

2929.10 – 2930.10
A change to subheading 2929.10 through 2930.10 from any other subheading.

2930.20
A change to ethyl isopropyl thionocarbamates of subheading 2930.20 from any other heading; or

A change to all other goods of subheading 2930.20 from any other subheading.

2930.30 – 2930.90
A change to subheading 2930.30 through 2930.90 from any other subheading.

29.31
A change to heading 29.31 from any other heading.

2932.11 – 2934.99
A change to subheading 2932.11 through 2934.99 from any other subheading.

29.35
A change to heading 29.35 from any other heading.

2936.10 – 2939.99
A change to subheading 2936.10 through 2939.99 from any other subheading.

29.40
A change to heading 29.40 from any other heading.

2941.10 – 2941.90
A change to subheading 2941.10 through 2941.90 from any other subheading.

29.42
A change to heading 29.42 from any other heading.

Chapter 30
Pharmaceutical Products

3001.10 – 3003.90
A change to subheading 3001.10 through 3003.90 from any other subheading.

30.04
A change to heading 30.04 from any other heading, provided that the change in heading does not result exclusively from packaging for retail sale.

3005.10 – 3006.40
A change to subheading 3005.10 through 3006.40 from any other subheading.

3006.50
A change to subheading 3006.50 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

3006.60 – 3006.80
A change to subheading 3006.60 through 3006.80 from any other subheading.

Chapter 31
Fertilizers

31.01
A change to heading 31.01 from any other heading.

3102.10 – 3105.90
A change to subheading 3102.10 through 3105.90 from any other subheading.

Chapter 32
Tanning or Dyeing Extracts; Tannins and Their Derivatives; Dyes, Pigments and Other Coloring Matter; Paints and Varnishes; Putty and Other Mastics; Inks.

3201.10 – 3202.90
A change to subheading 3201.10 through 3202.90 from any other subheading.

32.03
A change to heading 32.03 from any other heading.

3204.11 – 3204.90
A change to subheading 3204.11 through 3204.90 from any other subheading.

32.05
A change to heading 32.05 from any other chapter.

3206.11 – 3206.50
A change to subheading 3206.11 through 3206.50 from any other subheading.

32.07 – 32.12
A change to heading 32.07 through 32.12 from any other chapter.

32.13 – 32.14
A change to heading 32.13 through 32.14 from any other heading.

32.15

A change to heading 32.15 from any other chapter.

Chapter 33
Essential Oils and Resinoids; Perfumery, Cosmetic or Toilet Preparations

3301.11 – 3301.90
A change to subheading 3301.11 through 3301.90 from any other subheading.

33.02
A change to heading 33.02 from any other heading, except from heading 22.07.

33.03
A change to heading 33.03 from any other heading.

3304.10 – 3307.90
A change to subheading 3304.10 through 3307.90 from any other subheading.

Chapter 34
Soap, Organic Surface-active Agents, Washing Preparations, Lubricating Preparations, Artificial Waxes, Prepared Waxes, Polishing or Scouring Preparations, Candles and Similar Articles, Modeling Pastes, Dental Waxes and Dental Preparations with a Basis of Plaster

34.01
A change to heading 34.01 from any other heading.

3402.11 – 3402.19
A change to subheading 3402.11 through 3402.19 from any other subheading.

3402.20
A change to subheading 3402.20 from any other subheading, except from subheading 3402.90.

3402.90
A change to subheading 3402.90 from any other subheading.

3403.11 – 3403.19
A change to subheading 3403.11 through 3403.19 from any other subheading, except from heading 27.10 or 27.12.

3403.91 – 3403.99
A change to subheading 3403.91 through 3403.99 from any other subheading.

3404.10 – 3405.90
A change to subheading 3404.10 through 3405.90 from any other subheading.

34.06 – 34.07
A change to heading 34.06 through 34.07 from any other heading.

Chapter 35
Albuminoidal Substances; Modified Starches; Glues, Enzymes

3501.10 – 3501.90
A change to subheading 3501.10 through 3501.90 from any other subheading.

3502.11 – 3502.19
A change to subheading 3502.11 through 3502.19 from any other subheading outside that group, except from heading 04.07.

3502.20 – 3502.90
A change to subheading 3502.20 through 3502.90 from any other subheading.

35.03 – 35.04
A change to heading 35.03 through 35.04 from any other heading.

3505.10
A change to subheading 3505.10 from any other subheading.

3505.20
A change to subheading 3505.20 from any other heading.

35.06
A change to heading 35.06 from any other heading.

3507.10 – 3507.90
A change to subheading 3507.10 through 3507.90 from any other subheading.

Chapter 36
Explosives; Pyrotechnic Products; Matches; Pyrophoric Alloys; Certain Combustible Preparations

36.01 – 36.06
A change to heading 36.01 through 36.06 from any other heading.

Chapter 37
Photographic or Cinematographic Goods

37.01 – 37.03
A change to heading 37.01 through 37.03 from any other heading outside that group.

37.04 – 37.06
A change to heading 37.04 through 37.06 from any other heading.

3707.10 – 3707.90
A change to subheading 3707.10 through 3707.90 from any other subheading.

Chapter 38
Miscellaneous Chemical Products

3801.10 – 3807.00
A change to subheading 3801.10 through 3807.00 from any other heading.

3808.10 – 3808.90
A change to subheading 3808.10 through 3808.90 from any other subheading, provided that 50 percent by weight of the active ingredient or ingredients are originating.

3809.10 – 3824.90
A change to subheading 3809.10 through 3824.90 from any other heading.

38.25
A change to heading 38.25 from any other chapter, except from Chapter 28 through 37, 40, or 90.

Section VII
Plastics and Articles Thereof; Rubber and Articles Thereof (Chapter 39-40)

Notes to Section VII:

Note 1
Rules 1 through 5 of this Section confer origin to a good of any heading or subheading in this Section, except as otherwise specified in those rules.

Note 2
Notwithstanding Note 1, a good is an originating good if it meets the applicable change in tariff classification or satisfies the applicable regional value content specified in the rules of origin in this Section.

Rule 1: Chemical Reaction

A good that results from a chemical reaction in the territory of one or more of the Parties shall be treated as an originating good.

For purposes of this Section, a "chemical reaction" is a process (including a biochemical process) that results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following are not considered to be chemical reactions for the purposes of determining whether a good is an originating good:

(a) dissolution in water or another solvent;

(b) the elimination of solvents including solvent water; or

(c) the addition or elimination of water of crystallization.

Rule 2: Purification
A good that is subject to purification shall be treated as an originating good provided that the purification occurs in the territory of one or more of the Parties and result in the following:

(a) the elimination of 80 percent of the impurities; or

(b) the reduction or elimination of impurities resulting in a good suitable:

(i) as a pharmaceutical, medicinal, cosmetic, veterinary, or food grade substances;

(ii) as a chemical product or reagent for analytical, diagnostic or laboratory uses;

(iii) as an element or component for use in micro-elements;

(iv) for specialized optical uses;

(v) for non toxic uses for health and safety;

(vi) for biotechnical use;

(vii) as a carrier used in a separation process; or

(viii) for nuclear grade uses.

Rule 3: Mixtures and Blends

A good shall be treated as an originating good if the deliberate and proportionally controlled mixing or blending (including dispersing) of materials to conform to predetermined specifications, resulting in the production of a good having physical or chemical characteristics that are relevant to the purposes or uses of the good and are different from the input materials, occurs in the territory of one or more of the Parties.

Rule 4: Change in Particle Size

A good of Chapter 39 shall be treated as an originating good if the deliberate and controlled modification in particle size of a good, including micronizing by dissolving a polymer and subsequent precipitation, other than by merely crushing or pressing, resulting in a good having a defined particle size, defined particle size distribution or defined surface area, which is relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials, occurs in the territory of one or more of the Parties.

Rule 5: Isomer Separation

A good of Chapter 39 shall be treated as an originating good if the isolation or separation of isomers from mixtures of isomers occurs in the territory of one of more of the Parties.

Chapter 39
Plastics and Articles Thereof

39.01 – 39.15
A change to heading 39.01 through 39.15 from any other heading, provided that the originating polymer content is no less than 50 percent by weight of the total polymer content.

3916.10 – 3917.31
A change to subheading 3916.10 through 3917.31 from any other subheading.

3917.32 – 3917.33
A change to subheading 3917.32 through 3917.33 from any other subheading outside that group.

3917.39 – 3918.90
A change to subheading 3917.39 through 3918.90 from any other subheading.

3919.10 – 3919.90
A change to subheading 3919.10 through 3919.90 from any other subheading outside that group; or

A change to subheading 3919.10 through 3919.90 from any other subheading provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

3920.10-3920.99
A change to subheading 3920.10 through 3920.99 from any other subheading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

3921.11 – 3921.90
A change to subheading 3921.11 through 3921.90 from any other subheading.

39.22 – 39.26
A change to heading 39.22 through 39.26 from any other heading.

Chapter 40
Rubber and Articles Thereof

4001.10 – 4001.30
A change to subheading 4001.10 through 4001.30 from any other chapter; or

A change to subheading 4001.10 through 4001.30 from any other subheading, provided that there is a regional value content of not less than 30 percent under the build-down method.

4002.11 – 4002.70
A change to subheading 4002.11 through 4002.70 from any other heading, except from heading 40.01; or

A change to subheading 4002.11 through 4002.70 from heading 40.01 or from any other heading, provided that there is a regional value content of not less than 30 percent under the build-down method.

4002.80
A change to subheading 4002.80 from any other subheading.

4002.91 – 4002.99
A change to subheading 4002.91 through 4002.99 from any other heading.

40.03 – 40.04

A change to heading 40.03 through 40.04 from any other heading, except from heading 40.01; or

A change to heading 40.03 through 40.04 from heading 40.01 or from any other heading, provided that there is a regional value content of not less than 30 percent under the build-down method.

40.05 – 40.17
A change to heading 40.05 through 40.17 from any other heading.

Section VIII

Raw Hides and Skins, Leather, Furskins and Articles Thereof; Saddlery and Harness; Travel Goods, Handbags and Similar Containers; Articles of Animal Gut (Other Than Silk-worm Gut) (Chapter 41-43)

Chapter 41
Raw Hides and Skins (Other Than Furskins) and Leather

41.01
A change to hides or skins of heading 41.01 that have undergone a tanning (including a pre-tanning) process that is reversible from any other good of heading 41.01 or from any other chapter; or

A change to any other good of heading 41.01 from any other chapter.

41.02
A change to hides or skins of heading 41.02 that have undergone a tanning (including a pre-tanning) process that is reversible from any other good of heading 41.02 or from any other chapter; or

A change to any other good of heading 41.02 from any other chapter.

41.03
A change to hides or skins of heading 41.03 that have undergone a tanning (including a pre-tanning) process that is reversible from any other good of heading 41.03 or from any other chapter; or

A change to any other good of heading 41.03 from any other chapter.

4104.11 – 4104.49
A change to subheading 4104.11 through 4104.49 from any other subheading.

41.05
A change to heading 41.05 from any other heading, except from hides or skins of heading 41.02 that have undergone a tanning (including a pre-tanning) process that is reversible, or from heading 41.12; or

A change to heading 41.05 from wet blues of 4105.10.

41.06
A change to heading 41.06 from any other heading, except from hides or skins of heading 41.03 that have undergone a tanning (including a pre-tanning) process that is reversible, or from heading 41.13; or

A change to heading 41.06 from wet blues of 4106.21, 4106.31, or 4106.91.

41.07
A change to heading 41.07 from any other heading.

41.12
A change to heading 41.12 from any other heading, except from hides or skins of heading 41.02 that have undergone a tanning (including a pre-tanning) process that is reversible, or from heading 41.05; or

A change to heading 41.12 from wet blues of 4105.10.

41.13
A change to heading 41.13 from any other heading except from hides or skins of heading 41.03 that have undergone a tanning (including a pre-tanning) process that is reversible, or from heading 41.06; or

A change to heading 41.13 from wet blues of 4106.21, 4106.31 or 4106.91.

4114.10 – 4115.20
A change to subheading 4114.10 through 4115.20 from any other subheading.

Chapter 42
Articles of Leather; Saddlery and Harness; Travel Goods, Handbags and Similar Containers; Articles of Animal Gut (Other Than Silk-worm Gut)

42.01
A change to heading 42.01 from any other heading.

4202.11
A change to subheading 4202.11 from any other chapter.

4202.12
See Annex 3-A for goods with an outer surface of textile materials.

A change to goods of subheading 4202.12 with an outer surface of plastic from any other heading.

4202.19 – 4202.21
A change to subheading 4202.19 through 4202.21 from any other chapter.

4202.22
See Annex 3-A for goods with an outer surface of textile materials.

A change to goods of subheading 4202.22 with an outer surface of plastic sheeting from any other heading.

4202.29 – 4202.31
A change to subheading 4202.29 through 4202.31 from any other chapter.

4202.32
See Annex 3-A for goods with an outer surface of textile materials.

A change to goods of subheading 4202.32 with an outer surface of plastic sheeting from any other heading.

4202.39 – 4202.91
A change to subheading 4202.39 through 4202.91 from any other chapter.

4202.92
See Annex 3-A for goods with an outer surface of textile materials.

A change to goods of subheading 4202.92 with an outer surface of plastic sheeting from any heading.

4202.99
A change to subheading 4202.99 from any other chapter.

4203.10 – 4203.29
A change to subheading 4203.10 through 4203.29 from any other chapter.

4203.30 – 4203.40
A change to subheading 4203.30 through 4203.40 from any other heading.

42.04 – 42.06
A change to heading 42.04 through 42.06 from any other heading.

Chapter 43
Furskins and Artificial Fur; Manufactures Thereof

43.01
A change to heading 43.01 from any other chapter.

43.02 – 43.04
A change to heading 43.02 through 43.04 from any other heading.

Section IX
Wood and Articles of Wood; Wood Charcoal; Cork and Articles of Cork; Manufactures of Straw, of Esparto or of Other Plaiting Materials; Basketware and Wickerwork (Chapter 44-46)

Chapter 44
Wood and Articles of Wood; Wood Charcoal

44.01 – 44.21
A change to heading 44.01 through 44.21 from any other heading.

Chapter 45
Cork and Articles of Cork

45.01 – 45.04
A change to heading 45.01 through 45.04 from any other heading.

Chapter 46
Manufactures of Straw, of Esparto or of Other Plaiting Materials; Basketware and Wickerwork

46.01
A change to heading 46.01 from any other chapter.

46.02
A change to heading 46.02 from any other heading.

Section X
Pulp of Wood or of Other Fibrous Cellulosic Material; Recovered (Waste and Scrap) Paper or Paperboard; Paper and Paperboard and Articles Thereof (Chapter 47-49)

Chapter 47
Pulp of Wood or of Other Fibrous Cellulosic Material; Recovered (Waste and Scrap) Paper or Paperboard

47.01 – 47.07
A change to heading 47.01 through 47.07 from any other heading.

Chapter 48
Paper and Paperboard; Articles of Paper Pulp, of Paper or of Paperboard

48.01 – 48.07
A change to heading 48.01 through 48.07 from any other chapter.

48.08 – 48.11
A change to heading 48.08 through 48.11 from any other heading.

48.12 – 48.17
A change to heading 48.12 through 48.17 from any other heading outside that group.

4818.10 – 4818.30
A change to subheading 4818.10 through 4818.30 from any other heading, except from heading 48.03.

4818.40 – 4818.90
A change to subheading 4818.40 through 4818.90 from any other heading.

48.19 – 48.22
A change to heading 48.19 through 48.22 from any heading outside that group.

48.23
A change to heading 48.23 from any other heading.

Chapter 49
Printed Books, Newspapers, Pictures and Other Products of the Printing Industry; Manuscripts, Typescripts and Plans

49.01 – 49.11
A change to heading 49.01 through 49.11 from any other chapter.

Section XI
Textile and textile articles (Chapters 50 through 63)

Chapter 50
Silk

50.01 – 50.07
See Annex 3-A.

Chapter 51
Wool, Fine or Course Animal Hair; Horsehair Yarn and Woven Fabric

51.01 – 51.13
See Annex 3-A.

Chapter 52
Cotton

52.01 – 52.12
See Annex 3-A.

Chapter 53
Other Vegetable Textile Fibers; Paper Yarn and Woven Fabrics of Paper Yarn

53.01 – 53.11
See Annex 3-A.

Chapters 54 – 63
See Annex 3-A.

Section XII

Footwear, Headgear, Umbrellas, Sun Umbrellas, Walking-Sticks, Seat-Sticks, Whips, Riding-Crops and Parts Thereof; Prepared Feathers and Articles Made Therewith; Artificial Flowers; Articles of Human Hair (Chapter 64-67)

Chapter 64
Footwear, Gaiters and the Like; Parts of Such Articles

64.01 – 64.05
A change to subheading 6401.10 or 6401.91, or tariff item[2] 6401.92.aa, 6401.99.aa, 6401.99.bb, 6401.99.cc, 6402.30.aa 6402.30.bb, 6402.30.cc, 6402.91.aa, 6402.91.bb, 6402.91.cc, 6402.99.aa, 6402.99.bb, 6402.99.cc, 6404.11.aa, or 6404.19.aa from any other heading outside heading 64.01 through 64.05, except from subheading 6406.10, provided that there is a regional value content of not less than 55 percent under the build-up method; or

A change to all other goods of heading 64.01 through 64.05 from any other subheading, provided that there is a regional value content of not less than 20 percent under the build-up method.

6406.10 – 6406.99

A change to subheading 6406.10 through 6406.99 from any other subheading.

[2] See Appendix 4.1-A (Correlation Table for Footwear).

Chapter 65
Headgear and Parts Thereof

65.01
A change to heading 65.01 from any other chapter.

65.02
A change to heading 65.02 from any other chapter, except from toquilla straw of subheading 1401.90 and heading 46.01.

65.03
A change to heading 65.03 from any other heading, except from heading 65.03 through 65.07.

65.04
A change to heading 65.04 from any other heading, except from toquilla straw of subheading 1401.90 and heading 46.01, or heading 65.02 through 65.07.

65.05 – 65.06
A change to heading 65.05 through 65.06 from any other heading, except from heading 65.03 through 65.07

65.07
A change to heading 65.07 from any other heading.

Chapter 66
Umbrellas, Sun Umbrellas, Walking Sticks, Seat-Sticks, Whips, Riding-Crops and Parts Thereof

66.01
See Annex 3-A.

66.02
A change to heading 66.02 from any other heading.

66.03
A change to heading 66.03 from any other chapter.

Chapter 67
Prepared Feathers and Down and Articles Made of Feathers or of Down; Artificial Flowers; Articles of Human Hair

67.01
A change to heading 67.01 from any other heading; or

A change to articles of feather or down of heading 67.01 from any other product, including a product in that heading.

67.02 – 67.04
A change to heading 67.02 through 67.04 from any other heading.

Section XIII
Articles of Stone, Plaster, Cement, Asbestos, Mica or Similar Materials; Ceramic Products; Glass and Glassware (Chapter 68-70)

Chapter 68
Articles of Stone, Plaster, Cement, Asbestos, Mica or Similar Materials

68.01 – 68.11
A change to heading 68.01 through 68.11 from any other heading.

6812.50
A change to subheading 6812.50 from any other subheading.

6812.60 – 6812.70
A change to subheading 6812.60 through 6812.70 from any other subheading outside that group.

6812.90
A change to subheading 6812.90 from any other heading.

68.13 – 68.14
A change to heading 68.13 through 68.14 from any other heading.

6815.10 – 6815.99
A change to subheading 6815.10 through 6815.99 from any other subheading.

Chapter 69
Ceramic Products

69.01 – 69.14
A change to heading 69.01 through 69.14 from any other chapter.

Chapter 70
Glass and Glassware

70.01
A change to heading 70.01 from any other heading.

7002.10
A change to subheading 7002.10 from any other heading.

7002.20
A change to subheading 7002.20 from any other chapter.

7002.31
A change to subheading 7002.31 from any other heading.

7002.32 – 7002.39
A change to subheading 7002.32 through 7002.39 from any other chapter.

70.03 – 70.06
A change to heading 70.03 through 70.06 from any other heading outside that group.

7007.11
A change to subheading 7007.11 from any other heading.

7007.19
A change to subheading 7007.19 from any other heading, except from heading 70.03 through 70.07.

7007.21
A change to subheading 7007.21 from any other heading.

7007.29
A change to subheading 7007.29 from any other heading, except from heading 70.03 through 70.07.

70.08
A change to heading 70.08 from any other heading.

7009.10
A change to subheading 7009.10 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

7009.91 – 7018.90
A change to subheading 7009.91 through 7018.90 from any other heading outside that group, except from heading 70.07 through 70.08.

70.19
See Annex 3-A.

70.20
A change to heading 70.20 from any other heading.

Section XIV

Natural or Cultured Pearls, Precious or Semi-Precious Stones, Precious Metals, Metals Clad with Precious Metal and Articles Thereof; Imitation Jewellery; Coin (Chapter 71)

Chapter 71
Natural or Cultured Pearls, Precious or Semi-Precious Stones, Precious Metals, Metals Clad with Precious Metal and Articles Thereof, Imitation Jewellery; Coin

71.01
A change to heading 71.01 from any other heading.

71.02 – 71.03
A change to heading 71.02 through 71.03 from any other chapter.

71.04 – 71.05
A change to heading 71.04 through 71.05 from any other heading.

71.06 – 71.08
A change to heading 71.06 through 71.08 from any other chapter.

71.09
A change to heading 71.09 from any other heading.

71.10 – 71.11
A change to heading 71.10 through 71.11 from any other chapter.

71.12
A change to heading 71.12 from any other heading.

71.13
A change to heading 71.13 from any other heading, except from heading 71.16; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 55 percent under the build-up method; or

(b) 65 percent under the build-down method.

71.14 – 71.15
A change to heading 71.14 through 71.15 from any other heading.

71.16
A change to heading 71.16 from any other heading, except from heading 71.13.

71.17 – 71.18
A change to heading 71.17 through 71.18 from any other heading.

Section XV

Base Metals and Articles of Base Metal (Chapter 72-83)

Chapter 72
Iron and Steel

72.01 – 72.05
A change to heading 72.01 through 72.05 from any other chapter.

72.06 – 72.07
A change to heading 72.06 through 72.07 from any heading outside that group.

72.08 – 72.29
A change to heading 72.08 through 72.29 from any other heading.

Chapter 73
Articles of Iron or Steel

73.01 – 73.07
A change to heading 73.01 through 73.07 from any other chapter; or

A change to a good of subheading 7304.41 having an external diameter of less than 19 mm from subheading 7304.49.

73.08
A change to heading 73.08 from any other heading, except for changes resulting from the following processes performed on angles, shapes, or sections of heading 72.16:

(a) drilling, punching, notching, cutting, cambering, or sweeping, whether performed individually or in combination;

(b) adding attachments or weldments for composite construction;

(c) adding attachments for handling purposes;

(d) adding weldments, connectors or attachments to H- sections or I-sections; provided that the maximum dimension of the weldments, connectors or attachments is not greater than the dimension between the inner surfaces of the flanges of the H-sections or I-sections;

(e) painting, galvanizing, or otherwise coating; or

(f) adding a simple base plate without stiffening elements, individually or in combination with drilling, punching, notching, or cutting, to create an article suitable as a column.

73.09 – 73.11
A change to heading 73.09 through 73.11 from any other heading outside that group.

73.12 – 73.14
A change to heading 73.12 through 73.14 from any other heading.

7315.11 – 7315.12
A change to subheading 7315.11 through 7315.12 from any other heading; or

A change to subheading 7315.11 through 7315.12 from subheading 7315.19, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

7315.19
A change to subheading 7315.19 from any other heading.

7315.20 – 7315.89
A change to subheading 7315.20 through 7315.89 from any other heading; or

A change to subheading 7315.20 through 7315.89 from subheading 7315.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

7315.90
A change to subheading 7315.90 from any other heading.

73.16
A change to heading 73.16 from any other heading, except from heading 73.12 or 73.15.

73.17 – 73.18
A change to heading 73.17 through 73.18 from any heading outside that group.

73.19 – 73.20
A change to heading 73.19 through 73.20 from any other heading.

7321.11
A change to subheading 7321.11 from any other subheading, except cooking chambers, whether or not assembled, the upper panels, whether or not with controls or burners, or door assemblies, which includes more than one of the following components: inside panel, external panel, window, or isolation of subheading 7321.90; or

A change to subheading 7321.11 from subheading 7321.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

7321.12 – 7321.83
A change to subheading 7321.12 through 7321.83 from any other heading; or

A change to subheading 7321.12 through 7321.83 from subheading 7321.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

7321.90
A change to subheading 7321.90 from any other heading, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

73.22 – 73.23
A change to heading 73.22 through 73.23 from any heading outside that group.

7324.10 – 7324.29
A change to subheading 7324.10 through 7324.29 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

7324.90
A change to subheading 7324.90 from any other heading.

7325.10 – 7326.20
A change to subheading 7325.10 through 7326.20 from any subheading outside that group.

7326.90
A change to subheading 7326.90 from any other heading, except from heading 73.25.

Chapter 74
Copper and Articles Thereof

74.01 – 74.03
A change to heading 74.01 through 74.03 from any other heading.

74.04
No change in tariff classification is required, provided that there is regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

74.05 – 74.07
A change to heading 74.05 through 74.07 from any other heading.

74.08
A change to heading 74.08 from any other heading except from heading 74.07.

74.09
A change to heading 74.09 from any other heading.

74.10
A change to heading 74.10 from any other heading, except from plate, sheet, or strip of heading 74.09 of a thickness less than 5mm.

74.11 – 74.19
A change to heading 74.11 through 74.19 from any other heading.

Chapter 75
Nickel and Articles Thereof

75.01 – 75.05
A change to heading 75.01 through 75.05 from any other heading.

75.06
A change to heading 75.06 from any other heading; or

A change to foil, not exceeding 0.15 mm in thickness, from any other good of heading 75.06, provided that there has been a reduction in thickness of no less than 50 percent.

7507.11 – 7508.90
A change to subheading 7507.11 through 7508.90 from any other subheading.

Chapter 76
Aluminum and Articles Thereof

76.01
A change to heading 76.01 from any other chapter.

76.02
A change to heading 76.02 from any other heading.

76.03
A change to heading 76.03 from any other chapter.

76.04
A change to heading 76.04 from any other heading, except from heading 76.05 through 76.06.

76.05
A change to heading 76.05 from any other heading, except from heading 76.04.

7606.11
A change to subheading 7606.11 from any other heading.

7606.12
A change to subheading 7606.12 from any other heading, except from heading 76.04 through 76.06.

7606.91
A change to subheading 7606.91 from any other heading.

7606.92
A change to subheading 7606.92 from any other heading, except from heading 76.04 through 76.06.

7607.11
A change to subheading 7607.11 from any other heading.

7607.19 – 7607.20
A change to subheading 7607.19 through 7607.20 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

76.08 – 76.09
A change to heading 76.08 through 76.09 from any other heading outside that group.

76.10 – 76.15
A change to heading 76.10 through 76.15 from any other heading.

7616.10
A change to subheading 7616.10 from any other heading.

7616.91 – 7616.99
A change to subheading 7616.91 through 7616.99 from any other subheading.

Chapter 78
Lead and Articles Thereof

78.01 – 78.02
A change to heading 78.01 through 78.02 from any other chapter.

78.03 – 78.06
A change to heading 78.03 through 78.06 from any other heading.

Chapter 79
Zinc and Articles Thereof

79.01 – 79.02
A change to heading 79.01 through 79.02 from any other chapter.

7903.10
A change to subheading 7903.10 from any other chapter.

7903.90
A change to subheading 7903.90 from any other heading.

79.04 – 79.07
A change to heading 79.04 through 79.07 from any other heading.

Chapter 80
Tin and Articles Thereof

80.01 – 80.02
A change to heading 80.01 through 80.02 from any other chapter.

80.03 – 80.04
A change to heading 80.03 through 80.04 from any other heading.

80.05
A change to heading 80.05 from any other heading, except from heading 80.04.

80.06 – 80.07
A change to heading 80.06 through 80.07 from any other heading.

Chapter 81
Other Base Metals; Cermets; Articles Thereof

8101.10 – 8101.94
A change to subheading 8101.10 through 8101.94 from any other chapter.

8101.95
A change to subheading 8101.95 from any other subheading.

8101.96
A change to subheading 8101.96 from any other subheading, except from subheading 8101.95.

8101.97
A change to subheading 8101.97 from any other chapter.

8101.99
A change to subheading 8101.99 from any other subheading.

8102.10 – 8102.94
A change to subheading 8102.10 through 8102.94 from any other chapter.

8102.95
A change to subheading 8102.95 from any other subheading.

8102.96
A change to subheading 8102.96 from any other subheading, except from subheading 8102.95.

8102.97
A change to subheading 8102.97 from any other chapter.

8102.99
A change to subheading 8102.99 from any other subheading.

8103.20 – 8103.30
A change to subheading 8103.20 through 8103.30 from any other chapter.

8103.90
A change to subheading 8103.90 from any other subheading.

8104.11 – 8104.20
A change to subheading 8104.11 through 8104.20 from any other chapter.

8104.30 – 8104.90
A change to subheading 8104.30 through 8104.90 from any other subheading.

8105.20 – 8105.30
A change to subheading 8105.20 through 8105.30 from any other chapter.

8105.90
A change to subheading 8105.90 from any other subheading.

81.06
A change to heading 81.06 from any other chapter, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8107.20 – 8107.30
A change to subheading 8107.20 through 8107.30 from any other chapter.

8107.90
A change to subheading 8107.90 from any other subheading.

8108.20 – 8108.30
A change to subheading 8108.20 through 8108.30 from any other chapter.

8108.90
A change to subheading 8108.90 from any other subheading.

8109.20 – 8109.30
A change to subheading 8109.20 through 8109.30 from any other chapter.

8109.90
A change to subheading 8109.90 from any other subheading.

81.10 – 81.11
A change to heading 81.10 through 81.11 from any other chapter, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8112.12 – 8112.13
A change to subheading 8112.12 through 8112.13 from any other chapter.

8112.19
A change to subheading 8112.19 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8112.21 – 8112.59
A change to subheading 8112.21 through 8112.59 from any other chapter, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8112.92
A change to subheading 8112.92 from any other chapter.

8112.99
A change to subheading 8112.99 from any other subheading.

81.13
A change to heading 81.13 from any other chapter, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

Chapter 82
Tools, Implements, Cutlery, Spoons and Forks, of Base Metal; Parts Thereof of Base Metal

82.01 – 82.06
A change to heading 82.01 through 82.06 from any other chapter.

8207.13
A change to subheading 8207.13 from any other chapter; or

A change to subheading 8207.13 from heading 82.09 or subheading 8207.19, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8207.19 – 8207.90
A change to subheading 8207.19 through 8207.90 from any other chapter.

82.08 – 82.15
A change to heading 82.08 through 82.15 from any other chapter; or

A change to subheading 8211.91 through 8211.93 from subheading 8211.95, whether or not there is also a change from another chapter, provided that there is also a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

Chapter 83
Miscellaneous Articles of Base Metal

8301.10 – 8301.40
A change to subheading 8301.10 through 8301.40 from any other chapter; or

A change to subheading 8301.10 through 8301.40 from subheading 8301.60, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8301.50
A change to subheading 8301.50 from any other chapter; or

A change to subheading 8301.50 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8301.60 – 8301.70
A change to subheading 8301.60 through 8301.70 from any other chapter.

83.02 – 83.04
A change to heading 83.02 through 83.04 from any other heading.

8305.10 – 8305.20
A change to subheading 8305.10 through 8305.20 from any other chapter; or

A change to subheading 8305.10 through 8305.20 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8305.90
A change to subheading 8305.90 from any other heading.

8306.10
A change to subheading 8306.10 from any other chapter.

8306.21 – 8306.30
A change to subheading 8306.21 through 8306.30 from any other heading.

83.07
A change to heading 83.07 from any other heading.

8308.10 – 8308.20
A change to subheading 8308.10 through 8308.20 from any other chapter; or

A change to subheading 8308.10 through 8308.20 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8308.90
A change to subheading 8308.90 from any other heading.

83.09 – 83.10
A change to heading 83.09 through 83.10 from any other heading.

8311.10 – 8311.30
A change to subheading 8311.10 through 8311.30 from any other chapter; or

A change to subheading 8311.10 through 8311.30 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8311.90
A change to subheading 8311.90 from any other heading.

Section XVI

Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles (Chapter 84-85)

Chapter 84
Nuclear Reactors, Boilers, Machinery and Mechanical Appliances; Parts Thereof

8401.10 – 8401.30
A change to subheading 8401.10 through 8401.30 from any other subheading.

8401.40
A change to subheading 8401.40 from any other heading.

8402.11
A change to subheading 8402.11 from any other heading; or

A change to subheading 8402.11 from subheading 8402.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8402.12
A change to subheading 8402.12 from any other heading; or

A change to subheading 8402.12 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8402.19
A change to subheading 8402.19 from any other heading; or

A change to subheading 8402.19 from subheading 8402.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8402.20
A change to subheading 8402.20 from any other heading; or

A change to subheading 8402.20 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8402.90
A change to subheading 8402.90 from any other heading, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8403.10
A change to subheading 8403.10 from any other subheading.

8403.90
A change to subheading 8403.90 from any other heading.

8404.10
A change to subheading 8404.10 from any other subheading.

8404.20
A change to subheading 8404.20 from any other heading; or

A change to subheading 8404.20 from subheading 8404.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8404.90
A change to subheading 8404.90 from any other heading.

8405.10
A change to subheading 8405.10 from any other subheading.

8405.90
A change to subheading 8405.90 from any other heading.

8406.10
A change to subheading 8406.10 from any other subheading.

8406.81 – 8406.82
A change to subheading 8406.81 through 8406.82 from any other subheading outside that group.

8406.90
A change to subheading 8406.90 from any other heading; or,

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

8407.10 – 8407.29
A change to subheading 8407.10 through 8407.29 from any other heading.

8407.31 – 8407.34
A change to subheading 8407.31 through 8407.34 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than 35 percent under the net cost method.

8407.90
A change to subheading 8407.90 from any other heading.

8408.10
A change to subheading 8408.10 from any other heading,

8408.20
A change to subheading 8408.20 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than 35 percent under the net cost method.

8408.90
A change to subheading 8408.90 from any other heading.

84.09
No change in tariff classification is required, provided that there is a regional value content of not less than 35 percent under the net cost method.

8410.11 – 8410.13
A change to subheading 8410.11 through 8410.13 from any other subheading outside that group.

8410.90
A change to subheading 8410.90 from any other heading.

8411.11 – 8411.82
A change to subheading 8411.11 through 8411.82 from any other subheading outside that group.

8411.91
A change to subheading 8411.91 from any other heading.

8411.99
A change to subheading 8411.99 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

8412.10 – 8412.80
A change to subheading 8412.10 through 8412.80 from any other subheading.

8412.90
A change to subheading 8412.90 from any other heading.

8413.11 – 8413.82
A change to subheading 8413.11 through 8413.82 from any other subheading.

8413.91 – 8413.92
A change to subheading 8413.91 through 8413.92 from any other heading; or

No change in tariff classification is required, for subheading 8413.92, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8414.10 – 8414.80
A change to subheading 8414.10 through 8414.80 from any other heading; or

A change to subheading 8414.10 through 8414.80 from subheading 8414.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8414.90
A change to subheading 8414.90 from any other heading, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8415.10 – 8415.83
A change to subheading 8415.10 through 8415.83 from any other subheading.

8415.90
A change to subheading 8415.90 from any other heading; or

A change to chassis, chassis blades and outer cabinets of subheading 8415.90 from any other good, including a good in that subheading.

8416.10 – 8416.90
A change to subheading 8416.10 through 8416.90 from any other subheading

8417.10 – 8417.80
A change to subheading 8417.10 through 8417.80 from any other subheading.

8417.90
A change to subheading 8417.90 from any other heading.

8418.10 – 8418.69
A change to subheading 8418.10 through 8418.69 from any other subheading outside that group, except from subheading 8418.91.

8418.91 – 8418.99
A change to subheading 8418.91 through 8418.99 from any other heading.

8419.11
A change to subheading 8419.11 from any other subheading.

8419.19
A change to subheading 8419.19 from any other heading; or

A change to subheading 8419.19 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

8419.20 – 8419.89
A change to subheading 8419.20 through 8419.89 from any other subheading.

8419.90
A change to subheading 8419.90 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8420.10
A change to subheading 8420.10 from any other subheading.

8420.91 – 8420.99
A change to subheading 8420.91 through 8420.99 from any other heading.

8421.11 – 8421.39
A change to subheading 8421.11 through 8421.39 from any other subheading.

8421.91
A change to subheading 8421.91 from any other heading, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8421.99
A change to subheading 8421.99 from any other heading, or

No change in tariff classification is required, provided that there is regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8422.11 – 8422.40
A change to subheading 8422.11 through 8422.40 from any other subheading.

8422.90
A change to subheading 8422.90 from any other heading, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8423.10 – 8423.89
A change to subheading 8423.10 through 8423.89 from any other subheading.

8423.90
A change to subheading 8423.90 from any other heading.

8424.10 – 8430.69
A change to subheading 8424.10 through 8430.69 from any other subheading.

84.31
A change to heading 84.31 from any other heading; or

No change in tariff classification to subheading 8431.10, 8431.31, 8431.39, 8431.43, or 8431.49 is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8432.10 – 8432.80
A change to subheading 8432.10 through 8432.80 from any other subheading.

8432.90
A change to subheading 8432.90 from any other heading.

8433.11 – 8433.60
A change to subheading 8433.11 through 8433.60 from any other subheading.

8433.90
A change to subheading 8433.90 from any other heading.

8434.10 – 8435.90
A change to subheading 8434.10 through 8435.90 from any other subheading.

8436.10 – 8436.80
A change to subheading 8436.10 through 8436.80 from any other subheading.

8436.91 – 8436.99
A change to subheading 8436.91 through 8436.99 from any other heading.

8437.10 – 8437.80
A change to subheading 8437.10 through 8437.80 from any other subheading.

8437.90
A change to subheading 8437.90 from any other heading.

8438.10 – 8438.80
A change to subheading 8438.10 through 8438.80 from any other subheading.

8438.90
A change to subheading 8438.90 from any other heading.

8439.10 – 8440.90
A change to subheading 8439.10 through 8440.90 from any other subheading.

8441.10 – 8441.80
A change to subheading 8441.10 through 8441.80 from any other subheading.

8441.90
A change to subheading 8441.90 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8442.10 – 8442.30
A change to subheading 8442.10 through 8442.30 from any other subheading outside that group.

8442.40 – 8442.50
A change to subheading 8442.40 through 8442.50 from any other heading.

8443.11 – 8443.59
A change to subheading 8443.11 through 8443.59 from any other subheading outside that group, except from subheading 8443.60, or

A change to subheading 8443.11 through 8443.59 from subheading 8443.60, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8443.60
A change to subheading 8443.60 from any other subheading, except from subheading 8443.11 through 8443.59.

8443.90
A change to subheading 8443.90 from any other heading.

84.44
A change to heading 84.44 from any other heading.

84.45 – 84.47
A change to heading 84.45 through 84.47 from any other heading outside that group.

8448.11 – 8448.19
A change to subheading 8448.11 through 8448.19 from any other subheading.

8448.20 – 8448.59
A change to subheading 8448.20 through 8448.59 from any other heading.

84.49
A change to heading 84.49 from any other heading.

8450.11 – 8450.20
A change to subheading 8450.11 through 8450.20 from any other subheading.

8450.90
A change to subheading 8450.90 from any other heading.

8451.10 – 8451.80
A change to subheading 8451.10 through 8451.80 from any other subheading.

8451.90
A change to subheading 8451.90 from any other heading.

8452.10 – 8452.29
A change to subheading 8452.10 through 8452.29 from any other subheading outside that group.

8452.30 – 8452.40
A change to subheading 8452.30 through 8452.40 from any other subheading.

8452.90
A change to subheading 8452.90 from any other heading.

8453.10 – 8453.80
A change to subheading 8453.10 through 8453.80 from any other subheading.

8453.90
A change to subheading 8453.90 from any other heading.

8454.10 – 8454.30
A change to subheading 8454.10 through 8454.30 from any other subheading.

8454.90
A change to subheading 8454.90 from any other heading.

8455.10 – 8455.90
A change to subheading 8455.10 through 8455.90 from any other subheading.

84.56 – 84.63
A change to heading 84.56 through 84.63 from any other heading, provided that there is a regional value content of not less than 65 percent under the build-down method.

84.64 – 84.65
A change to heading 84.64 through 84.65 from any other heading.

84.66
A change to heading 84.66 from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8467.11 – 8467.89
A change to subheading 8467.11 through 8467.89 from any other subheading.

8467.91
A change to subheading 8467.91 from any other heading.

8467.92 – 8467.99
A change to subheading 8467.92 through 8467.99 from any other heading, except from heading 84.07.

8468.10 – 8468.80
A change to subheading 8468.10 through 8468.80 from any other subheading.

8468.90
A change to subheading 8468.90 from any other heading.

8469.11 – 8469.12
A change to subheading 8469.11 through 8469.12 from any other subheading outside that group.

8469.20 – 8469.30
A change to subheading 8469.20 through 8469.30 from any other subheading outside that group.

8470.10 – 8471.90
A change to subheading 8470.10 through 8471.90 from any other subheading.

8472.10 – 8472.90
A change to subheading 8472.10 through 8472.90 from any other subheading.

8473.10 – 8473.50
A change to subheading 8473.10 through 8473.50 from any other subheading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 30 percent under the build-up method, or

(b) 35 percent under the build-down method.

8474.10 – 8474.80
A change to subheading 8474.10 through 8474.80 from any other subheading outside that group.

8474.90
A change to subheading 8474.90 from any other heading, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8475.10
A change to subheading 8475.10 from any other subheading.

8475.21 – 8475.29
A change to subheading 8475.21 through 8475.29 from any other subheading outside that group.

8475.90
A change to subheading 8475.90 from any other heading.

8476.21 – 8476.89
A change to subheading 8476.21 through 8476.89 from any other subheading outside that group.

8476.90
A change to subheading 8476.90 from any other heading.

84.77
A change to heading 84.77 from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method; or

a change to subheadings 8477.10 through 8477.80 from subheading 8477.90, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8478.10
A change to subheading 8478.10 from any other subheading.

8478.90
A change to subheading 8478.90 from any other heading.

8479.10 – 8479.89
A change to subheading 8479.10 through 8479.89 from any other subheading.

8479.90
A change to subheading 8479.90 from any other heading.

84.80
A change to heading 84.80 from any other heading.

8481.10 – 8481.80
A change to subheading 8481.10 though 8481.80 from any other heading; or

A change to subheading 8481.10 through 8481.80 from subheading 8481.90 whether or not there is also a change from another heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8481.90
A change to subheading 8481.90 from any other heading.

8482.10 – 8482.80
A change to subheading 8482.10 through 8482.80 from any subheading outside that group, except from inner or outer rings or races of subheading 8482.99; or

A change to subheading 8482.10 through 8482.80 from inner or outer rings or races of subheading 8482.99, whether or not there is also a change from any subheading outside that group, provided that there is a regional value content of not less than 40 percent under the build-up method.

8482.91 – 8482.99
A change to subheading 8482.91 through 8482.99 from any other heading.

8483.10
A change to subheading 8483.10 from any other subheading.

8483.20
A change to subheading 8483.20 from any other subheading, except from subheading 8482.10 through 8482.80.

8483.30
A change to subheading 8483.30 from any other heading, or

A change to subheading 8483.30 from any other subheading, provided that there is a regional value content of not less than 40 percent under the build-up method.

8483.40 – 8483.50
A change to subheading 8483.40 through 8483.50 from any subheading, except from subheading 8482.10 through 8482.80, 8482.99, 8483.10 through 8483.40, 8483.60 or 8483.90; or

A change to subheading 8483.40 through 8483.50 from subheading 8482.10 through 8482.80, 8482.99, 8483.10 through 8483.40, 8483.60 or 8483.90, provided that there is a regional value content of not less than 40 percent under the build-up method.

8483.60
A change to subheading 8483.60 from any other subheading.

8483.90
A change to subheading 8483.90 from any other heading.

8484.10 – 8484.20
A change to subheading 8484.10 through 8484.20 from any other subheading.

8484.90
A change to subheading 8484.90 from any other heading.

84.85
A change to heading 84.85 from any other heading.

Chapter 85
Electrical Machinery and Equipment and Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles

8501.10
A change to subheading 8501.10 from any other heading, except from stators or rotors of heading 85.03; or

A change to subheading 8501.10 from stators or rotors of heading 85.03, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8501.20 – 8501.64
A change to subheading 8501.20 through 8501.64 from any other heading.

85.02 – 85.03
A change to heading 85.02 through 85.03 from any other heading.

8504.10 – 8504.23
A change to subheading 8504.10 through 8504.23 from any subheading, except from subheading 8504.10 through 8504.50.

8504.31
A change to subheading 8504.31 from any other heading; or

A change to subheading 8504.31 from subheading 8504.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8504.32 – 8504.50
A change to subheading 8504.32 through 8504.50 from any subheading, except from subheading 8504.10 through 8504.50.

8504.90
A change to subheading 8504.90 from any other heading.

8505.11 – 8505.30
A change to subheading 8505.11 through 8505.30 from any other subheading.

8505.90
A change to subheading 8505.90 from any other heading.

8506.10 – 8506.40
A change to subheading 8506.10 through 8506.40 from any other subheading.

8506.50 – 8506.80
A change to subheading 8506.50 through 8506.80 from any other subheading outside that group.

8506.90
A change to subheading 8506.90 from any other heading.

8507.10
A change to subheading 8507.10 from any other heading; or

A change to subheading 8507.10 from any other subheading, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8507.20 – 8507.80
A change to subheading 8507.20 through 8507.80 from any other subheading.

8507.90
A change to subheading 8507.90 from any other heading.

8509.10 – 8509.80
A change to subheading 8509.10 through 8509.80 from any other heading; or

A change to subheading 8509.10 through 8509.80 from any other subheading, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8509.90
A change to subheading 8509.90 from any other heading.

8510.10 – 8510.30
A change to subheading 8510.10 through 8510.30 from any other subheading.

8510.90
A change to subheading 8510.90 from any other heading.

8511.10-8511.80
A change to subheading 8511.10 through 8511.80 from any other subheading.

8511.90
A change to subheading 8511.90 from any other heading.

8512.10 – 8512.30
A change to subheading 8512.10 through 8512.30 from any other subheading outside that group.

8512.40
A change to subheading 8512.40 from any other heading; or

A change to subheading 8512.40 from subheading 8512.90, whether or not there is also a change from any other heading, provided that there is also a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8512.90
A change to subheading 8512.90 from any other heading.

8513.10
A change to subheading 8513.10 from any other heading; or

A change to subheading 8513.10 from subheading 8513.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8513.90
A change to subheading 8513.90 from any other heading.

8514.10 – 8514.40
A change to subheading 8514.10 through 8514.40 from any other subheading.

8514.90
A change to subheading 8514.90 from any other heading.

8515.11 – 8515.80
A change to subheading 8515.11 through 8515.80 from any other subheading outside that group.

8515.90
A change to subheading 8515.90 from any other heading.

8516.10 – 8516.50
A change to subheading 8516.10 through 8516.50 from any other subheading.

8516.60
A change to subheading 8516.60 from any other subheading, except from furnitures, whether or not assembled, cooking chambers, whether or not assembled, or the upper panels, whether or not with heating or control elements, of subheading 8516.90; or

A change to subheading 8516.60 from subheading 8516.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8516.71
A change to subheading 8516.71 from any other subheading.

8516.72
A change to subheading 8516.72 from any other subheading, except from housings for toasters of subheading 8516.90 or subheading 9032.10; or

A change to subheading 8516.72 from housings for toasters of subheading 8516.90 or 9032.10, whether or not there is also a change from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8516.79
A change to subheading 8516.79 from any other subheading.

8516.80
A change to subheading 8516.80 from any other heading; or

A change to subheading 8516.80 from subheading 8516.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8516.90
A change to subheading 8516.90 from any other heading, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8517.11 – 8517.80
A change to subheading 8517.11 through 8517.80 from any other subheading.

8517.90
A change to subheading 8517.90 from any other subheading, or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8518.10 – 8518.21
A change to subheading 8518.10 through 8518.21 from any other heading; or

A change to subheading 8518.10 through 8518.21 from subheading 8518.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8518.22
A change to subheading 8518.22 from any other heading; or

A change to subheading 8518.22 from subheading 8518.29 or 8518.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8518.29 – 8518.50
A change to subheading 8518.29 through 8518.50 from any other heading; or

A change to subheading 8518.29 through 8518.50 from subheading 8518.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8518.90
A change to subheading 8518.90 from any other heading.

8519.10 – 8519.40
A change to subheading 8519.10 through 8519.40 from any other subheading.

8519.92 – 8519.93
A change to subheading 8519.92 through 8519.93 from any other subheading outside that group.

8519.99
A change to subheading 8519.99 from any other subheading.

8520.10 – 8520.20
A change to subheading 8520.10 through 8520.20 from any other subheading.

8520.32 – 8520.33
A change to subheading 8520.32 through 8520.33 from any other subheading outside that group.

8520.39 – 8520.90
A change to subheading 8520.39 through 8520.90 from any other subheading.

8521.10 – 8524.99
A change to subheading 8521.10 through 8524.99 from any other subheading.

8525.10 – 8525.20
A change to subheading 8525.10 through 8525.20 from any other subheading outside that group.

8525.30 – 8525.40
A change to subheading 8525.30 through 8525.40 from any other subheading.

8526.10 – 8527.90
A change to subheading 8526.10 through 8527.90 from any other subheading.

8528.12
A change to subheading 8528.12 from any other subheading, except from subheading 7011.20, 8540.11, or 8540.91.

8528.13
A change to subheading 8528.13 from any other subheading.

8528.21
A change to subheading 8528.21 from any other subheading, except from subheading 7011.20, 8540.11, or 8540.91.

8528.22 – 8528.30
A change to subheading 8528.22 through 8528.30 from any other subheading.

85.29
A change to heading 85.29 from any other heading; or

No change in tariff classification for subheading 8529.90 is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8530.10 – 8530.80
A change to subheading 8530.10 through 8530.80 from any other subheading.

8530.90
A change to subheading 8530.90 from any other heading.

8531.10 – 8531.80
A change to subheading 8531.10 through 8531.80 from any other subheading.

8531.90
A change to subheading 8531.90 from any other heading.

8532.10 – 8532.30
A change to subheading 8532.10 through 8532.30 from any other subheading.

8532.90
A change to subheading 8532.90 from any other heading.

8533.10 – 8533.40
A change to subheading 8533.10 through 8533.40 from any other subheading.

8533.90
A change to subheading 8533.90 from any other heading.

85.34
A change to heading 85.34 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 30 percent under the build-up method, or

(b) 35 percent under the build-down method.

8535.10 – 8536.90
A change to subheading 8535.10 through 8536.90 from any other subheading.

85.37 – 85.38
A change to heading 85.37 through 85.38 from any other heading.

8539.10 – 8539.49
A change to subheading 8539.10 through 8539.49 from any other subheading.

8539.90
A change to subheading 8539.90 from any other heading.

8540.11
A change to subheading 8540.11 from any other subheading, except from subheading 7011.20 or 8540.91.

8540.12
A change to subheading 8540.12 from any other subheading.

8540.20
A change to subheading 8540.20 from any other heading; or

A change to subheading 8540.20 from subheading 8540.91 through 8540.99, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8540.40 – 8540.60
A change to subheading 8540.40 through 8540.60 from any other subheading outside that group.

8540.71 – 8540.89
A change to subheading 8540.71 through 8540.89 from any other subheading.

8540.91
A change to subheading 8540.91 from any other heading; or

A change to front panel assemblies of subheading 8540.91 from any other good including a good in that subheading.

8540.99
A change to subheading 8540.99 from any other subheading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8541.10 – 8542.90
A change to assembled semiconductor devices, integrated circuits, or microassemblies of subheading 8541.10 through 8542.90 from unmounted chips, wafers, or dice of subheading 8541.10 through 8542.90 or from any other subheading; or

A change to all other goods of subheading 8541.10 through 8542.90 from any other subheading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 30 percent under the build-up method, or

(b) 35 percent under the build-down method.

8543.11 – 8543.19
A change to subheading 8543.11 through 8543.19 from any other subheading outside that group.

8543.20 – 8543.30
A change to subheading 8543.20 through 8543.30 from any other subheading.

8543.40 – 8543.89
A change to subheading 8543.40 through 8543.89 from any other subheading outside that group.

8543.90
A change to subheading 8543.90 from any other heading.

8544.11
A change to subheading 8544.11 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8544.19
A change to subheading 8544.19 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8544.20
A change to subheading 8544.20 from any subheading, except from subheading 8544.11 through 8544.60 or heading 74.08, 74.13, 76.05 or 76.14; or

A change to subheading 8544.20 from heading 74.08, 74.13, 76.05 or 76.14, whether or not there is also a change from any other subheading, provided that there is also a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8544.30 – 8544.49
A change to subheading 8544.30 through 8544.49 from any other subheading, provided that there is also a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8544.51 – 8544.59
A change to subheading 8544.51 through 8544.59 from any heading.

8544.60 – 8544.70
A change to subheading 8544.60 through 8544.70 from any other subheading, provided that there is also a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8545.11 – 8545.90
A change to subheading 8545.11 through 8545.90 from any other subheading.

85.46
A change to heading 85.46 from any other heading.

8547.10 – 8547.90
A change to subheading 8547.10 through 8547.90 from any other subheading.

85.48
A change to heading 85.48 from any other heading.

Section XVII

Vehicles, Aircraft, Vessels and Associated Transport Equipment (Chapter 86-89)

Chapter 86
Railway or Tramway Locomotives, Rolling-Stock and Parts Thereof; Railway or Tramway Track Fixtures and Fittings and Parts Thereof; Mechanical (Including Electro-Mechanical) Traffic Signaling Equipment of all Kinds

86.01 – 86.02
A change to heading 86.01 through 86.02 from any other heading.

86.03 – 86.06
A change to heading 86.03 through 86.06 from any other heading, except from heading 86.07; or

A change to heading 86.03 through 86.06 from heading 86.07, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8607.11 – 8607.12
A change to subheading 8607.11 through 8607.12 from any subheading outside that group.

8607.19
A change to axles of subheading 8607.19 from parts of axles of subheading 8607.19; or

A change to wheels, whether or not fitted with axles, of subheading 8607.19 from parts of axles or parts of wheels of subheading 8607.19; or

A change to subheading 8607.19 from any other subheading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8607.21 – 8607.99
A change to subheading 8607.21 through 8607.99 from any other heading.

86.08-86.09
A change to heading 86.08 through 86.09 from any other heading.

Chapter 87
Vehicles Other Than Railway or Tramway Rolling-Stock, and Parts and Accessories Thereof

87.01 – 87.06
No change in tariff classification is required, provided that there is a regional value content of not less than 35 percent under the net cost method.

87.07
A change to heading 87.07 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than 35 percent under the net cost method.

8708.10 – 8708.99
A change to subheading 8708.10 through 8708.99 from any other subheading; or

No change in tariff classification is required, provided that there is a regional value content of not less than 35 percent under the net cost method.

8709.11 – 8709.19
A change to subheading 8709.11 through 8709.19 from any other heading; or

A change to subheading 8709.11 through 8709.19 from subheading 8709.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8709.90
A change to subheading 8709.90 from any other heading.

87.10
A change to heading 87.10 from any other heading.

87.11
A change to heading 87.11 from any other heading, except from heading 87.14; or

A change to heading 87.11 from heading 87.14, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

87.12
A change to heading 87.12 from any other heading, except from heading 87.14; or

A change to heading 87.12 from heading 87.14, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

87.13
A change to heading 87.13 from heading 87.14, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

87.14 – 87.15
A change to heading 87.14 through 87.15 from any other heading.

8716.10 – 8716.80
A change to subheading 8716.10 through 8716.80 from any other heading; or

A change to subheading 8716.10 through 8716.80 from subheading 8716.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

8716.90
A change to subheading 8716.90 from any other heading.

Chapter 88
Aircraft, Spacecraft, and Parts Thereof

8801.10 – 8803.90
A change to subheading 8801.10 through 8803.90 from any other subheading.

88.04 – 88.05
A change to heading 88.04 through 88.05 from any other heading.

Chapter 89
Ships, Boats and Floating Structures

89.01 – 89.02
A change to heading 89.01 through 89.02 from any other chapter; or

A change to heading 89.01 through 89.02 from any other heading, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

89.03
A change to heading 89.03 from any other heading.

89.04 – 89.05
A change to heading 89.04 through 89.05 from any other chapter; or

A change to heading 89.04 through 89.05 from any other heading, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

89.06 – 89.08
A change to heading 89.06 through 89.08 from any other heading.

Section XVIII

Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus; Clocks and Watches; Musical Instruments; Parts and Accessories Thereof (Chapter 90-92)

Chapter 90
Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus; Parts and Accessories Thereof

9001.10
A change to subheading 9001.10 from any other chapter, except from heading 70.02; or

A change to subheading 9001.10 from heading 70.02, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9001.20 – 9001.90
A change to subheading 9001.20 through 9001.90 from any other heading.

9002.11 – 9002.90
A change to subheading 9002.11 through 9002.90 from any other heading, except from heading 90.01.

9003.11 – 9003.19
A change to subheading 9003.11 through 9003.19 from any other subheading, except from subheading 9003.90; or

A change to subheading 9003.11 through 9003.19 from subheading 9003.90, whether or not there is also a change from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9003.90
A change to subheading 9003.90 from any other heading.

9004.10
A change to subheading 9004.10 from any other chapter; or

A change to subheading 9004.10 from any other heading, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9004.90
A change to heading 9004.90 from any other heading, except from subheading 9001.40 or 9001.50.

9005.10
A change to subheading 9005.10 from any other subheading.

9005.80
A change to subheading 9005.80 from any subheading, except from heading 90.01 through 90.02 or subheading 9005.90; or

A change to subheading 9005.80 from subheading 9005.90, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9005.90
A change to subheading 9005.90 from any other heading.

9006.10 – 9006.69
A change to subheading 9006.10 through 9006.69 from any other heading; or

A change to subheading 9006.10 through 9006.69 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9006.91 – 9006.99
A change to subheading 9006.91 through 9006.99 from any other heading.

9007.11 – 9007.20
A change to subheading 9007.11 through 9007.20 from any other heading; or

A change to subheading 9007.11 through 9007.20 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9007.91
A change to subheading 9007.91 from any other heading.

9007.92
A change to subheading 9007.92 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9008.10 – 9008.40
A change to subheading 9008.10 through 9008.40 from any other heading, or

A change to subheading 9008.10 through 9008.40 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9008.90
A change to subheading 9008.90 from any other heading.

9009.11
A change to subheading 9009.11 from any other subheading.

9009.12
A change to subheading 9009.12 from any other subheading, except from subheading 9009.91; or

A change to subheading 9009.12 from subheading 9009.91, whether or not there is also a change from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9009.21 – 9009.30
A change to subheading 9009.21 through 9009.30 from any other subheading.

9009.91 – 9009.93
A change to subheading 9009.91 through 9009.93 from any subheading outside that group.

9009.99:
A change to subheading 9009.99 from any other subheading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9010.10 – 9010.60
A change to subheading 9010.10 through 9010.60 from any other heading; or

A change to subheading 9010.10 through 9010.60 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9010.90
A change to subheading 9010.90 from any other heading.

9011.10 – 9011.80
A change to subheading 9011.10 through 9011.80 from any other heading; or

A change to subheading 9011.10 through 9011.80 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9011.90
A change to subheading 9011.90 from any other heading.

9012.10
A change to subheading 9012.10 from any other heading; or

A change to subheading 9012.10 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9012.90
A change to subheading 9012.90 from any other heading.

9013.10 – 9013.80
A change to subheading 9013.10 through 9013.80 from any other heading; or

A change to subheading 9013.10 through 9013.80 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9013.90
A change to subheading 9013.90 from any other heading.

9014.10 – 9014.80
A change to subheading 9014.10 through 9014.80 from any other heading; or

A change to subheading 9014.10 through 9014.80 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9014.90
A change to subheading 9014.90 from any other heading.

9015.10 – 9015.80
A change to subheading 9015.10 through 9015.80 from any other heading; or

A change to subheading 9015.10 through 9015.80 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9015.90
A change to subheading 9015.90 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

90.16
A change to heading 90.16 from any other heading.

9017.10 – 9022.90
A change to subheading 9017.10 through 9022.90 from any other subheading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 30 percent under the build-up method, or

(b) 35 percent under the build-down method.

90.23
A change to heading 90.23 from any other heading.

9024.10 – 9024.80
A change to subheading 9024.10 through 9024.80 from any other heading; or

A change to subheading 9024.10 through 9024.80 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9024.90
A change to subheading 9024.90 from any other heading.

9025.11 – 9025.80
A change to subheading 9025.11 through 9025.80 from any other heading or

A change to subheading 9025.11 through 9025.80 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9025.90
A change to subheading 9025.90 from any other heading.

9026.10 – 9026.80
A change to subheading 9026.10 through 9026.80 from any other heading; or

A change to subheading 9026.10 through 9026.80 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9026.90
A change to subheading 9026.90 from any other heading.

9027.10 – 9027.80
A change to subheading 9027.10 through 9027.80 from any other heading; or

A change to subheading 9027.10 through 9027.80 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9027.90
A change to subheading 9027.90 from any other heading.

9028.10 – 9028.30
A change to subheading 9028.10 through 9028.30 from any other heading; or

A change to subheading 9028.10 through 9028.30 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9028.90
A change to subheading 9028.90 from any other heading.

9029.10 – 9029.20
A change to subheading 9029.10 through 9029.20 from any other heading; or

A change to subheading 9029.10 through 9029.20 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9029.90
A change to subheading 9029.90 from any other heading.

9030.10 – 9030.89
A change to subheading 9030.10 through 9030.89 from any other subheading.

9030.90
A change to subheading 9030.90 from any other heading.

9031.10 – 9031.80
A change to subheading 9031.10 through 9031.80 from any other heading; or

A change to coordinate measuring machines of subheading 9031.49 from any other good except from bases and frames for the goods of the same subheading; or

A change to subheading 9031.10 through 9031.80 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9031.90
A change to subheading 9031.90 from any other heading.

9032.10 – 9032.89
A change to subheading 9032.10 through 9032.89 from any other heading; or

A change to subheading 9032.10 through 9032.89 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9032.90
A change to subheading 9032.90 from any other heading.

90.33
A change to heading 90.33 from any other heading.

Chapter 91
Clocks and Watches and Parts Thereof

9101.11
A change to subheading 9101.11 from any other chapter; or

A change to subheading 9101.11 from heading 91.14, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9101.12
A change to subheading 9101.12 from any other chapter; or

A change to subheading 9101.12 from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9101.19
A change to subheading 9101.19 from any other chapter; or

A change to subheading 9101.19 from heading 91.14, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9101.21
A change to subheading 9101.21 from any other chapter; or

A change to subheading 9101.21 from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9101.29
A change to subheading 9101.29 from any other chapter; or

A change to subheading 9101.29 from heading 91.14, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9101.91
A change to subheading 9101.91 from any other chapter; or

A change to subheading 9101.91 from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9101.99
A change to subheading 9101.99 from any other chapter; or

A change to subheading 9101.99 from heading 91.14, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

91.02 – 91.07
A change to heading 91.02 through 91.07 from any other chapter; or

A change to heading 91.02 through 91.07 from heading 91.14, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

91.08 – 91.10
A change to heading 91.08 through 91.10 from any other chapter; or

A change to heading 91.08 through 91.10 from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9111.10 – 9111.80
A change to subheading 9111.10 through 9111.80 from any other chapter; or

A change to subheading 9111.10 through 9111.80 from subheading 9111.90 or any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9111.90
A change to subheading 9111.90 from any other chapter; or

A change to subheading 9111.90 from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9112.20
A change to subheading 9112.20 from subheading 9112.90 or any other heading, provided that there is regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9112.90
A change to subheading 9112.90 from any other chapter; or

A change to subheading 9112.90 from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

91.13
A change to heading 91.13 from any other chapter; or

A change to heading 91.13 from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

91.14
A change to heading 91.14 from any other heading.

Chapter 92
Musical Instruments; Parts and Accessories of Such Articles

92.01 – 92.08
A change to heading 92.01 through 92.08 from any other chapter; or

A change to heading 92.01 through 92.08 from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

92.09
A change to heading 92.09 from any other heading.

Section XIX
Arms and Ammunition; Parts and Accessories Thereof (Chapter 93)

Chapter 93
Arms and Ammunition; Parts and Accessories Thereof

93.01 – 93.04
A change to heading 93.01 through 93.04 from any other chapter; or

A change to heading 93.01 through 93.04 from any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

93.05
A change to heading 93.05 from any other heading.

93.06 – 93.07
A change to heading 93.06 through 93.07 from any other chapter.

Section XX

Miscellaneous Manufactured Articles (Chapter 94-96)

Chapter 94
Furniture; Bedding, Mattresses, Mattress Supports, Cushions and Similar Stuffed Furnishings; Lamps and Lighting Fittings, Not Elsewhere Specified or Included; Illuminated Signs, Illuminated Name-Plates and the Like; Prefabricated Buildings

9401.10 – 9401.80
A change to subheading 9401.10 through 9401.80 from any other heading; or

A change to subheading 9401.10 through 9401.80 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9401.90
A change to subheading 9401.90 from any other heading.

9402.10 – 9402.90
A change to subheading 9402.10 through 9402.90 from any other subheading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

94.03
A change to heading 94.03 from any other heading.

9404.10 – 9404.30
A change to subheading 9404.10 through 9404.30 from any other chapter.

9404.90
See Annex 3-A.

9405.10 – 9405.60
A change to subheading 9405.10 through 9405.60 from any other chapter; or

A change to subheading 9405.10 through 9405.60 from subheading 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

9405.91 – 9405.99
A change to subheading 9405.91 through 9405.99 from any other heading.

94.06
A change to heading 94.06 from any other chapter.

Chapter 95
Toys, Games and Sport Requisites; Parts and Accessories Thereof

9501.00 – 9505.90
A change to subheading 9501.00 through 9505.90 from any other subheading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

95.06 – 95.08
A change to heading 95.06 through 95.08 from any other chapter; or

A change to subheading 9506.31 from subheading 9506.39, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method; or

(b) 45 percent under the build-down method.

Chapter 96
Miscellaneous Manufactured Articles

96.01 – 96.05
A change to heading 96.01 through 96.05 from any other chapter.

9606.10
A change to subheading 9606.10 from any other heading; or

No change in tariff classification is required, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9606.21 – 9606.22
A change to subheading 9606.21 through 9606.22 from any other chapter; or

A change to subheading 9606.21 through 9606.22 from subheading 9606.30, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9606.29
A change to subheading 9606.29 from any other chapter, except from "tagua" of subheading 1404.90; or

A change to subheading 9606.29, except from button moulds and button blanks of "tagua" of subheading 9606.30 and "tagua" of subheading 1404.90, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9606.30
A change to subheading 9606.30 from any other heading, except from "tagua" of subheading 1404.90.

9607.11 – 9607.19
A change to subheading 9607.11 through 9607.19 from any other chapter; or

A change to subheading 9607.11 through 9607.19 from subheading 9607.20, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9607.20
A change to subheading 9607.20 from any other heading.

9608.10 – 9608.20
A change to subheading 9608.10 through 9608.20 from any other chapter; or

No change in tariff classification is required, provided that there is a regional value content of not less than 30 percent under the build-down method.

9608.31 – 9608.50
A change to subheading 9608.31 through 9608.50 from any other chapter; or

A change to subheading 9608.31 through 9608.50 from subheading 9608.60 through 9608.99, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9608.60
A change to subheading 9608.60 from any other heading.

9608.91
A change to subheading 9608.91 from any other subheading.

9608.99
A change to subheading 9608.99 from any other heading.

9609.10
A change to subheading 9609.10 from any other heading; or

A change to subheading 9609.10 from subheading 9609.20 or any other heading, provided that there is a regional value content of not less than:

(a) 30 percent under the build-up method, or

(b) 35 percent under the build-down method.

9609.20 – 9609.90
A change to subheading 9609.20 through 9609.90 from any other heading; or

A change to subheading 9609.20 through 9609.90 from subheading 9609.20 or any other heading, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

96.10 – 96.11
A change to heading 96.10 through 96.11 from any other heading.

9612.10
A change to subheading 9612.10 from any other chapter.

9612.20
A change to subheading 9612.20 from any other heading.

9613.10 – 9613.80
A change to subheading 9613.10 through 9613.80 from any other chapter; or

A change to subheading 9613.10 through 9613.80 from subheading 9613.90, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9613.90
A change to subheading 9613.90 from any other heading.

9614.20
A change to subheading 9614.20 from any other subheading, except from subheading 9614.90.

9614.90
A change to subheading 9614.90 from any other heading.

9615.11 – 9615.19
A change to subheading 9615.11 through 9615.19 from any other chapter; or

A change to subheading 9615.11 through 9615.19 from subheading 9615.90, provided that there is a regional value content of not less than:

(a) 35 percent under the build-up method, or

(b) 45 percent under the build-down method.

9615.90
A change to subheading 9615.90 from any other heading.

96.16
A change to heading 96.16 from any other heading.

96.17
A change to heading 96.17 from any other chapter.

96.18
A change in heading 96.18 from any other heading.

Section XXI
Works of Art, Collectors Pieces and Antiques (Chapter 97)

Chapter 97
Works of Art, Collectors Pieces and Antiques

9701.10 – 9701.90
A change to subheading 9701.10 through 9701.90 from any other subheading.

97.02 – 97.06
A change to heading 97.02 through 97.06 from any other heading.

Appendix 4.1-A

Correlation Table for Footwear

TARIFF ITEM	UNITED STATES	COLOMBIA	DESCRIPTION
6401.92.aa	6401.92.90	ex6401.92.00.00	Waterproof footwear, not mechanically assembled, with outer soles and uppers of rubber or plastics, nesoi[3], covering ankle but not knee.
6401.99.aa	6401.99.30	ex6401.99.00.00	Waterproof protective footwear, not mechanically assembled with outer soles and uppers of rubber or plastics, not covering ankle, without closures.
6401.99.bb	6401.99.60	ex6401.99.00.00	Waterproof protective footwear, not mechanically assembled with outer soles and uppers of rubber or plastics, not covering ankle, with closures.
6401.99.cc	6401.99.90	ex6401.99.00.00	Waterproof footwear, not mechanically assembled, with outer soles and uppers of rubber or plastics, nesoi, not covering ankle.
6402.30.aa	6402.30.50	ex640230.00.00	Footwear with outer soles & uppers of rubber or plastics, nesoi, with metal toecap, designed as a protection against liquids, chemicals, weather.
6402.30.bb	6402.30.70	ex6402.30.00.00	Footwear with outer soles & uppers of rubber or plastics, nesoi, with metal toecap, not protective, valued over US$3 but not over US$6.50/pair.
6402.30.cc	6402.30.80	ex6402.30.00.00	Footwear with outer soles & uppers of rubber or plastics, nesoi, with metal toecap, not protective, valued over US$6.50 but not over US$12/pair.
6402.91.aa	6402.91.50	ex6402.91.00.00	Footwear with outer soles & uppers of rubber or plastics, nesoi, covering ankle, designed as protection against liquids, chemicals, weather.
6402.91.bb	6402.91.80	ex6402.91.00.00	Footwear with outer soles & uppers of rubber or plastics, nesoi, covering ankle, nesoi, valued over US$6.50 but not over US$12/pair.
6402.91.cc	6402.91.90	ex6402.91.00.00	Footwear with outer soles & uppers of rubber or plastics, nesoi,

[3] The expression refers to not elsewhere specified or included ("nesoi") as indicated in the Harmonized Tariff Schedule of the United States.

TARIFF ITEM	UNITED STATES	COLOMBIA	DESCRIPTION
			covering ankle, nesoi, valued over US$12/pair.
6402.99.aa	6402.99.20	ex6402.99.00.00	Footwear with outer soles & uppers of rubber or plastics, nesoi, not covering ankle, nesoi, designed as protection against liquids, chemicals, weather.
6402.99.bb	6402.99.80	ex6402.99.00.00	Footwear with outer soles & uppers of rubber or plastics, nesoi, not covering ankle, nesoi, valued over US$6.50 but not over US$12/pair.
6402.99.cc	6402.99.90	ex6402.99.00.00	Footwear with outer soles & uppers of rubber or plastics, nesoi, not covering ankle, nesoi, valued over US$12/pair
6404.11.aa	6404.11.90	ex6404.11.10.00 ex6404.11.20.00	Sports & athletic footwear w/outer soles of rubber/plastics & uppers of textile, valued over US$12/pair.
6404.19.aa	6404.19.20	ex6404.19.00.00	Footwear with outer soles of rubber or plastics & uppers of textile for protection against water, oil, grease or chemicals, or cold or inclement weather.

Chapter Five

Customs Administration and Trade Facilitation

Article 5.1: Publication

1. Each Party shall publish, including on the Internet, its customs laws, regulations, and general administrative procedures.

2 Each Party shall designate or maintain one or more inquiry points to address inquiries by interested persons concerning customs matters and shall make available on the Internet information concerning the procedures for making such inquiries.

3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.

Article 5.2: Release of Goods

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

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

(a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws, and to the extent posible release the goods within 48 hours of arrival;

(b) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and

(c) allow importers to withdraw goods from customs before and without prejudice to the final determination by its customs authority of the applicable customs duties, taxes, and fees.[1]

Article 5.3: Automation

Each Party shall endeavor to use information technology that expedites procedures for the release of goods. When deciding on the information technology to be used for this purpose, each Party shall:

(a) endeavor to use international standards;

(b) make electronic systems accessible to customs users;

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

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

[1] A Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties, taxes, and fees in connection with the importation of the good.

(e) work towards developing compatible electronic systems among the Parties' customs authorities, to facilitate government to government exchange of international trade data; and

(f) work towards developing a set of common data elements and processes in accordance with World Customs Organization (WCO) Customs Data Model and related WCO recommendations and guidelines.

Article 5.4: Risk Management

Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods, while respecting the confidential nature of the information it obtains through such activities.

Article 5.5: Cooperation

1. With a view to facilitating the effective operation of this Agreement, each Party shall endeavor to provide each other Party with advance notice of any significant modification of administrative policy or other similar development related to its laws or regulations governing importations that is likely to substantially affect the operation of this Agreement.

2. The Parties shall cooperate in achieving compliance with their respective laws and regulations pertaining to:

(a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims of origin and origin procedures;

(b) the implementation and operation of the Customs Valuation Agreement;

(c) restrictions or prohibitions on imports or exports; and

(d) other customs matters as the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request that another Party provide specific confidential information normally collected in connection with the importation of goods.

4. A Party's request under paragraph 3 shall be in writing, shall specify the purpose for which the information is sought, and shall identify the requested information with sufficient specificity for the other Party to locate and provide the information.

5. The Party from whom the information is requested shall, in accordance with its law and any relevant international agreements to which it is a party, provide a written response containing such information.

6. For purposes of paragraph 3, "a reasonable suspicion of unlawful activity" means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:

(a) historical evidence of non-compliance with laws or regulations governing importations by an importer or exporter;

(b) historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other person involved in the

movement of goods from the territory of one Party to the territory of another Party;

(c) historical evidence that some or all of the persons involved in the movement from the territory of one Party to the territory of another Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importations; or

(d) other information that the requesting Party and the Party from whom the information is requested agree is sufficient in the context of a particular request.

7. Each Party shall endeavor to provide another Party with any other information that would assist that Party in determining whether imports from or exports to that Party are in compliance with the other Party's laws or regulations governing importations, in particular those related to the prevention of unlawful activities such as smuggling and similar infractions.

8. For purposes of facilitating trade between the Parties, each Party shall endeavor to provide the other Parties with technical advice and assistance for the purpose of improving risk assessment and risk management techniques, facilitating the implementation of international supply chain standards, simplifying and expediting customs procedures for the timely and efficient clearance of goods, advancing the technical skill of personnel, and enhancing the use of technologies that can lead to improved compliance with regard to a Party's laws or regulations governing importations.

9. The Parties shall endeavor to cooperate to enhance each Party's ability to enforce its regulations governing importations. The Parties shall further endeavor to establish and maintain other channels of communication to facilitate the secure and rapid exchange of information and to improve coordination on importation issues.

Article 5.6: Confidentiality

1. Where a Party providing information to another Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information. The Party providing the information may require a written assurance from the other Party that the information will be held in confidence, will be used only for the purposes specified in the other Party's request for information, and will not be disclosed without the Party's specific permission.

2. A Party may decline to provide information requested by another Party where that Party has failed to act in conformity with the assurance provided under paragraph 1.

3. Each Party shall adopt or maintain procedures in which confidential information, including information the disclosure of which could prejudice the competitive position of the person providing the information, submitted in accordance with the administration of the Party's customs laws, shall be protected from unauthorized disclosure.

Article 5.7: Express Shipments

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

(a) provide a separate and expedited customs procedure for express shipments;

(b) provide for the submission and processing of information necessary for the release of an express shipment before the express shipment arrives;

(c) allow submission of a single manifest covering all goods contained in a shipment transported by an express shipment service, through, if possible, electronic means;

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

(e) under normal circumstances, provide for clearance of express shipments within six hours after submission of the necessary customs documents, provided the shipment has arrived;

(f) apply without regard to weight or customs value; and

(g) provide, under normal circumstances, that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments valued at US$200 or less.[2]

Article 5.8: Review and Appeal

Each Party shall ensure that with respect to its determinations[3] on customs matters, importers in its territory have access to:

(a) a level of administrative review independent of the employee or office that issued the determinations; and

(b) judicial review of the determinations.

Article 5.9: Penalties

Each Party shall adopt or maintain measures that allow for the imposition of civil or administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, country of origin, and claims for preferential treatment under this Agreement.

Article 5.10: Advance Rulings

1. Each Party shall issue, before a good is imported into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer[4] in the territory of another Party with regard to:

(a) tariff classification;

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[2] Notwithstanding Article 5.7(g), a Party may require that express shipments be accompanied by an airway bill or bill of lading. For greater certainty, a Party may assess customs duties or taxes and may require formal entry documents for restricted goods.

[3] For purposes of this Article, a determination, if made by a Party other than the United States means an administrative act.

[4] For greater certainty, an importer, exporter, or producer may submit a request for an advance ruling through a duly authorized representative.

(b) the application of customs valuation criteria for a particular case, in accordance with the application of the provisions set forth in the Customs Valuation Agreement;

(c) the application of duty drawback, deferral, or other relief from customs duties;

(d) whether a good is originating in accordance with Chapter Four (Rules of Origin and Origin Procedures);

(e) whether a good re-entered into the territory of a Party after being exported to the territory of the other Party for repair or alteration is eligible for duty free treatment in accordance with Article 2.6 (Goods Re-entered after Repair or Alteration);

(f) country of origin marking;

(g) the application of quotas; and

(h) such other matters as the Parties may agree.

2. Each Party shall issue an advance ruling within 150 days after a request, provided that the requester has submitted all information that the Party requires, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the Party shall take into account facts and circumstances the requester has provided.

3. Each Party shall provide that advance rulings shall be in force from their date of issuance, or another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.

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

5. Subject to any confidentiality requirements in its laws, each Party shall make its advance rulings publicly available.

6. If a requester provides false information or omits relevant facts or circumstances relating to the 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, monetary penalties, or other sanctions.

Article 5.11: Implementation

For Colombia:

(a) Articles 5.1.1, 5.1.2, and 5.7 shall enter into force two years after the date of entry into force of this Agreement;

(b) Article 5.10 shall enter into force three years after the date of entry into force of this Agreement; and

(c) Article 5.2 shall enter into force one year after the date of entry into force of this Agreement.

Chapter Six

Sanitary and Phytosanitary Measures

Objectives

The objectives of this Chapter are to protect human, animal, or plant life or health in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a Standing Committee for addressing sanitary and phytosanitary matters, attempt to resolve trade issues, and thereby expand trade opportunities.

Article 6.1: Scope and Coverage

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

Article 6.2: General Provisions

1. Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.

2. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

Article 6.3: Standing Committee on Sanitary and Phytosanitary Matters

1. Not later than 30 days after the date of entry into force of this Agreement, the Parties shall establish a Standing Committee on Sanitary and Phytosanitary Matters (the "Standing Committee"). The objectives of the Standing Committee shall be to enhance the implementation by each Party of the SPS Agreement, protect human, animal, or plant life or health, enhance consultation and cooperation between the Parties on sanitary and phytosanitary matters, and address measures affecting trade between the Parties.

2. The Parties shall establish the Standing Committee through an exchange of letters identifying the primary representative of each Party to the Standing Committee and establishing the Standing Committee's terms of reference.

3. The Standing Committee shall seek to enhance any present or future relationships between the Parties' agencies and ministries with responsibility for sanitary and phytosanitary matters.

4. The Standing Committee shall provide a forum for:

   (a) improving the Parties' understanding of specific issues relating to the implementation of the SPS Agreement;

   (b) enhancing mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

   (c) consulting on and attempting to resolve matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

(d) coordinating and making recommendations on technical assistance programs on sanitary and phytosanitary matters to the Committee on Trade Capacity Building; and

(e) consulting on issues, positions, and agendas for meetings of the *WTO SPS Committee*, the various *Codex* Committees (including the *Codex Alimentarius Commission*), the *International Plant Protection Convention*, the *World Organization for Animal Health*, and other international and regional fora on food safety and human, animal, and plant health.

5. The Standing Committee shall meet at least once a year unless the Parties otherwise agree.

6. The Standing Committee shall perform its work in accordance with its terms of reference. The Standing Committee may revise its terms of reference and establish procedures to guide its operation.

7. The Standing Committee may establish *ad hoc* technical working groups, as needed, in accordance with its terms of reference.

8. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies or ministries participate in meetings of the Standing Committee.

9. All decisions of the Standing Committee shall be taken by consensus, unless the Committee otherwise decides.

Chapter Seven

Technical Barriers to Trade

Objectives

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

Article 7.1: Affirmation of the TBT Agreement

Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

Article 7.2: Scope and Coverage

1. This Chapter applies to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of central government bodies that may, directly or indirectly, affect trade in goods between the Parties,[1] including any amendments[2] thereto and any addition to their rules or the product coverage thereof, except amendments and additions of an insignificant nature.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

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

   (b) sanitary and phytosanitary measures.

Articles 7.3: Trade Facilitation

1. The Parties shall intensify their joint work in the field 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, develop, and promote trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors, taking into consideration the Parties' experience in other bilateral, regional, and multilateral agreements, as appropriate. Such initiatives may include cooperation on regulatory issues, such as convergence, alignment with international standards, reliance on a supplier's declaration of conformity, the recognition and acceptance of the results of conformity assessment procedures, and the use of accreditation to qualify conformity assessment bodies.

2. 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.8, 23 May 2002, Section IX (*Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement*) issued by the WTO Committee on Technical Barriers to Trade.

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[1] For greater certainty, the Parties understand that any reference in this Chapter to a standard, technical regulation, or conformity assessment procedure includes those related to metrology.

[2] "Any amendments" includes the elimination of technical regulations.

3. Where a Party detains at a port of entry a good originating in the territory of another Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention.

4. On request of another Party, a Party shall give favorable consideration to any sector-specific proposal that the requesting Party makes for further cooperation under this Chapter.

Article 7.4: Conformity Assessment

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

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

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

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

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

(e) a Party may designate conformity assessment bodies located in the territory of another Party; and

(f) a Party may recognize the results of conformity assessment procedures conducted in the territory of another Party.

The Parties shall intensify their exchange of information on these and other similar mechanisms.

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of another Party, it shall, on request of that other Party, explain the reasons so that corrective action may be taken, if necessary.

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territories of the other Parties on terms no less favorable than those it accords to conformity assessment bodies in its territory. Where a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of another Party, it shall, on request of that other Party, explain the reasons for its decision so that corrective action may be taken, if necessary.

4. Where a Party declines a request from another 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 7.5: Technical Regulations

1. Where a Party provides that foreign technical regulations may be accepted as equivalent to a specific technical regulation of its own, and the Party does not accept a technical regulation of another Party as equivalent to that technical regulation, it shall, at the request of that other Party, explain the reasons for its decision. A Party seeking the acceptance of its technical regulation as equivalent should provide, as appropriate, information regarding the relationship of its technical regulation to international standards referenced in the technical regulation of the other Party, the circumstances which gave rise to the adoption of its technical regulation, and the similarity of the respective conformity assessment procedures.

2. Where a Party does not provide that foreign technical regulations may be accepted as equivalent to its own, it shall, at the request of another Party, explain its reasons for not accepting that other Party's technical regulations as equivalent.

3. At the request of a Party which may have an interest in developing a similar technical regulation, and in order to minimize duplicate expenses, the other Party shall provide any available information, studies, or other relevant documents, except for confidential information on which it has relied in the development of a technical regulation.

Article 7.6: Transparency

1. Each Party shall allow persons of the other Parties to participate in the development of its standards, technical regulations, and conformity assessment procedures. Each Party shall permit persons of the other Parties to participate in the development of such measures on terms no less favorable than those accorded to its own persons and to persons of any other Party.

2. Each Party shall recommend that non-governmental standardizing bodies in its territory observe paragraph 1.

3. In order to enhance the opportunity for persons to be aware of, and to understand, proposed technical regulations and conformity assessment procedures, and to be able to provide meaningful comments on such regulations and procedures, a Party publishing a notice and filing a notification under Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement, 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 Parties through the inquiry points each Party has established under Article 10 of the TBT Agreement at the same time as it notifies other WTO Members of the proposal pursuant to the TBT Agreement.

Each Party shall publish and notify those technical regulations that are in accordance with the technical content of any relevant international standards.

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for persons and the other Parties to provide comments in writing on the proposal. A Party shall give favorable consideration to reasonable requests for extending the comment period.

4. Each Party shall publish or otherwise make available to the public, either in print or electronically, its responses to significant comments that it receives from persons or the other

Parties under paragraph 3 no later than the date it publishes the final technical regulation or conformity assessment procedure.

5. Where a Party makes a notification under Article 2.10, 3.2, 5.7, or 7.2 of the TBT Agreement because urgent problems have arisen or threaten to arise, the notifying Party shall at the same time transmit the notification electronically to the other Parties through the inquiry points referenced in subparagraph 3(b).

Each Party also shall notify those technical regulations that are in accordance with the technical content of any relevant international standards.

6. A Party shall, on request of another Party, provide information regarding the objectives of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.

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

Article 7.7: Committee on Technical Barriers to Trade

1. The Parties hereby establish the Committee on Technical Barriers to Trade, comprising representatives of each Party, as set out in Annex 7.7.

2. The Committee's functions shall include:

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

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

(c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures and, as appropriate, designing and proposing mechanisms for technical assistance of the type described in Article 11 of the TBT Agreement, in coordination with the Committee on Trade Capacity Building, as appropriate;

(d) where appropriate, facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies in the territories of two or more Parties;

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

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

(g) 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;

(h) taking any other steps the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade;

(i) as it considers appropriate, reporting to the Commission on the implementation of this Chapter;

(j) establishing, if necessary, for particular issues or sectors, working groups for the treatment of specific matters related to this Chapter and the TBT Agreement; and

(k) exchanging information, at a Party's request, on the Parties' respective views regarding third party issues concerning standards, technical regulations, and conformity assessment procedures so as to foster a common approach to their resolution.

3. When a Party requests consultations under subparagraph 2(f), the Parties shall make every effort to obtain a mutually satisfactory solution within 60 days .

4. Where the Parties have had recourse to consultations under subparagraph 2(f), such consultations shall constitute consultations under Article 21.4 (Consultations).

5. The Committee shall meet at least once a year unless the Parties otherwise agree. The Committee shall carry out its work through the communication channels agreed to by the Parties, which may include electronic mail, videoconferencing, or other means.

6. All decisions of the Committee shall be made by consensus unless the Committee decides otherwise.

Article 7.8: Information Exchange

1. If a Party requests any information or explanation pursuant to the provisions of this Chapter, the other Party shall provide such information or explanation in print or electronically within a reasonable time. A Party shall endeavor to respond to each such request within 60 days.

2. With respect to information exchanges, in compliance with Article 10 of the TBT Agreement, each Party shall apply the recommendations set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995*, G/TBT/1/Rev. 8, 23 May 2002, Section IV (Procedure for information exchanges) issued by the WTO Committee on Technical Barriers to Trade.

Article 7.9: Definitions

For purposes of this Chapter:

central government body, conformity assessment procedures, standard, and technical regulation shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement; and

TBT Agreement means the WTO *Agreement on Technical Barriers to Trade.*

Annex 7.7

Committee on Technical Barriers to Trade

The Committee on Technical Barriers to Trade shall be coordinated by:

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

(b) in the case of the United States, the Office of the U.S. Trade Representative,

or their successors.

Chapter Eight

Trade Remedies

Section A: Safeguard Measures

Article 8.1: Imposition of a Safeguard Measure

1. A Party may apply a measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a duty pursuant to this Agreement,[1] an originating good is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

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

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

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

(i) the most-favored-nation (MFN) applied rate of duty in effect at the time the measure is applied, and

(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.[2]

3. A Party shall apply a safeguard measure to imports of an originating good[3] irrespective of their source.

4. No Party may apply a safeguard measure against an originating good of another Party as long as the exporting Party's share of imports of the originating good in the importing Party does not exceed three percent, provided that Parties with less than three percent import share collectively account for not more than nine percent of total imports of such originating good.

Article 8.2: Standards for a Safeguard Measure

1. No Party may maintain a safeguard measure:

(a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment;

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[1] The Parties note that prior to the date of entry into force of this Agreement, the United States accorded duty-free treatment under the U.S. Generalized System of Preferences and the U.S. Andean Trade Preference Act, as amended, to many of the goods imported from the other Parties.

[2] The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of safeguard measure.

[3] For greater certainty, goods imported into one Party from another Party under an Andean Community certificate of origin shall not be subject to safeguard measures under this Chapter.

(b) for a period exceeding two years; except that the period may be extended by up to two years if the competent authority determines, in conformity with the procedures set out in Article 8.3, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting; or

(c) beyond the expiration of the transition period.

2. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.

3. No Party may apply a safeguard measure more than once on the same good.

4. On the termination of a safeguard measure, the rate of duty shall be no higher than the rate that, according to the Party's Schedule to Annex 2.3 (Tariff Elimination), would have been in effect one year after the initiation of the measure. Beginning on January 1 of the year following the termination of the measure, the Party that has applied the measure shall:

(a) apply the rate of duty set out in the Party's Schedule to Annex 2.3 (Tariff Elimination) as if the safeguard measure had never been applied; or

(b) eliminate the tariff in equal annual stages ending on the date set out in the Party's Schedule to Annex 2.3 (Tariff Elimination) for the elimination of the tariff.

Article 8.3: Investigation Procedures and Transparency Requirements

1. A Party shall apply a safeguard measure only following an investigation by the Party's competent authority in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement; and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. In the investigation described in paragraph 1, a Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement; and to this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 8.4: Notification and Consultation

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

(a) initiating a safeguard proceeding under this Chapter;

(b) making a finding of serious injury, or threat thereof, caused by increased imports under Article 8.1; and

(c) taking a decision to apply or extend a safeguard measure.

2. A Party shall provide to the other Parties a copy of the public version of the report of its competent investigating authority required under Article 8.3.1.

3. On request of a Party whose good is subject to a safeguard proceeding under this Chapter, the Party conducting that proceeding shall enter into consultations with the requesting Party to review a notification under paragraph 1 or any public notice or report that

the competent investigating authority has issued in connection with the proceeding.

Article 8.5: Compensation

1. A Party applying a safeguard measure shall, after consultations with each Party against whose good the measure is applied, provide mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The Party applying the safeguard measure shall provide an opportunity for such consultations no later than 30 days after the application of the safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalizing compensation within 30 days, any Party against whose good the measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. A Party against whose good the measure is applied shall notify the Party applying the safeguard measure in writing at least 30 days before suspending concessions under paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the later of:

(a) the termination of the safeguard measure, or

(b) the date on which the rate of duty returns to the rate of duty set out in the Party's Schedule to Annex 2.3 (Tariff Elimination).

Article 8.6: Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.

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

3. No Party may apply, with respect to the same good, at the same time:

(a) a safeguard measure; and

(b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

Article 8.7: Definitions

For purposes of this Section:

competent investigating authority means (a) for Colombia, the *Subdirección de Prácticas Comerciales del Ministerio de Comercio, Industria y Turismo*, and (b) for the United States, the U.S. International Trade Commission;

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the territory of a Party 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;

safeguard measure means a measure described in Article 8.1.2;

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

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

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

transition period means the 10-year period beginning on the date of entry into force of this Agreement, except that for any good for which the Schedule to Annex 2.3 (Tariff Elimination) of the Party applying the measure provides for the Party to eliminate its tariffs on the good over a period of more than 10 years, **transition period** means the tariff elimination period for the good set out in that Schedule.

Section B: Antidumping and Countervailing Measures

Article 8.8: Antidumping and Countervailing Measures

1. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties.

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

Chapter Nine

Government Procurement

Article 9.1: Scope and Coverage

Application of Chapter

1. This Chapter applies to any measure of a Party regarding covered procurement.

2. For purposes of this Chapter, covered procurement means a procurement of goods, services, or both:

(a) by any contractual means, including purchase, rental, or lease, with or without an option to buy, build-operate-transfer contracts, and public works concession contracts;

(b) for which the value, as estimated in accordance with paragraphs 9 and 10, as appropriate, equals or exceeds the relevant threshold in Annex 9.1;

(c) that is conducted by a procuring entity; and

(d) that is not excluded from coverage.

3. For greater certainty relating to the procurement of digital products as defined in Article 15.8 (Definitions):

(a) covered procurement includes the procurement of digital products; and

(b) no provision of Chapter Fifteen (Electronic Commerce) shall be construed as imposing obligations on a Party with respect to the procurement of digital products.

4. This Chapter does not apply to:

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

(b) government provision of goods or services to persons or to regional or local level governments;

(c) purchases for the direct purpose of providing foreign assistance;

(d) purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter;

(e) acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt; or

(f) hiring of government employees and related employment measures.

5. For greater certainty, this Chapter does not apply to procurement of banking, financial, or specialized services related to the following activities:

(a) the incurring of public indebtedness; or

(b) public debt management.

6. The provisions of this Chapter shall apply only between the United States and each of the other Parties to this Agreement. Five years after this Agreement enters into force for at least the United States and two other Parties, the Parties shall consult to review the application of this Chapter and determine whether it should continue to be applied on a bilateral basis.

7. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided that they are consistent with this Chapter.

Compliance

8. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

Valuation

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

(a) neither divide a procurement into separate procurements nor use a particular method for estimating the value of the procurement for the purpose of avoiding the application of this Chapter;

(b) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for under the contract, and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases; and

(c) where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation of the total maximum value of the procurement over its entire duration.

10. Where the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be covered by this Chapter.

Article 9.2: General Principles

National Treatment and Non-Discrimination

1. With respect to any measure covered by this Chapter, each Party shall accord unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favorable than the most favorable treatment the Party accords to domestic goods, services, and suppliers.

2. With respect to any measure covered by this Chapter, a Party may not:

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

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

Tendering Procedures

3. A procuring entity shall use an open tendering procedure for covered procurement, except where Articles 9.7.3 through 9.7.5 and 9.8 apply.

Rules of Origin

4. Each Party shall apply to covered procurement of goods the rules of origin that it applies in the normal course of trade to those goods.

Offsets

5. A procuring entity may not seek, take account of, impose, or enforce offsets in the qualification and selection of suppliers, goods, or services, in the evaluation of tenders, or in the award of contracts, before or in the course of a covered procurement.

Measures Not Specific to Procurement

6. Paragraphs 1 and 2 shall not apply to measures respecting customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations or formalities, or measures affecting trade in services, other than measures specifically governing covered procurements.

Article 9.3: Publication of Procurement Information

1. Each Party shall promptly publish the following information relating to a covered procurement, and any modifications or additions to this information, in an electronic or paper medium that is widely disseminated and readily accessible to the public:

(a) laws, regulations, and procedures; and

(b) judicial decisions and administrative rulings of general application.

2. Each Party shall, on request, provide to the other Party an explanation relating to such information.

Article 9.4: Publication of Notices

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 9.8, a procuring entity shall publish a notice inviting interested suppliers to submit tenders ("notice of intended procurement") or, where appropriate, applications for participation in the procurement. Any such notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering. Each Party shall encourage procuring entities to publish notices of intended procurement in a single point of entry electronic publication that is accessible through the Internet or a comparable network.

2. A procuring entity shall include the following information in each notice of intended procurement:

(a) the name and address of the procuring entity and any other information necessary to contact the entity and obtain all relevant documents relating to the procurement and, if applicable, the sum payable for the tender documentation;

(b) a description of the procurement, including the nature and, where known, quantity of the goods or services to be procured, and any conditions for participation;

(c) the time frame for delivery of goods or services or the duration of the contract;

(d) the procurement method that will be used and whether it will involve negotiations;

(e) the address and the time limit for the submission of tenders and, where appropriate, any time limit for the submission of an application for participation in a procurement; and

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

Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year notices regarding their respective procurement plans. Such notices should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement. Where the notice is published in accordance with Article 9.5.4(a), a procuring entity may apply Article 9.5.4(a) for the purpose of establishing shorter time limits for tendering.

Article 9.5: Time Limits

1. A procuring entity shall provide suppliers sufficient time to submit applications to participate in a procurement and prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.

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

(a) from the date on which the notice of intended procurement is published; or

(b) where the procuring entity has used selective tendering, from the date on which the entity invites suppliers to submit tenders.

3. A procuring entity may reduce the time limit for submission of tenders by up to 10 days where the entity publishes a notice of intended procurement in accordance with Article 9.4 in an electronic medium and concurrently provides the tender documentation in an electronic medium.

4. A procuring entity may establish a time limit for tendering that is less than 40 days, or 30 days where the entity has complied with paragraph 3, provided that the time given to suppliers is sufficient to enable them to prepare and submit responsive tenders and is in no case less than 10 days before the final date for the submission of tenders, where:

(a) the procuring entity published a separate notice, including a notice of planned procurement under Article 9.4.3 at least 40 days and not more than 12 months in advance, and such separate notice contains a description of the procurement, the relevant time limits for the submission of tenders or, where appropriate, applications for participation in a procurement, and the address from which documents relating to the procurement may be obtained;

(b) the procuring entity procures commercial goods or services; or

(c) a state of unforeseen urgency, duly substantiated by the procuring entity, renders impracticable the time limits specified in paragraph 2 or, where applicable, paragraph 3.

5. A procuring entity shall require all participating suppliers to submit tenders in accordance with a common deadline. For greater certainty, this requirement also applies where:

(a) as a result of the need to amend information provided to suppliers during the procurement process, the procuring entity extends the time limits for qualification or tendering procedures; or

(b) in the case of negotiations, the negotiations are concluded and suppliers may submit new tenders.

Article 9.6: Information on Intended Procurements

Tender Documentation

1. A procuring entity shall promptly provide, on request, to any supplier interested in participating in a procurement tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature, scope, and, where known, the quantity of the goods or services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials;

(b) any conditions for participation, including any financial guarantees, information, and documents that suppliers are required to submit;

(c) all criteria to be considered in the awarding of the contract and, except where price is the determinative factor, the relative importance of such criteria;

(d) where there will be a public opening of tenders, the date, time, and place for the opening of tenders; and

(e) any other terms or conditions relevant to the evaluation of tenders.

2. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in a covered procurement, except that the entity shall not make available information with regard to a specific procurement in a manner that would give the requesting supplier an advantage over its competitors in the procurement.

Technical Specifications

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

4. In prescribing the technical specifications for the good or service being procured, a procuring entity shall:

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

(b) base the technical specification on international standards, where such exist and are applicable to the procuring entity, except where the use of an international standard would fail to meet the entity's program requirements or would impose a greater burden than the use of a recognized national standard.

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

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

7. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications:

(a) to promote the conservation of natural resources and the environment; or

(b) to require a supplier to comply with generally applicable laws regarding

(i) fundamental principles and rights at work;

(ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health,

in the territory in which the good is produced or the service is performed.

Modifications

8. Where, in the course of a covered procurement, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, it shall transmit all such modifications in writing:

(a) to all the suppliers that are participating at the time the information is modified, if the identities of such suppliers are known, and, in all other cases, in the same manner that the original information was transmitted; and

(b) in adequate time to allow such suppliers to modify and re-submit their initial tenders, as appropriate.

Article 9.7: Conditions for Participation

General Requirements

1. Where a procuring entity requires suppliers to satisfy conditions for participation, the entity shall, subject to the other provisions of this Chapter:

(a) limit such conditions to those that are essential to ensure that a supplier has the legal, commercial, technical, and financial abilities to fulfill the requirements and technical specifications of the procurement;

(b) assess the commercial, technical, and financial abilities of a supplier on the basis of the supplier's global business activities, including its activity in the territory of the Party of the supplier as well as its activity, if any, in the territory of the Party of the procuring entity;

(c) not make it a condition for participation in a procurement that a supplier has previously been awarded one or more contracts by a procuring entity of the Party of the procuring entity or that the supplier has prior work experience in the territory of the Party;

(d) base its determination of whether a supplier has satisfied the conditions for participation solely on the conditions that have been specified in advance in notices or tender documentation; and

(e) allow all domestic suppliers and suppliers of the other Party that satisfy the conditions for participation to participate in the procurement.

2. A procuring entity may exclude a supplier from a procurement on grounds such as:

(a) bankruptcy; or

(b) false declarations.

Multi-use Lists

3. A procuring entity may establish a multi-use list provided that the entity annually publishes or otherwise makes available continuously in electronic form a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods or services that may be procured using the list;

(b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;

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

(d) any deadlines for submission of applications for inclusion on the list; and

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

4. A procuring entity that maintains a multi-use list shall:

(a) include on the list, within a reasonably short time following submission of an application, any supplier that satisfies the conditions for participation; and

(b) where an entity uses the multi-use list in any intended procurement, invite all suppliers on the multi-use list to submit tenders.

Selective Tendering

5. Where a Party's law allows the use of selective tendering procedures, a procuring entity shall, for each intended procurement:

(a) publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the entity to evaluate, and make its determinations based on, such applications; and

(b) allow all domestic suppliers and suppliers of the other Party that the entity has determined satisfy the conditions for participation to submit a tender, unless the entity has stated in the notice of intended procurement or, where publicly available, the tender documentation a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

Information on Procuring Entity's Decisions

6. Where a supplier applies for participation in a covered procurement, a procuring entity shall promptly advise such supplier of the entity's decision with respect to the supplier's application.

7. Where a procuring entity:

(a) rejects an application for participation in a procurement conducted using the procedures described in paragraph 5;

(b) rejects a request for inclusion on a list referred to in paragraph 3; or

(c) ceases to recognize a supplier as having satisfied the conditions for participation,

the entity shall promptly inform the supplier and, on request, promptly provide the supplier with a written explanation of the reasons for the entity's decision.

Article 9.8: Limited Tendering

1. Provided that a procuring entity does not use this provision to avoid competition, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, the entity may contact a supplier or suppliers of its choice and may choose not to apply Articles 9.4 through 9.7, 9.9.1, and 9.9.3 through 9.9.7 in any of the following circumstances:

(a) where, in response to a prior notice or invitation to participate,

(i) no tenders were submitted,

(ii) no tenders were submitted that conform to the essential requirements in the tender documentation, or

(iii) no suppliers satisfied the conditions for participation,

and the entity does not substantially modify the essential requirements of the procurement;

(b) where a good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or service exists for any of the following reasons:

(i) the requirement is for a work of art,

(ii) protection of patents, copyrights, or other exclusive rights, or proprietary information, or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries of goods or services by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, where a change of supplier would compel the procuring entity to procure goods or services that do not meet requirements of interchangeability with existing equipment, software, services, or installations;

(d) for goods purchased on a commodity market;

(e) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. For greater certainty, when such a contract has been fulfilled, subsequent procurements of the goods or services shall be subject to Articles 9.4 through 9.7 and 9.9;

(f) in so far as is strictly necessary, where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services cannot be obtained in time under procedures consistent with Articles 9.4 through 9.7 and the use of such procedures would result in serious injury to the procuring entity or the relevant Party; or

(g) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. In such cases, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract.

2. For each contract awarded under paragraph 1, a procuring entity shall prepare and, on request, submit to the other Party a written report that includes:

(a) the name of the procuring entity;

(b) the value and kind of goods or services procured; and

(c) a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of a procedure other than open or selective tendering procedures.

Article 9.9: Treatment of Tenders and Awarding of Contracts

Receipt and Opening of Tenders

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

2. A procuring entity shall treat tenders in confidence until at least the opening of the tenders. In particular, the procuring entity shall not provide information to particular suppliers that might prejudice fair competition between suppliers.

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

Awarding of Contracts

4. A procuring entity shall require that, in order to be considered for an award, a tender must be submitted:

(a) in writing and, at the time of opening, must conform to the essential requirements and evaluation criteria specified in the notices and tender documentation; and

(b) by a supplier that satisfies any conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined satisfies the conditions for participation and is fully capable of undertaking the contract and whose tender is determined to be the lowest price or the most advantageous solely on the basis of the requirements and evaluation criteria specified in the notices and tender documentation.

6. A procuring entity may not cancel a procurement or terminate or modify awarded contracts in a manner that circumvents this Chapter.

Information Provided to Suppliers

7. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decision. Subject to Article 9.13, a procuring entity shall, on request, provide an unsuccessful supplier with the reasons that the entity did not select that supplier's tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

8. Not later than 60 days after an award, a procuring entity shall publish in an officially designated publication, which may be in either an electronic or paper medium, a notice that includes at least the following information about the contract:

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

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

(c) the date of award;

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

(e) the contract value; and

(f) the procurement method used and, in cases where a procedure has been used pursuant to Article 9.8.1, a description of the circumstances justifying the use of such procedure.

Maintenance of Records

9. A procuring entity shall maintain reports and records of tendering procedures relating to covered procurements, including the reports provided for in Article 9.8.2, and shall retain such reports and records for a period of at least three years after the award of a contract.

Article 9.10: Ensuring Integrity in Procurement Practices

Further to Article 19.9 (Anti-Corruption Measures), each Party shall establish or maintain procedures to declare ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to procurement. On the request of a Party, the Party receiving the request shall identify the suppliers determined to be ineligible under these procedures, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

Article 9.11: Domestic Review of Supplier Challenges

1. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent from its procuring entities to receive and review challenges that suppliers submit relating to the application by a procuring entity of a Party's measures implementing this Chapter, and to make appropriate findings and recommendations. In the event that a body other than such an authority initially reviews a supplier's challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity that is the subject of the challenge.

2. Each Party shall ensure that a supplier may invoke the review procedure without jeopardizing its participation in ongoing or future procurement activities by the Party's procuring entities.

3. Each Party shall provide that an authority established or designated under paragraph 1 may take prompt interim measures, pending the resolution of a challenge, to preserve the supplier's opportunity to participate in the procurement and to ensure that the procuring entities of the Party comply with measures implementing this Chapter. Such interim measures may include the suspension of the award of a contract or the performance of a contract that has already been awarded.

4. Each Party shall ensure that its review procedures are publicly available in writing, and are timely, transparent, effective, and consistent with the principle of due process.

5. Each Party shall ensure that its review procedures are conducted in accordance with the following:

(a) a supplier shall be allowed sufficient time to prepare and submit a written challenge, which in no case shall be less than 10 days from the time when the basis of the complaint became known, or reasonably should have become known, to the supplier;

(b) a procuring entity shall respond in writing to a supplier's complaint and disclose all relevant documents to the review authority;

(c) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response before the review authority takes a decision on the complaint; and

(d) the review authority shall provide its decision on a supplier's challenge in a timely fashion, in writing, with an explanation of the basis for the decision.

Article 9.12: Modifications and Rectifications to Coverage

1. A Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules in Annex 9.1, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Party.

2. A Party may otherwise modify its coverage under this Chapter provided that the Party:

(a) notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification; and

(b) offers, within 30 days of the notification, acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification, where necessary.

3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. Where a Party objects to the assertion that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

4. The Commission shall modify Annex 9.1 to reflect any agreed rectification, minor amendment, or modification.[1]

Article 9.13: Disclosure of Information

Provision of Information to a Party

1. On request, a Party shall provide to the requesting Party information on the tender and evaluation procedures used in the conduct of a procurement sufficient to determine whether a particular procurement was conducted fairly, impartially, and in accordance with this Chapter. The information shall include information on the characteristics and relative advantages of the successful tender and on the contract price.

Non-Disclosure of Information

2. No Party, procuring entity or review authority, referred to in Article 9.11, may disclose information that the person providing it has designated as confidential, in accordance with domestic law, except with the authorization of such person.

[1] For purposes of this Article, the Commission shall comprise the Parties that have agreed to the rectification, minor amendment, or modification.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, to provide information disclosure of which would:

(a) impede law enforcement;

(b) prejudice fair competition between suppliers;

(c) prejudice the legitimate commercial interests of particular suppliers or procuring entities, including the protection of intellectual property; or

(d) otherwise be contrary to the public interest.

Article 9.14: Exceptions

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

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

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic institutions, or of prison labor.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.

Article 9.15: Committee on Procurement

The Parties hereby establish a Committee on Procurement comprising representatives of each Party. On request of a Party, the Committee shall meet to address matters related to the implementation of this Chapter, such as:

(a) cooperation relating to the development and use of electronic communications in government procurement systems, including developments that may allow procuring entities to reduce the time limits for tendering set out in Article 9.5.2;

(b) exchange of statistics and other information to assist the Parties in monitoring the implementation and operation of this Chapter;

(c) consideration of further negotiations aimed at broadening the coverage of this Chapter; and

(d) efforts to increase understanding of their respective government procurement systems, with a view to maximizing access to government procurement opportunities, especially for small business suppliers. To that end, a Party may ask the other Party to provide trade-related technical assistance, including training of government personnel or interested suppliers on specific elements of that Party's government procurement system, in coordination with the Committee on Trade Capacity Building, as appropriate.

Article 9.16: Definitions

For purposes of this Chapter:

build-operate-transfer contract and **public works concession contract** mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period, temporary ownership, or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

commercial goods and services means goods and services of a type of goods and services that are sold or offered for sale to, and customarily purchased by, non-governmental buyers for non-governmental purposes; it includes goods and services with modifications customary in the commercial marketplace, as well as minor modifications not customarily available in the commercial marketplace;

conditions for participation means any registration, qualification, or other pre-requisites for participation in a procurement;

in writing and **written** mean any worded or numbered expression that can be read, reproduced, and later communicated, including electronically transmitted and stored information;

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

offsets means any conditions or undertakings that require use of domestic content, domestic suppliers, the licensing of technology, investment, counter-trade, or similar actions to encourage local development or to improve a Party's balance-of-payments accounts;

open tendering means a procurement method where all interested suppliers may submit a tender;

procurement official means any person who performs procurement functions;

procuring entity means an entity listed in Annex 9.1;

selective tendering means a procurement method where only the suppliers satisfying the conditions for participation are invited by the procuring entity to submit tenders;

services includes construction services, unless otherwise specified;

supplier means a person that provides or could provide goods or services to a procuring entity; and

technical specification means a tendering requirement that:

(a) sets out the characteristics of:

(i) goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or

(ii) services to be procured, or the processes or methods for their provision, including any applicable administrative provisions; or

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

Annex 9.1

Section A: Central Level of Government Entities

1. This Chapter applies to the entities of the central level of government listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraphs 9 and 10 of Article 9.1, to equal or exceed:

(a) for procurement of goods and services: US$64,786; and

(b) for procurement of construction services:

(i) US$7,407,000; or

(ii) for Colombia, during the three-year period following the date of entry into force of this Agreement, the higher of US$7,407,000, as adjusted in accordance with Section I of this Annex, or US$8,000,000.

2. The monetary thresholds set out in subparagraphs (a) and (b)(i) shall be adjusted in accordance with Section I of this Annex.

Schedule of Colombia

Executive Branch

1. *Departamento Administrativo de la Presidencia de la República*
2. *Ministerio del Interior y de Justicia*
3. *Ministerio de Relaciones Exteriores*
4. *Ministerio de Hacienda y Crédito Público*
5. *Ministerio de Defensa Nacional* (Note 2)
6. *Ministerio de Agricultura y Desarrollo Rural* (Note 3)
7. *Ministerio de Protección Social (Note 4)*
8. *Ministerio de Minas y Energía* (Note 5)
9. *Ministerio de Comercio, Industria y Turismo*
10. *Ministerio de Educación Nacional*
11. *Ministerio de Ambiente, Vivienda y Desarrollo Territorial*
12. *Ministerio de Comunicaciones*
13. *Ministerio del Transporte* (Note 6)
14. *Ministerio de Cultura*
15. *Departamento Nacional de Planeación*
16. *Departamento Administrativo de Seguridad*
17. *Departamento Administrativo de la Función Pública*
18. *Departamento Administrativo Nacional de Estadísticas*
19. *Departamento Administrativo Nacional de Economía Solidaria*

Legislative Branch

20. *Senado de la República*
21. *Cámara de Representantes*

Judicial Branch

22. *Consejo Superior de la Judicatura*
23. *Fiscalía General de la Nación*

Control Agencies

24. *Contraloría General de la República*
25. *Auditoría General de la República*
26. *Procuraduría General de la Nación*
27. *Defensoría del Pueblo*

Electoral Organization

28. *Registraduría Nacional del Estado Civil* (Note 7)

Notes to Schedule of Colombia

1. Unless otherwise specified herein, this Chapter applies to the "superintendencias", "unidades administrativas especiales", and "establecimientos públicos" of the entities listed in Colombia's Schedule in this Section.

2. *Ministerio de Defensa Nacional*: This Chapter does not cover the procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the United Nations Central Product Classification 1.0 (CPC version 1.0) for the *Comando General de las Fuerzas Armadas*, *Ejército Nacional*, *Armada Nacional*, *Fuerza Aérea Colombiana*, and the *Policía Nacional*.

3. *Ministerio de Agricultura y Desarrollo Rural*: This Chapter does not cover the procurement of food, agricultural raw materials or inputs, and live animals related to agricultural support programs and food assistance.

4. *Ministerio de Protección Social*: This Chapter does not cover the procurement by the *Instituto Colombiano de Bienestar Familiar* (ICBF) of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC version 1.0 for social assistance programs.

5. *Ministerio de Minas y Energía*: This Chapter does not cover the procurement of nuclear materials and technology by the *Instituto Colombiano de Geología y Minería* (INGEOMINAS).

6. *Ministerio del Transporte*: This Chapter does not cover procurement by the *Unidad Administrativa Especial de Aeronáutica Civil* (AEROCIVIL).

7. *Registraduría Nacional del Estado Civil*: This Chapter does not cover procurement for the preparation and conduct of elections.

Schedule of the United States

1. Advisory Commission on Intergovernmental Relations
2. Africa Development Foundation
3. Alaska Natural Gas Transportation System
4. American Battle Monuments Commission
5. Appalachian Regional Commission
6. Broadcasting Board of Governors
7. Commission of Fine Arts
8. Commission on Civil Rights
9. Commodity Futures Trading Commission
10. Consumer Product Safety Commission
11. Corporation for National and Community Service
12. Delaware River Basin Commission
13. Department of Agriculture (Note 2)
14. Department of Commerce (Note 3)
15. Department of Defense (Note 4)
16. Department of Education
17. Department of Energy (Note 5)
18. Department of Health and Human Services
19. Department of Homeland Security (Note 6)
20. Department of Housing and Urban Development
21. Department of the Interior, including the Bureau of Reclamation
22. Department of Justice
23. Department of Labor
24. Department of State
25. Department of Transportation (Note 7)
26. Department of the Treasury
27. Department of Veterans Affairs
28. Environmental Protection Agency

29. Equal Employment Opportunity Commission
30. Executive Office of the President
31. Export-Import Bank of the United States
32. Farm Credit Administration
33. Federal Communications Commission
34. Federal Crop Insurance Corporation
35. Federal Deposit Insurance Corporation
36. Federal Election Commission
37. Federal Home Loan Mortgage Corporation
38. Federal Housing Finance Board
39. Federal Maritime Commission
40. Federal Mediation and Conciliation Service
41. Federal Mine Safety and Health Review Commission
42. Federal Prison Industries, Inc.
43. Federal Reserve System
44. Federal Retirement Thrift Investment Board
45. Federal Trade Commission
46. General Services Administration (Note 8)
47. Government National Mortgage Association
48. Holocaust Memorial Council
49. Inter-American Foundation
50. Merit Systems Protection Board
51. National Aeronautics and Space Administration (NASA)
52. National Archives and Records Administration
53. National Capital Planning Commission
54. National Commission on Libraries and Information Science
55. National Council on Disability
56. National Credit Union Administration
57. National Foundation on the Arts and the Humanities
58. National Labor Relations Board
59. National Mediation Board
60. National Science Foundation
61. National Transportation Safety Board
62. Nuclear Regulatory Commission
63. Occupational Safety and Health Review Commission
64. Office of Government Ethics
65. Office of the Nuclear Waste Negotiator
66. Office of Personnel Management
67. Office of Special Counsel
68. Office of Thrift Supervision
69. Overseas Private Investment Corporation
70. Peace Corps
71. Railroad Retirement Board
72. Securities and Exchange Commission
73. Selective Service System
74. Small Business Administration
75. Smithsonian Institution
76. Susquehanna River Basin Commission
77. United States Agency for International Development
78. United States International Trade Commission

Notes to United States Schedule

1. Unless otherwise specified herein, this Chapter applies to all agencies subordinate to the entities listed in the United States' Schedule in this Section.

2. Department of Agriculture: This Chapter does not cover the procurement of agricultural goods made in furtherance of agricultural support programs or human feeding programs.

3. Department of Commerce: This Chapter does not cover shipbuilding activities of the U.S. National Oceanic and Atmospheric Administration (NOAA).

4. Department of Defense:

(a) This Chapter does not cover the procurement of the goods listed below (for complete listing of U.S. Federal Supply Classification, see http://www.fedbizopps.gov/classCodes1html):

(i)

FSC 11	Nuclear Ordnance
FSC 18	Space Vehicles
FSC 19	Ships, Small Craft, Pontoons, and Floating Docks (the part of this classification defined as naval vessels or major components of the hull or superstructure thereof)
FSC 20	Ship and Marine Equipment (the part of this classification defined as naval vessels or major components of the hull or superstructure thereof)
FSC 2310	Passenger Motor Vehicles (only buses)
FSC 2350	Combat, Assault & Tactical Vehicles, Tracked
FSC 51	Hand Tools
FSC 52	Measuring Tools
FSC 60	Fiber Optics Materials, Components, Assemblies, and Accessories
FSC 8140	Ammunition & Nuclear Ordnance Boxes, Packages & Special Containers
FSC 83	Textiles, Leather, Furs, Apparel, Shoes, Tents, and Flags (all elements other than pins, needles, sewing kits, flagstaffs, flagpoles and flagstaff trucks)
FSC 84	Clothing, Individual Equipment, and Insignia (all elements other than sub-class 8460 - luggage)
FSC 89	Subsistence (all elements other than sub-class 8975- tobacco products)

(ii) "Specialty metals," defined as steels melted in steel manufacturing facilities located in the United States or its possessions, where the maximum alloy content exceeds one or more of the following limits, must be used in products purchased by the Department of Defense: (1) manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten or vanadium; (2) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 per cent; (3) titanium and titanium alloys; or (4) zirconium base alloys; and

(b) The goods in the following FSC categories are not generally covered by this Chapter due to application of Article 22.2 (Essential Security):

FSC 10	Weapons
FSC 12	Fire Control Equipment
FSC 13	Ammunitions and Explosives
FSC 14	Guided Missiles
FSC 15	Aircraft and Airframe Structural Components
FSC 16	Aircraft Components and Accessories
FSC 17	Aircraft Launching, Landing, and Ground Handling Equipment
FSC 19	Ships, Small Craft, Pontoons, and Floating Docks
FSC 20	Ship and Marine Equipment
FSC 28	Engines, Turbines, and Components
FSC 31	Bearings
FSC 58	Communications, Detection, and Coherent Radiation
FSC 59	Electrical and Electronic Equipment Components
FSC 95	Metal Bars, Sheets, and Shapes

5. Department of Energy: This Chapter does not cover national security procurements made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act or oil purchases related to the Strategic Petroleum Reserve.

6. Department of Homeland Security:

(a) This Chapter does not cover procurement by the Transportation Security Administration.

(b) The national security considerations applicable to the Department of Defense are equally applicable to the U.S. Coast Guard.

7. Department of Transportation: This Chapter does not cover procurement by the Federal Aviation Administration.

8. General Services Administration: This Chapter does not cover procurement of the goods in the following FSC categories:

FSC 51	Hand Tools
FSC 52	Measuring Tools
FSC 7340	Cutlery and Flatware

Section B: Sub-Central Level of Government Entities

1. This Chapter applies to the entities of the sub-central level of government listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraphs 9 and 10 of Article 9.1, to equal or exceed:

(a) for procurement of goods and services, US$ 526,000; and

(b) for procurement of construction services:

(i) US$ 7,407,000; or

(ii) for Colombia, during the three-year period following the date of entry into force of this Agreement, the higher of US$7,407.000, as adjusted in accordance with Section I of this Annex, or US$8,000,000.

The monetary thresholds set out in subparagraphs (a) and (b)(i) shall be adjusted in accordance with Section I of this Annex.

2. Within two years after the entry into force of this Agreement, the Parties shall consider and, if appropriate, address any issues that have arisen with regard to the implementation of the denial of benefits provisions in each Party's Schedule to this Section (paragraph 2 and 3 of the Schedule of Colombia and paragraphs 7 and 8 of the Schedule of the United States).

3. For purposes of this Section:

(a) "participating state" means a state listed in the Schedule of the United States;

(b) "participating *Gobernación*" means a *Gobernación* listed in the Schedule of Colombia; and

(c) "principal place of business" means the headquarters or main office of an enterprise, or any other place where the enterprise's business is managed, conducted, or operated.

4. This Chapter covers procurement only by those entities listed in this Schedule.

Schedule of Colombia

1. *Gobernación del Departamento de Amazonas*
2. *Gobernación del Departamento de Antioquia*
3. *Gobernación del Departamento de Arauca*
4. *Gobernación del Departamento de Atlántico*
5. *Gobernación del Departamento de Bolívar*
6. *Gobernación del Departamento de Boyacá*
7. *Gobernación del Departamento de Caldas*
8. *Gobernación del Departamento de Caquetá*
9. *Gobernación del Departamento de Casanare*
10. *Gobernación del Departamento de Cauca*
11. *Gobernación del Departamento de César*
12. *Gobernación del Departamento de Choco*
13. *Gobernación del Departamento de Córdoba*
14. *Gobernación del Departamento de Cundinamarca*
15. *Gobernación del Departamento de Guainía*
16. *Gobernación del Departamento de Guaviare*
17. *Gobernación del Departamento de Huila*
18. *Gobernación del Departamento de La Guajira*
19. *Gobernación del Departamento de Magdalena*
20. *Gobernación del Departamento de Meta*
21. *Gobernación del Departamento de Nariño*
22. *Gobernación del Departamento de Norte de Santander*
23. *Gobernación del Departamento de Putumayo*
24. *Gobernación del Departamento de Quindío*
25. *Gobernación del Departamento de Risaralda*
26. *Gobernación del Departamento de San Andrés y Providencia*
27. *Gobernación del Departamento de Santander*
28. *Gobernación del Departamento de Sucre*
29. *Gobernación del Departamento de Tolima*
30. *Gobernación del Departamento de Valle*
31. *Gobernación del Departamento de Vaupés*
32. *Gobernación del Departamento de Vichada*

Notes to the Schedule of Colombia

1. This Chapter does not cover:

(a) Procurements of food, agricultural raw materials/inputs, and live animals related to agricultural support programs and food assistance;

(b) Procurements of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC version 1.0 for social assistance programs; or

(c) Procurements made by a covered entity on behalf of a non-covered entity at a different level of government.

2. A participating *Gobernación* may deny the benefits of this Section to a supplier of the United States unless the supplier meets one or more of the conditions set out in subparagraphs (a) through (c).

a. Procurement of Goods:

(i) The supplier is offering to supply a good of the United States, as determined under Article 9.2.4 of this Chapter, and has a principal place of business in a participating state or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating state; or

(ii) The supplier is offering to supply a good that is substantially produced or assembled in one or more participating states. A good shall be considered to

be substantially produced or assembled in a participating state(s) if the production or assembly in the participating state(s) accounts for 51 percent or more of the value of the good.

b. Procurement of Services Other Than Construction Services:

(i) The supplier is offering to supply a service, other than a construction service, and the supplier has a principal place of business in a participating state or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating state; or

(ii) The supplier is offering to supply a service, other than a construction service, that is substantially performed within a participating state(s). A service, other than a construction service, shall be considered to be substantially performed in a participating state(s) if the performance of the service in the participating state(s) accounts for 51 percent or more of the value of the service.

c. Procurement of Construction Services: The supplier is offering to supply construction services, and the supplier has a principal place of business in a participating state or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating state.

3. A participating *Gobernación* shall allow a supplier to self-certify that it meets one or more of the conditions set out in paragraph 2. If the participating *Gobernación* considers the certification to be erroneous or unsubstantiated, it shall, after consultations with the supplier, permit the supplier to challenge that determination in accordance with Article 9.11 of this Chapter.

Schedule of the United States

Arkansas
Executive branch agencies, including universities
For the entities listed for Arkansas, this Chapter does not cover procurement by the Office of Fish and Game or of construction services.

Colorado
Executive branch agencies

Florida*
Executive branch agencies

Illinois*
Department of Central Management Services

Mississippi
Department of Finance and Administration
For the entity listed for Mississippi, this Chapter does not cover the procurement of services.

New York*
State agencies
State university system
Public authorities and public benefit corporations
1. For the entities listed for New York, this Chapter does not cover procurement by public authorities and public benefit corporations with multi-state mandates.
2. For the entities listed for New York, this Chapter does not cover the procurement of transit cars, buses, or related equipment.

Puerto Rico
Department of State
Department of Justice
Department of the Treasury
Department of Economic Development and Commerce

Department of Labor and Human Resources
Department of Natural and Environmental Resources
Department of Consumer Affairs
Department of Sports and Recreation
For the entities listed for Puerto Rico, this Chapter does not cover the procurement of construction services.

Texas
Texas Building and Procurement Commission
For the entity listed for Texas, this Chapter does not apply to preferences for: (1) motor vehicles; (2) travel agents located in Texas; or (3) rubberized asphalt paving made from scrap tires by a Texas facility.

Utah
Executive branch agencies

Notes to the Schedule of the United States

1. For the states marked by an asterisk (*), indicating pre-existing restrictions, this Chapter does not cover the procurement of construction-grade steel (including requirements on subcontracts), motor vehicles, or coal.

2. This Chapter does not apply to preferences or restrictions associated with programs promoting the development of distressed areas, or businesses owned by minorities, disabled veterans, or women.

3. Nothing in this Annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.

4 This Chapter does not cover any procurement made by a covered entity on behalf of a non-covered entity at a different level of government.

5. This Chapter does not apply to restrictions attached to Federal funds for mass transit and highway projects.

6. This Chapter does not apply to the procurement of printing services.

7. A procuring entity of a participating state may deny the benefits of this Section to a supplier of Colombia unless it meets one or more of the conditions set out in subparagraphs (a) through (c).

a. Procurement of Goods:

(i) The supplier is offering to supply a good of Colombia, as determined under Article 9.2.4 of this Chapter, and has a principal place of business in a participating *Gobernación* or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating *Gobernación*; or

(ii) The supplier is offering to supply a good that is substantially produced or assembled in one or more participating *Gobernación*. A good shall be considered to be substantially produced or assembled in a participating *Gobernación(s)* if the production or assembly in the participating *Gobernación(s)* accounts for 51 percent or more of the value of the good.

b. Procurement of Services Other Than Construction Services:

(i) The supplier is offering to supply a service, other than a construction service, and the supplier has a principal place of business in a participating *Gobernación* or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating *Gobernación*; or

(ii) The supplier is offering to supply a service, other than a construction service, that is substantially performed within a participating *Gobernación(s)*. A service, other than a construction service, shall be considered to be substantially performed in a participating *Gobernación(s)* if the performance of the service in the participating *Gobernación(s)* accounts for 51 percent or more of the value of the service.

c. Procurement of Construction Services: The supplier is offering to supply construction services, and the supplier has a principal place of business in a participating *Gobernación* or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating *Gobernación*.

8. A procuring entity of a participating state shall allow a supplier to self-certify that it meets the conditions set out in paragraph 7. If the procuring entity of a participating state considers the certification to be erroneous or unsubstantiated, the state shall, after consultations with the supplier, permit the supplier to challenge that determination in accordance with Article 9.11 of this Chapter.

Section C: Other Covered Entities

1. This Chapter applies to the other covered entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraphs 9 and 10 of Article 9.1, to equal or exceed:

(a) for procurement of goods and services:

(i) by List A entities, US$250,000 or

(ii) by List B entities, US$593,000; and

(b) for procurement of construction services by List A and List B entities:

(i) US$ 7,407,000; or

(ii) for Colombia, during the three-year period following the date of entry into force of this Agreement, the higher of US$7,407.000, as adjusted in accordance with Section I of this Annex, or US$8,000,000.

The monetary thresholds set out in subparagraphs (a)(ii) and (b)(i) shall be adjusted in accordance with Section I of this Annex.

2. Unless otherwise specified herein, this Chapter covers only the entities listed in this Section.

Schedule of Colombia

<u>List A</u>

1. *Agencia Logistica de las Fuerzas Militares* (Note 1)
2. *Fondo Rotatorio de la Policía Nacional* (Note 1)
3. *Fondo Rotatorio del Departamento Administrativo de Seguridad* (Note 1)
4. *Instituto de Casas Fiscales del Ejercito*
5. *Dirección de Impuestos y Aduanas Nacionales* (DIAN)
6. *Instituto Colombiano del Deporte* (COLDEPORTES)
7. *Instituto Colombiano Para el Desarrollo de la Ciencia y la Tecnología Francisco José de Caldas (COLCIENCIAS)*
8. *Instituto Colombiano para el Fomento de la Educación Superior (ICFES)*
9. *Instituto Nacional Penitenciario y Carcelario (INPEC)*
10. *Servicio Nacional de Aprendizaje (SENA)*
11. *Comisión de Regulación de Energía y Gas (CREG)*
12. *Unidad de Planeación Minero Energética (UPME)*
13. *Administración Postal Nacional (ADPOSTAL)*

14. *Caja de Previsión Social de Comunicaciones (CAPRECOM)*
15. *Caja Nacional de Previsión Social (CAJANAL)*
16. *Empresa Territorial para la Salud (ETESA)*
17. *Imprenta Nacional de Colombia*
18. *Industria Militar (INDUMIL)*
19. *Instituto de Seguros Sociales (ISS)*
20. *Radio Televisión Nacional de Colombia (RTVC)*
21. *Servicio Aéreo a Territorios Nacionales (SATENA)*
22. *Empresa Colombiana de Petroleos, S.A. (ECOPETROL)* (Notes 2 through 6)

Notes to Schedule of Colombia

1. *Agencia Logistica de las Fuerzas Militares, Fondo Rotatorio de la Policía Nacional, and Fondo Rotatorio del Departamento Administrativo de Seguridad*: This Chapter does not cover procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC version 1.0 by the entities listed for the *Comando General de las Fuerzas Armadas*, *Ejército Nacional*, *Armada Nacional*, *Fuerza Aérea Colombiana*, and the *Polícia Nacional*..

2. *Empresa Colombiana de Petroleos, S.A. (ECOPETROL)*: ECOPETROL shall apply the procedures in this Chapter or equivalent procedures in the conduct of its procurement. This Chapter does not cover the procurement of the following services:

(a)	CPC 632	Food serving services
(b)	CPC 642	Road transport services
(c)	CPC 852	Investigation and surveillance services
(d)	CPC 82211	Financial auditing services
(e)	CPC 712	Investment banking services
(f)	CPC 713	Insurance and pension services (excluding reinsurance services), except compulsory social security services
(g)	CPC 715	Services auxiliary to financial intermediation other than to insurance and pensions

3. The minimum 40-day time period set out in Article 9.5.2 shall not apply to ECOPETROL. ECOPETROL shall provide suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. However, ECOPETROL shall in no case provide for less than ten business days from the date on which the notice of intended procurement is published to the final date for the submission of tenders.

4. For greater certainty, Article 9.7.1(c) does not preclude ECOPETROL's requirement of relevant prior experience as a condition for participation in a procurement where essential to meet the requirements of the procurement.

5. Notwithstanding Article 9.8.1(c), ECOPETROL may use limited tendering in accordance with Article 9.8 for additional deliveries of a good or service that is intended either as a replacement part, extension, or continuing service for existing equipment, software, services or installations, where a change in the good or service would compel ECOPETROL to procure a good or a service that does not meet requirements of interchangeability with existing equipment, software, services, or installations.

6. When, under Colombian Law, ECOPETROL:

(a) is no longer subject to the requirements of the government procurement law of Colombia (the *Estatuto de Contratación Pública* or any successor law), and

(b) is required to conduct its procurement under private law, in a transparent manner, and in accordance with commercial considerations,

Colombia shall notify the United States and provide relevant documentation verifying that ECOPETROL meets the conditions set out in subparagraphs (a) and (b). Colombia shall also certify that ECOPETROL will comply with the conditions for a Special Covered Entity. Unless the United States notifies Colombia of any concern regarding the documentation within 30 days of its receipt, the

Parties shall modify the relevant sections of the Annex to move ECOPETROL from Section C to Section D.

Schedule of the United States

List A:

1. Tennessee Valley Authority
2. Bonneville Power Administration
3. Western Area Power Administration
4. Southeastern Power Administration
5. Southwestern Power Administration
6. St. Lawrence Seaway Development Corporation

List B:

Rural Utilities Service (Note 1)

Notes to Schedule of the United States

1. The Rural Utilities Service shall:

   (a) waive federal buy national requirements imposed as conditions of funding for all power generation projects; and

   (b) apply procurement procedures equivalent to the procedures in the WTO Agreement on Government Procurement and national treatment to funded projects exceeding the thresholds specified above.

For greater certainty, this Chapter does not apply to any other aspect of procurement by the Rural Utilities Service, including any restrictions the Rural Utilities Service places on financing for telecommunications projects.

2. With respect to procurement by entities listed in this Section, this Chapter does not apply to restrictions attached to Federal funds for airport projects.

Section D: Special Covered Entities

1. For purposes of this Chapter, a Special Covered Entity is an entity of the Government of Colombia that:

   (a) is not subject to the requirements of the government procurement law of Colombia (the *Estatuto de Contratación Pública* or any successor law); and

   (b) conducts its procurement under private law, in a transparent manner, in accordance with commercial considerations, and without any control or influence by the Government of Colombia.[1]

2. This Section applies to the following Special Covered Entities of the Government of Colombia:

   (a) *Interconexion Electrica S.A.* (ISA)
   (b) ISAGEN
   (c) *Colombia Telecomunicaciones*

[1] For greater certainty, appointment of any member of the Board of Directors of an entity by the President of Colombia or by another Colombian government official or entity, ownership of a majority or all of the shares of an entity by the Government of Colombia, or auditing requirements related to the entity, do not constitute "control or influence by the Government of Colombia" with respect to the entity's procurement.

Notes

1. The only provisions of this Chapter that apply to the Special Covered Entities listed in this Section are paragraphs 1 and 2 of Article 9.2.

Section E: Goods

This Chapter applies to all goods procured by the entities listed in Sections A through D, subject to the Notes to the respective Sections and the General Notes.

Section F: Services

This Chapter applies to all services procured by the entities listed in Sections A through D, subject to the Notes to the respective Sections, the General Notes, and the Notes to this Section, except for the services excluded in the Schedules of each Party.

Schedule of Colombia

This Chapter does not cover the procurement of the following services, as elaborated in the Central Product Classification Version 1.0. (For complete listing of Central Product Classification Version 1.0, see http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=3):

1. *Research and Development Services*
   Division 81 *Research and development services*
   Group 835 *Scientific and other technical services*
   Data processing (8596) and trade fair and exhibition organization (8597), required for carrying out scientific and technological activities

2. *Engineering and Architectural Services*
   Class 8321 *Architectural services.*
   Class 8334 *Engineering design services*
   Class 8335 *Engineering services during the contruction and installation phase*

3. *Utilities*
   Division 69 *Electricity distribution services; gas and water distribution services through mains*
   Division 94 *Sewer and refuse disposal, sanitation, and other environmental protection services*
   Basic telecommunication services (not including value-added telecommunication services)

4. *Social Services*
   Division 91 *Public admnistration and other services for the general public; compulsory social security services*
   Division 92 *Education services*
   Group 931 *Human health services*

5. *Printing Services*

6. *Production of television programs*
   Subclass 96121 *Motion picture, video and television program production services*

Schedule of the United States

This Chapter does not cover the procurement of the following services, as elaborated in the Common Classification System (For complete listing of Common Classification System, see http://www.sice.oas.org/trade/nafta/chap-105.asp.):

A. **Research and Development**
   All classes

D. **Information Processing and Related Telecommunications Services**

D304 ADP Telecommunications and Transmission Services, except for those services classified as "enhanced or value-added services." For the purposes of this provision, the procurement of "ADP Telecommunications and Transmission Services" does not include the ownership or furnishing of facilities for the transmission of voice or data services.
D305 ADP Teleprocessing and Timesharing Services
D316 Telecommunications Network Management Services
D317 Automated News Services, Data Services or Other Information Services
D399 Other ADP and Telecommunications Services

J. **Maintenance, Repair, Modification, Rebuilding and Installation of Goods/Equipment**

J019 Maintenance, Repair, Modification, Rebuilding and Installation of Equipment Related to Ships
J998 Non-nuclear Ship Repair

M. **Operation of Government-Owned Facilities**:

All facilities operated by the Department of Defense, Department of Energy and the National Aeronautics and Space Administration; and for all entities:

M180 Research and Development facilities

S. **Utilities**:
All Classes

V. **Transportation, Travel and Relocation Services**:
All Classes except V503 Travel Agent Services

Notes to the Schedule of the United States

1. This Chapter does not cover the procurement of any service purchased in support of military forces overseas.

Section G: Construction Services

This Chapter applies to all construction services procured by the entities listed in Sections A through D, subject to the Notes to the respective Sections, the General Notes, and the Notes to this Section.

Schedule of Colombia

Notwithstanding any other provision of this Chapter, a procuring entity of Colombia, in a procurement of construction services for the construction, maintenance, or rehabilitation of roads and highways, may apply a condition relating to the hiring of local personnel in rural areas in order to promote employment and improve living conditions in such areas.

Schedule of the United States

This Chapter does not cover the procurement of dredging services.

Section H: General Notes

Unless otherwise specified herein, the following General Notes in each Party's Schedule apply without exception to this Chapter, including to all sections of this Annex.

Schedule of Colombia

1. This Chapter does not apply to the procurements of goods or services by a Colombian entity from another Colombian entity.

2. This Chapter does not apply to the renting or acquisition of real estate.

3. This Chapter does not apply to set-asides of procurements below $125,000 on behalf of Micro, Small and Medium-sized Companies (MIPYMES). The set-asides include any form of preference, such as the exclusive right to provide a good or a service and measures conducive to facilitate the transfer of technology and sub-contracting.

4. This Chapter does not apply to procurements under programs of reintegration to civil life as a result of peace processes, to aid to persons displaced due to violence, to support those living in conflict zones, and general programs resulting from the resolution of the armed conflict.

5. This Chapter does not apply to procurements by the missions of the foreign service of the Republic of Colombia exclusively for their operation and management.

6. This Chapter does not apply to the procurement of goods required to conduct research and development services.

Schedule of the United States

1. This Chapter does not apply to set asides on behalf of small or minority businesses. Set-asides include any form of preference, such as the exclusive right to provide a good or service and price preferences.

2. Where a contract is to be awarded by an entity that is not listed in Section A, B or C, this Chapter shall not be construed to cover any good or service component of that contract.

3. This Chapter does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.

Section I: Threshold Adjustment Formula

1. The thresholds shall be adjusted at two-year intervals with each adjustment taking effect on January 1, beginning on January 1, 2008.

2. With regard to the threshold for procurement of goods and services in Section A, the United States shall calculate the U.S. dollar value for each threshold every two years, based on the U.S. inflation rate measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics, using the two-year period that ends on October 31 in the year prior to the adjustment taking effect, and using the following formula:

$$T_0 \times (1 + \Pi_i) = T_1$$

T_0 = threshold value at base period
Π_i = accumulated U.S. inflation rate for the ith two-year period
T_1 = new threshold value

3. The thresholds for procurement of goods and services by entities in Section B and List B entities in Section C and for procurement of construction services in Sections A through C are conversions into U.S. dollars of the thresholds listed in the U.S. Appendix 1 to the World Trade Organization Agreement on Government Procurement, which are set out in Special Drawing Rights (SDRs) and listed below. Every two years, the United States shall calculate adjustments of these thresholds for purposes of paragraph 1 based on an average of the daily conversion rates of the U.S. dollar in terms of SDRs, published by the IMF in its monthly "International Financial Statistics," for the two-year period preceding October 1 or November 1 of the year before the adjusted thresholds are to take effect:

(a) 355,000 SDRs for goods and services for Section B entities;

(b) 400,000 SDRs for goods and services for Section C, List B entities, paragraph 1(a)(ii); and

(c) 5 million SDRs for construction services for Section A, B, and C entities.

4. The United States shall notify Colombia of the adjusted threshold values in December of the year before the adjusted thresholds take effect.

5. Colombia shall:

(a) convert the adjusted threshold values notified by the United States under paragraph 3 into Colombian pesos based on the official conversion rate of its central bank, using the average of the daily values of its currency in terms of the U.S. dollar over the two-year period ending September 30 of the year in which the United States notifies the adjusted threshold; and

(b) promptly notify the United States of the value in its currency of the adjusted thresholds.

6. The Parties shall consult if any major change in a national currency vis-à-vis the other currency creates a significant problem with regard to the application of this Chapter.

Chapter Ten

Investment

Section A: Investment

Article 10.1: Scope and Coverage[1]

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

   (a) investors of another Party;

   (b) covered investments; and

   (c) with respect to Articles 10.9 and 10.11, all investments in the territory of the Party.

2. A Party's obligations under this Section shall apply to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party, such as the authority to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

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

Article 10.2: Relation to Other Chapters

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

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

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

Article 10.3: National Treatment

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

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect

[1] For greater certainty, nothing in this Chapter shall be construed to impose an obligation on a Party to privatize any investment that it owns or controls or to prevent a Party from designating a monopoly, provided that, if a Party adopts or maintains a measure to privatize such an investment or a measure to designate a monopoly, this Chapter shall apply to such measure.

to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

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

Article 10.4: Most-Favored-Nation Treatment

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

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

Article 10.5: Minimum Standard of Treatment[3]

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

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

Article 10.6: Treatment in Case of Strife

1. Notwithstanding Article 10.13.5(b), each Party shall accord to investors of another Party, and to covered investments, non-discriminatory treatment with respect to measures it

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[2] For greater certainty, treatment "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments" referred to in paragraphs 1 and 2 of Article 10.4 does not encompass dispute resolution mechanisms, such as those in Section B, that are provided for in international investment treaties or trade agreements.

[3] Article 10.5 shall be interpreted in accordance with Annex 10-A.

adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of another Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in accordance with Article 10.7.2 through 10.7.4, *mutatis mutandis*.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.3 but for Article 10.13.5(b).

Article 10.7: Expropriation and Compensation[4]

1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

(a) for a public purpose[5];

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law and Article 10.5.

2. The compensation referred to in paragraph 1(c) shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

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[4] Article 10.7 shall be interpreted in accordance with Annex 10-B.

[5] For greater certainty, for purposes of this article, the term "public purpose" refers to a concept in customary international law. Domestic law may express this or a similar concept using different terms, such as "public necessity," "public interest," or "public use."

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter Sixteen (Intellectual Property Rights).

Article 10.8: Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 10.6.1 and 10.6.2 and Article 10.7; and

(f) payments arising out of a dispute.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of another Party.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

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

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offenses;

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

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 10.9: Performance Requirements

1. No Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement or enforce any commitment or undertaking:[6]

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

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

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

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

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

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory;[7] or

(g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

2. No Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement:

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

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

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

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

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an

[6] For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for the purposes of paragraph 1.

[7] For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement or enforcing a commitment or undertaking to train workers in its territory, provided that such training does not require the transfer of a particular technology, production process, or other proprietary knowledge to a person in its territory.

investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraph 1(f) does not apply:

(i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.[8]

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement,

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

(iii) related to the conservation of living or non-living exhaustible natural resources.

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to procurement.

(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

Article 10.10: Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

[8] The Parties recognize that a patent does not necessarily confer market power.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.11: Investment and Environment

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Article 10.12: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of any Party, other than the denying Party, and persons of a non-Party, or of the denying Party, own or control the enterprise.

Article 10.13: Non-Conforming Measures

1. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to:

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

(i) the central level of government, as set out by that Party in its Schedule to Annex I,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3, 10.4, 10.9, or 10.10.

2. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 10.3 and 10.4 do not apply to any measure that is an exception to, or derogation from, the obligations under paragraph 8 of Article 16.1 (General Provisions) as specifically provided in that Article.

5. Articles 10.3, 10.4, and 10.10 do not apply to:

(a) procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

Article 10.14: Special Formalities and Information Requirements

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 10.3 and 10.4, a Party may require an investor of another Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Section B: Investor-State Dispute Settlement

Article 10.15: Consultation and Negotiation

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

Article 10.16: Submission of a Claim to Arbitration

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement;

and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement;

and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or

(d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

Article 10.17: Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

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

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article II of the New York Convention for an "agreement in writing;" and

(c) Article I of the Inter-American Convention for an "agreement."

Article 10.18: Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied,

(i) for claims submitted to arbitration under Article 10.16.1(a), by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 10.16.1(b), by the claimant's and the enterprise's written waivers

of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.16.1(a)) and the claimant or the enterprise (for claims brought under Article 10.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.[9]

4. (a) No claim may be submitted to arbitration:

(i) for breach of an investment authorization under Article 10.16.1(a)(i)(B) or Article 10.16.1(b)(i)(B), or

(ii) for breach of an investment agreement under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C),

if the claimant (for claims brought under 10.16.1(a)) or the claimant or the enterprise (for claims brought under 10.16.1(b)) has previously submitted the same alleged breach to an administrative tribunal or court of the respondent, or to any other binding dispute settlement procedure.

(b) For greater certainty, if a claimant elects to submit a claim of the type described in subparagraph (a) to an administrative tribunal or court of the respondent, or to any other binding dispute settlement procedure, that election shall be definitive, and the claimant may not thereafter submit the claim to arbitration under Section B.

Article 10.19: Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

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[9] In an action for interim injunctive relief described in paragraph 3 (including an action seeking to preserve evidence or property during the pendency of a dispute submitted to arbitration), a judicial or administrative tribunal of the Party that is the respondent in a dispute submitted to arbitration under Section B may apply the law of that Party, including its rules on the conflict of laws, and such rules of international law as may be applicable.

3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 10.16.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 10.16.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

Article 10.20: Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.16.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. The tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party. Each submission shall identify the author and any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the tribunal's competence, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26.[10]

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment).

[10] For greater certainty, with respect to a claim submitted under Article 10.16.1(a)(i)(C) or 10.16.1(b)(i)(C), an objection that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26 may include, where applicable, an objection provided for under the law of the respondent.

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

8. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.16. For purposes of this paragraph, an order includes a recommendation.

9. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.

(b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 10 or Annex 10-D.

10. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 10.26 in arbitrations commenced after the multilateral agreement enters into force between the Parties.

Article 10.21: Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties and make them available to the public:

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.20.2 and 10.20.3 and Article 10.25;

(d) minutes or transcripts of hearings of the tribunal, where available; and

(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 22.2 (Essential Security) or Article 22.4 (Disclosure of Information).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;

(c) a disputing party shall, at the time it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version

shall be provided to the non-disputing Parties and made public in accordance with paragraph 1; and

(d) the tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

Article 10.22: Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)(i)(B) or (C), the tribunal shall apply:

(a) the rules of law specified in the pertinent investment authorization or investment agreement, or as the disputing parties may otherwise agree; or

(b) if the rules of law have not been specified or otherwise agreed:

(i) the law of the respondent, including its rules on the conflict of laws,[11] and

(ii) such rules of international law as may be applicable.

3. A decision of the Commission declaring its interpretation of a provision of this Agreement under Article 20.1.3 (Free Trade Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

Article 10.23: Interpretation of Annexes

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an entry set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision declaring its interpretation under Article 20.1.3 (Free Trade Commission) to the tribunal within 60 days of delivery of the request.

[11] The "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 60 days, the tribunal shall decide the issue.

Article 10.24: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 10.25: Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 10.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

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

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of any Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of a Party of the claimants.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

(c) instruct a tribunal previously established under Article 10.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that

(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.16.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 10.19 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.26: Awards

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

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.16.1(b):

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

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

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A tribunal may not award punitive damages.

4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

6. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention,

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.16.3(d),

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

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

7. Each Party shall provide for the enforcement of an award in its territory.

8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 21.6 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) in accordance with Article 21.13 (Initial Report), a recommendation that the respondent abide by or comply with the final award.

9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention, or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 8.

10. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 10.27: Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-C.

Section C: Definitions

Article 10.28: Definitions

For purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes ("ICSID") established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with another Party;

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

enterprise means an enterprise as defined in Article 1.3 (Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its *Articles of Agreement*;

ICSID Additional Facility Rules means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

ICSID Convention means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, done at Washington, March 18, 1965;

Inter-American Convention means the *Inter-American Convention on International Commercial Arbitration*, done at Panama, January 30, 1975;

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

(a) an enterprise;

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

(c) bonds, debentures, other debt instruments, and loans;[12, 13]

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;[14, 15] and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

investment agreement means a written agreement[16] between a national authority[17] of a Party and a covered investment or an investor of another Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

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[12] Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

[13] Loans issued by one Party to another Party are not investments.

[14] Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

[15] The term "investment" does not include an order or judgment entered in a judicial or administrative action.

[16] "Written agreement" refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

[17] For purposes of this definition, "national authority" means an authority at the central level of government.

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

investment authorization means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of another Party; [18, 19]

investor of a non-Party means, with respect to a Party, an investor that attempts through concrete action to make, is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

national means a natural person who has the nationality of a Party according to Annex 1.3 (Country-Specific Definitions);

negotiated restructuring means the restructuring or rescheduling of a debt instrument that has been effected through (i) a modification or amendment of such debt instrument, as provided for under its terms, or (ii) a comprehensive debt exchange or other similar process in which the holders of no less than 75 percent of the aggregate principal amount of the outstanding debt under such debt instrument have consented to such debt exchange or other process.

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

non-disputing Party means a Party that is not a party to an investment dispute;

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

respondent means the Party that is a party to an investment dispute;

Secretary-General means the Secretary-General of ICSID; and

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

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[18] For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

[19] The Parties recognize that no Party has a foreign investment authority that grants investment authorizations, as of the date this Agreement enters into force.

Annex 10-A

Customary International Law

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 10.5 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Annex 10-B

Expropriation

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Article 10.7.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 10.7.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.[20]

[20] For greater certainty, the list of "legitimate public welfare objectives" in this subparagraph is not exhaustive.

Annex 10-C

Service of Documents on a Party under Section B

Colombia

Notices and other documents in disputes under Section B shall be served on Colombia by delivery to:

Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 # 13 A – 15
Bogotá D.C. - Colombia

United States

Notices and other documents in disputes under Section B shall be served on the United States by delivery to:

Executive Director (L/EX)
Office of the Legal Adviser
Department of State
Washington, D.C. 20520
United States of America

Annex 10-D

Appellate Body or Similar Mechanism

Within three years after the date of entry into force of this Agreement, the Parties shall consider whether to establish an appellate body or similar mechanism to review awards rendered under Article 10.26 in arbitrations commenced after they establish the appellate body or similar mechanism.

Annex 10-E

Special Dispute Settlement Provisions

1. Where a claimant submits a claim to arbitration alleging that a Party other than the United States has breached an obligation under Section A, other than Article 10.3 or 10.4, through the imposition of a restrictive measure with regard to payments and transfers, Section B shall apply, except as follows:

(a) The claimant may not submit any such claim to arbitration until one year after the events that give rise to the claim.

(b) Loss or damages arising from the restrictive measure on capital inflows shall be limited to the reduction in value of the transfers and shall exclude loss of profits or business and any similar consequential or incidental damages.

(c) Subparagraph (a) shall not apply to a claim that arises from restrictions on:

(i) payments or transfers on current transactions,

(ii) payments or transfers associated with equity investments, or

(iii) payments pursuant to a loan or bond,[21] provided that such payments are made in accordance with the terms and conditions of the loan or bond agreement.

(d) If the measure restricts outward payments or transfers:

(i) it shall not prevent investors from earning a market rate of return in the territory of the Party imposing the measure on any restricted assets;

(ii) the Party imposing the measure shall afford investors a reasonable opportunity to mitigate any losses arising from such measure; and

(iii) so long as the Party imposing the measure has complied with its obligations under this paragraph, the claimant may not recover any alleged opportunity costs or any similar consequential or incidental damages from forgoing alternative investments.

[21] For greater certainty, the term "payments pursuant to a loan or bond" as used in this subparagraph does not include capital account transactions relating to inter-bank loans, including loans to or from financial institutions established in the territory of the Party subject to the claim.

2. A Party may not request the establishment of a panel under Chapter Twenty-One (Dispute Settlement) relating to the imposition of a restrictive measure with regard to payments and transfers by a Party other than the United States until one year after the imposition of such measure.

Annex 10-F

Public Debt

1. The Parties recognize that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award may be made in favor of a claimant for a claim under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A) with respect to default or non-payment of debt issued by a Party unless the claimant meets its burden of proving that such default or non-payment constitutes an uncompensated expropriation for purposes of Article 10.7.1 or a breach of any other obligation under Section A.

2. No claim that a restructuring of debt issued by a Party other than the United States breaches an obligation under Section A may be submitted to, or if already submitted continue in, arbitration under Section B if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article 10.3 or 10.4.

3. Notwithstanding Article 10.16.3, and subject to paragraph 2 of this Annex, an investor of another Party may not submit a claim under Section B that a restructuring of debt issued by a Party other than the United States breaches an obligation under Section A (other than Article 10.3 or 10.4) unless 270 days have elapsed from the date of the events giving rise to the claim.

Annex 10-G

Submission of a Claim to Arbitration

1. An investor of the United States may not submit to arbitration under Section B a claim that a Party has breached an obligation under Section A either:

(a) on its own behalf under Article 10.16.1(a), or

(b) on behalf of an enterprise of a Party other than the United States that is a juridical person that the investor owns or controls directly or indirectly under Article 10.16.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of that Party.

2. For greater certainty, if an investor of the United States elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of a Party other than the United States, that election shall be definitive, and the investor may not thereafter submit the claim to arbitration under Section B.

Chapter Eleven

Cross-Border Trade in Services

Article 11.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of another Party. Such measures include measures affecting:

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

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

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of another Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. For the purposes of this Chapter, "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.

3. Articles 11.4, 11.7, and 11.8 also apply to measures by a Party affecting the supply of a service in its territory by a covered investment.[1]

4. This Chapter does not apply to:

(a) financial services as defined in Article 12.20 (Definitions), except that paragraph 3 applies where the financial service is supplied by a covered investment that is not a covered investment in a financial institution (as defined in Article 12.20) in the Party's territory;

(b) "government procurement" or "procurement", as defined in Article 1.3 (Definitions of General Application);

(c) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and

(ii) specialty air services; or

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

[1] The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B of Chapter Ten (Investment).

Annex 11-A sets forth an understanding of the Parties related to subparagraph (d).

5. This Chapter does not impose any obligation on a Party with respect to a national of another Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

6. This Chapter does not apply to services supplied in the exercise of governmental authority in a Party's territory. 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.

7. Nothing in this Chapter or any other provision of this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, including admission or conditions of admission for temporary entry.

Article 11.2: National Treatment

1. Each Party shall accord to service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service suppliers.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 11.3: Most-Favored-Nation Treatment

Each Party shall accord to service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to service suppliers of any other Party or any non-Party.

Article 11.4: Market Access

No Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

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

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

(iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test,[2] or

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

[2] This clause does not cover measures of a Party that limit inputs for the supply of services.

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 11.5: Local Presence

No Party may require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 11.6: Non-Conforming Measures

1. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to:

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

(i) the central level of government, as set out by that Party in its Schedule to Annex I,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.2, 11.3, 11.4, or 11.5.

2. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities as set out in its Schedule to Annex II.

Article 11.7: Domestic Regulation

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party's competent authorities shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 11.6.2.

2. 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, each Party shall endeavor to ensure, as appropriate for individual sectors, that such measures are:

(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.

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which each of the 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 shall coordinate on such negotiations, as appropriate.

Article 11.8: Transparency in Developing and Applying Regulations[3]

Further to Chapter Nineteen (Transparency):

(a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter;

(b) if a Party does not provide advance notice and opportunity for comment pursuant to Article 19.2 (Publication), it shall, to the extent possible, address in writing the reasons therefor;

(c) at the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, address in writing substantive comments received from interested persons with respect to the proposed regulations; and

(d) to the extent possible, each Party shall allow reasonable time between publication of final regulations and their effective date.

Article 11.9: Recognition

1. For the purposes of fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 11.3 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 another Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for another Party, if that other Party is interested, to negotiate accession to such an agreement or arrangement or to negotiate one comparable with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. No Party may accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

[3] For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria.

5. Annex 11-B (Professional Services) applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

Article 11.10: Transfers and Payments

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws relating to:

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

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

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

(d) criminal or penal offences; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 11.11: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. Subject to Article 21.4 (Consultations), a Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or of the denying Party that has no substantial business activities in the territory of that other Party.

Article 11.12: Specific Commitments

1. Annex 11-C sets out certain obligations with regard to certain limitations on the employment of specialty personnel and professionals.

2. Annex 11-D sets out obligations with regard to the supply of express delivery services.

3. Annex 11-E will set out other specific commitments that the Parties may agree.

Article 11.13: Implementation

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider other matters of mutual interest affecting trade in services.

Article 11.14: Definitions

For the purposes of this Chapter:

cross-border trade in services or **cross-border supply of services** means the supply of a service:

(a) from the territory of one Party into the territory of another Party;

(b) in the territory of one Party by a person of that Party to a person of another Party; or

(c) by a national of a Party in the territory of another Party;

but does not include the supply of a service in the territory of a Party by a covered investment;

enterprise means an "enterprise" as defined in Article 1.3 (Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise organized or constituted under the laws of that Party; and a branch located in the territory of that Party and carrying out business activities there;

professional services means services, the supply of which requires specialized[4] post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by trades-persons or vessel and aircraft crew members;

service supplier of a Party means a person of that Party that seeks to supply or supplies a service;[5] and

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.

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[4] For greater certainty, the term "specialized post-secondary education" includes education beyond the high-school level that is related to a specific area of knowledge.

[5] For the purposes of Articles 11.2 and 11.3, "services suppliers" has the same meaning as "services and service suppliers" as used in Articles II and XVII of the GATS.

Annex 11-A

The Parties understand that if a Party establishes or maintains a fund to promote development of a particular service within its territory, disbursements from such fund would be subject to the same treatment as a measure covered by Article 11.1.4(d), even when a privately owned entity is wholly or partially responsible for the administration of the fund.[6]

[6] For greater certainty, this annex does not prejudice the position of the Parties in subsidies negotiations in any other forum.

Annex 11-B

Professional Services

Development of Professional Services Standards

1. Each Party shall encourage the relevant bodies in its territory to develop mutually acceptable standards and criteria for licensing and certification of professional services suppliers and to provide recommendations on mutual recognition to the Commission.

2. The standards and criteria referred to in paragraph 1 may be developed with regard to the following matters:

(a) education – accreditation of schools or academic programs;

(b) examinations – qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;

(c) experience – length and nature of experience required for licensing;

(d) conduct and ethics – standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;

(e) professional development and re-certification – continuing education and ongoing requirements to maintain professional certification;

(f) scope of practice – extent of, or limitations on, permissible activities;

(g) local knowledge – requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and

(h) consumer protection – including alternatives to residency requirements, such as bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.

3. On receipt of a recommendation referred to in paragraph 1, the Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

Temporary Licensing

4. For mutually agreed individual professional services, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service suppliers of the other Parties.

Working Group on Professional Services

5. The Parties shall establish a Working Group on Professional Services (Working Group), comprising representatives of each Party, to facilitate the activities listed in paragraphs 1 and 4.

6. In pursuing this objective, the Working Group shall consider, as appropriate, relevant bilateral, plurilateral, and multilateral agreements relating to professional services.

7. The Working Group shall consider, for professional services generally and, as appropriate, for individual professional services, the following matters:

(a) procedures for fostering the development of mutual recognition agreements or arrangements among relevant professional bodies;

(b) the feasibility of developing model procedures for the licensing and certification of professional services providers; and

(c) other issues of mutual interest relating to the provision of professional services.

8. To facilitate the efforts of the Working Group, each Party shall consult with the relevant bodies in its territory to seek to identify professional services to which the Working Group should give consideration, giving priority to engineering and architecture services.

9. The Working Group shall report to the Commission on its progress, including with respect to any recommendations for initiatives to promote mutual recognition of standards and criteria and for temporary licensing, and on the further direction of its work, no later than 18 months after establishment of the Working Group.

10. The Working Group shall be established no later than one year after the entry into force of the Agreement.

Review

11. The Commission shall review the implementation of this Annex at least once every three years.

Temporary Licensing of Engineers

12. At its first meeting, the Working Group shall consider establishing a work program in conjunction with the relevant professional bodies in the territories of the Parties to develop procedures for the temporary licensing by the competent authorities in one Party of engineers of other Parties.

13. To this end, each Party shall consult with relevant professional bodies in its territory to obtain their recommendations on:

(a) the development of procedures for the temporary licensing of engineers of the other Parties to practice their engineering specialties in the territory of the consulting Party;

(b) the development of model procedures for adoption by the competent authorities throughout its territory to facilitate the temporary licensing of engineers of the other Parties;

(c) the engineering specialties and, as applicable, the regional jurisdictions with respect to which priority should be given in developing temporary licensing procedures; and

(d) other matters of mutual interest to the Parties relating to the temporary licensing of engineers identified by the consulting Party in such consultations.

14. Each Party shall request the relevant professional bodies in its territory to present recommendations to the Commission on the matters referred to in paragraph 13 within 18 months after the date of establishment of the Working Group.

15. Each Party shall encourage the relevant professional bodies in its territory to meet at the earliest opportunity with the relevant professional bodies located in the territory of the other Parties, with a view to cooperating in the development of joint recommendations described in paragraph 13 within 18 months of the date of establishment of the Working Group. Each Party shall request an annual report from relevant professional bodies in its territory on the progress achieved in developing those recommendations.

16. The Parties shall promptly review any recommendation under paragraph 14 or 15 to ensure its consistency with this Agreement. Based on the Commission's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

17. For purposes of this Annex, **engineers of the other Parties** means nationals of the other Parties who are licensed to supply engineering services within the territories of the other Parties.

Annex 11-C

1. Notwithstanding Article 11.1.1 and 11.1.5, this Annex applies to the limitations set forth in paragraphs 2 and 3.

2. The following limitations may be maintained or promptly renewed, except to the extent they restrict the ability of an enterprise to hire, as a dependent employee or as an independent contractor, professionals and specialty personnel of another Party on a temporary basis:

For Colombia:

(a) *Código Sustantivo del Trabajo*, 1993, Article 74 and 75[7].

(b) *Ley 18 de 1976*, Article 7.

(c) *Ley 51 de 1986*, Article 8.

(d) *Decreto 2718 de 1984*, Article 31.

(e) *Ley 685 de 2001*, *Código de Minas*, Article 253.

(f) *Ley 9 de 1974*, Articles 9 and 10.

(g) *Ley 33 de 1989*, Article 7.

(h) *Decreto 1056 de 1953*, Article 8.

(i) *Ley 22 de 1984*, Articles 9 and 10.

(j) *Decreto 2531 de 1986*, Article 30.

3. The following limitations may be maintained or promptly renewed:

For Colombia:

(a) *Decreto Ley 2324 de 1984*, Articles 99 and 101.

(b) *Código de Comercio de 1974*, Articles 1803 and 1804.

(c) *Ley 74 de 1966*, Article 7.

4. Nothing in this Annex shall be construed to limit a Party's obligations under Article 10.10 (Senior Management and Board of Directors) or Article 12.12 (Senior Management and Board of Directors).

5. For greater certainty, the limitations listed in paragraphs 2 and 3 are not inconsistent with Article 10.9 (Performance Requirements).

6. For purposes of this Annex:

professionals means natural persons employed to supply professional services;

[7] Training requirements pursuant to Article 75 of the *Código Sustantivo del Trabajo* are not necessarily a restriction on the ability of an enterprise to hire, as a dependent employee or as an independent contractor, professionals and specialty personnel of another Party.

specialty personnel means natural persons who are employed to use their expert or proprietary knowledge of an enterprise's services, equipment, techniques, or management; and may include, but are not limited to, members of licensed professions; and

temporary means for a specified period that may be up to three years, depending on the relevant Party's domestic law, which may or may not be renewable.

Annex 11-D

Express Delivery Services

1. For the purposes of this Agreement, **express delivery services** means the collection, transport, and delivery, of documents, printed matter, parcels, goods, or other items on an expedited basis while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include (i) air transport services, (ii) services supplied in the exercise of governmental authority, or (iii) maritime transport services.[8]

2. The Parties confirm their desire to maintain at least the level of market openness for express delivery services they provide on the date this Agreement is signed. If a Party considers that another Party is not maintaining such level of access, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the level of access and any related matter.

3. Each Party shall ensure that, where its monopoly supplier of postal services competes, either directly or through an affiliated company, in the supply of express delivery services outside the scope of its monopoly rights, such a supplier does not abuse its monopoly position to act in the Party's territory in a manner inconsistent with the Party's obligations under Articles 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), 11.2, 11.3, or 11.4. Further to Article 1.2 (Relation to Other Agreements), the Parties also reaffirm their rights and obligations under Article VIII of the GATS.[9]

4. Each Party confirms its intention to prevent the direction of revenues derived from monopoly postal services to confer an advantage to its own or any other competitive supplier's express delivery services.

5. Notwithstanding Article 11.1.1 and 11.1.4(d), Colombia shall not use revenues derived from the payments required under Article 24(a) and (b) of *Decreto 229* of 1995 and its amendments or successor legislation to subsidize the supply of express delivery services by the Government or a state enterprise.

6. If Colombia provides for the supply of universal postal services by a government entity or a state enterprise or by concession, it shall also provide for an independent authority to regulate the entity or enterprise and any services supplied by the entity or enterprise in competition with private service suppliers.

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[8] For greater certainty, for the United States, express delivery services do not include delivery of letters subject to the Private Express Statutes (18 U.S.C. 1693 et seq., 39 U.S.C. 601 et seq.), but do include delivery of letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters.

[9] For greater certainty, the Parties reaffirm that nothing in this Article is subject to investor-state dispute settlement pursuant to Section B of Chapter Ten (Investment).

Annex 11-E

1. If a Party maintains a measure at the central level of government:

   (a) entitling the agent, upon termination of a commercial agency contract, to a payment from the principal equivalent to a portion of the commission, royalty , or profit the agent received pursuant to the contract[10];

   (b) requiring that in the event the principal terminates a commercial agency contract without just cause or the agent terminates a contract for just cause arising from actions of the principal, the principal must provide an equitable indemnity to the agent as compensation for the agent's efforts to build the brand, the product line, or the services subject to a commercial agency contract; or

   (c) providing that a commercial agency contract creates an exclusive agency unless the contract provides otherwise;

that Party shall revise or eliminate the measure in accordance with paragraph 2 within six months after entry into force of this Agreement.

2. A Party shall:

   (a) revise a measure described in subparagraph 1(a) by making the entitlement to the payment inapplicable to the parties to a commercial agency contract;

   (b) revise a measure described in subparagraph 1(b) by making the requirement to pay the equitable indemnity inapplicable to parties that enter into a commercial agency contract, and instead, that any indemnity upon termination of the commercial agency contract by the principal without just cause, or upon termination of such a contract by the agent for just cause arising from actions of the principal, shall be determined in accordance with:

      (i) general principles of contract law (for example, costs that have not been recovered, lost profits, and detrimental reliance);[11] and, in the event that the parties expressly stipulate this,

      (ii) provisions voluntarily agreed upon by the principal and agent and set out in a commercial agency contract, to the extent consistent with applicable law; and

   (c) revise a measure described in subparagraph 1(c) by providing that a principal may contract more than one agent in a single geographic area for the same scope of activities or products, unless the commercial agency contract provides otherwise.

3. Nothing in this Annex shall prevent the continued application, to the extent required under a Party's Constitution, of a measure described in paragraph 1(a) or (c) to commercial

[10] This subparagraph does not refer to other measures that may be adopted or maintained in relation to payments associated with the termination of a contract in bad faith or in violation of the terms of the contract.

[11] The provision for damages based on the concepts set out in this clause does not constitute an equitable indemnity for purposes of paragraph 1(b).

agency contracts entered into before entry into force of legislation adopted to implement this Annex.[12]

4. A Party shall not adopt a measure described in paragraph 1.

5. For purposes of this Annex, commercial agency contract means,

   (a) for Colombia, a commercial agency contract within the meaning of Articles 1317 through 1331 of the *Código de Comercio* of Colombia; only when this contract is related to commercial goods[13]; and

   (b) for the United States, any contract in which a party agrees to distribute commercial goods for another party.

[12] In the case of Colombia, the relevant provision is Article 58 of the *Constitution Politica de Colombia*. For greater certainty, a measure described in paragraph 2(b) will apply as of the entry into force of the legislation adopted to implement that measure, to contracts entered into before that date.

[13] For purposes of this Annex,"commercial goods" includes software. This is without prejudice to the treatment of software in other contexts or in other fora.

Chapter Twelve

Financial Services

Article 12.1: Scope and Coverage

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

   (a) financial institutions of another Party;

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

   (c) cross-border trade in financial services.

2. Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

   (a) Articles 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.11 (Investment and Environment), 10.12 (Denial of Benefits), 10.14 (Special Formalities and Information Requirements), and 11.11 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

   (b) Section B (Investor-State Dispute Settlement) of Chapter Ten (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.12 (Denial of Benefits), or 10.14 (Special Formalities and Information Requirements), as incorporated into this Chapter.

   (c) Article 11.10 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 12.5.

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

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

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

except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. Annex 12.1.3(a) sets out the Parties' understanding with respect to certain activities or services described in subparagraph 3(a).

Article 12.2: National Treatment

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

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

3. For purposes of the national treatment obligations in Article 12.5.1, a Party shall accord to cross-border financial service suppliers of another Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 12.3: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party, financial institutions of another Party, investments of investors in financial institutions, and cross-border financial service suppliers of another Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of any other Party or of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of another Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded autonomously;

(b) achieved through harmonization or other means; or

(c) based upon an agreement or arrangement with another Party or a non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the relevant Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 12.4: Market Access for Financial Institutions

No Party may adopt or maintain, with respect to financial institutions of another Party or investors of another Party seeking to establish such institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

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

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

(iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical

units in the form of quotas or the requirement of an economic needs test,[1] or

(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution 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 the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

Article 12.5: Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of another Party to supply the services specified in Annex 12.5.1.

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

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of another Party and of financial instruments.

Article 12.6: New Financial Services[2]

Each Party shall permit a financial institution of another Party established in its territory to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 12.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires authorization to supply a new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

Article 12.7: Treatment of Certain Information

Nothing in this Chapter requires a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

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[1] This clause does not cover measures of a Party that limit inputs for the supply of financial services.

[2] The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to another Party to request that it authorize the supply of a financial service that is not supplied in the territory of any Party. Such application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.6.

Article 12.8: Senior Management and Boards of Directors

1. A Party may not require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. A Party may not require that more than a minority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 12.9: Non-Conforming Measures

1. Articles 12.2 through 12.5 and 12.8 do not apply to:

   (a) any existing non-conforming measure that is maintained by a Party at

      (i) the central level of government, as set out by that Party in Section A of its Schedule to Annex III (Non-Conforming Measures),

      (ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III (Non-Conforming Measures), or

      (iii) a local level of government;

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

   (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 12.2, 12.3, 12.4, or 12.8.[3]

2. Articles 12.2 through 12.5 and 12.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities as set out, in Section B of its Schedule to Annex III.

3. A non-conforming measure set out in a Party's Schedule to Annex I or II as a measure to which Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), 11.2 (National Treatment), or 11.3 (Most-Favored-Nation Treatment) does not apply shall be treated as a non-conforming measure not subject to Article 12.2 or 12.3, as the case may be, to the extent that the measure, sector, subsector, or activity set out in the non-conforming measure is covered by this Chapter.

Article 12.10: Exceptions

1. Notwithstanding any other provision of this Chapter or Chapter Ten (Investment), Fourteen (Telecommunications), or Fifteen (Electronic Commerce), including specifically Articles 14.16 (Relationship to Other Chapters), and 11.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,[4] including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or

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[3] For greater certainty, Article 12.5 does not apply to an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed on the date of entry into force of the Agreement, with Article 12.5.

[4] It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapter Ten (Investment), Fourteen (Telecommunications), or Fifteen (Electronic-Commerce), including specifically Articles 14.16 (Relationship to Other Chapters), and 11.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.9 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or under Article 10.8 (Transfers) or 11.10 (Transfers and Payments).

3. Notwithstanding Articles 10.8 (Transfers) and 11.10 (Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

Article 12.11: Transparency and Administration of Certain Measures

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in another Party's markets. Each Party commits to promote regulatory transparency in financial services.

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

3. In lieu of Article 19.2.2, each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt and the purpose of the regulations; and

(b) provide interested persons and Parties a reasonable opportunity to comment on the proposed regulations.

4. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.[5]

[5] For greater certainty, a Party may consolidate its responses to the comments received from interested persons and publish them in a separate document from that setting forth the final regulations.

5. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

6. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of financial services.

9. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

10. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of another Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

11. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

12. Annex 12.11 sets out the Parties' understanding with regard to certain provisions of this Article.

Article 12.12: Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into its territory, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such self-regulatory organization.

Article 12.13: Payment and Clearing Systems

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

Article 12.14: Expedited Availability of Insurance Services

1. The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

2. Annex 12.14 sets out certain commitments of the Parties with regard to the expedited availability of insurance services.

Article 12.15: Specific Commitments

Annex 12.15 sets out certain specific commitments by each Party.

Article 12.16: Financial Services Committee

1. The Parties hereby establish a Financial Services Committee (Committee). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.16.1.

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

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

(c) participate in the dispute settlement procedures in accordance with Article 12.19.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 12.17: Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.16.1.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of two or more Parties.

Article 12.18: Dispute Settlement

1. Section A (Dispute Settlement) of Chapter Twenty-One (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. When a Party claims that a dispute arises under this Chapter, Article 21.9 (Panel Selection) shall apply, except that:

(a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and

(b) in any other case,

(i) each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 21.8 (Qualifications of Panelists), and

(ii) if the Party complained against invokes Article 12.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the disputing Parties agree otherwise.

3. Financial services panelists shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, a disputing Party; and

(d) comply with the code of conduct to be established by the Commission.

4. Notwithstanding Article 21.15 (Non-Implementation – Suspension of Benefits), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

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

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector.

Article 12.19: Investment Disputes in Financial Services

1. Where an investor of a Party submits a claim to arbitration under Section B of Chapter Ten, (Investor-State Dispute Settlement) and the respondent invokes Article 12.10 as a defense, the following provisions shall apply:

(a) The respondent shall, within 120 days of the date the claim is submitted to arbitration under Section B of Chapter Ten (Investor-State Dispute Settlement), submit in writing to the authorities responsible for financial services for the respondent and for the Party of the claimant, as set out in Annex 12.16.1, a request for a joint determination on the issue of whether and to what extent Article 12.10 is a valid defense to the claim. The respondent shall promptly provide the tribunal, if constituted, a copy of such request. The arbitration may proceed with respect to the claim only as provided in subparagraph (d).

(b) If a non-disputing Party other than the Party of the claimant considers that it has a substantial interest in the joint determination, such non-disputing Party may request that its authorities responsible for financial services, as set out in Annex 12.16.1, be included in any consultations held with a view to making that determination. They shall be included in such consultations if the respondent and the Party of the claimant agree that the claim of substantial interest is well founded. Where the substantial interest of the non-disputing Party is based on ownership or control of the claimant by a person of the non-disputing Party, the substantial interest shall be deemed to be well founded.

(c) The authorities referred to in subparagraph (a) shall attempt in good faith to make a joint determination as described in that subparagraph. Any such joint determination shall be transmitted promptly to the disputing parties, the

Financial Services Committee, and, if constituted, to the tribunal. The joint determination shall be binding on the tribunal.

(d) If the authorities referred to in subparagraph (a), within 60 days of the date by which they have received the respondent's written request for a joint determination under that subparagraph, have not made a joint determination as described in that subparagraph, the tribunal shall decide the issue left unresolved by the authorities. The provisions of Section B of Chapter Ten (Investor-State Dispute Settlement) shall apply, except as modified by this subparagraph.

(i) In the appointment of all arbitrators not yet appointed to the tribunal, each disputing party shall take appropriate steps to ensure that the tribunal has expertise or experience as described in Article 12.18.3(a). The expertise or experience of particular candidates with respect to financial services shall be taken into account to the greatest extent possible in the appointment of the presiding arbitrator.

(ii) If, prior to the submission of the request for a joint determination in conformance with subparagraph (a), the presiding arbitrator has been appointed pursuant to Article 10.19.2, such arbitrator shall be replaced upon the request of either disputing party and the tribunal shall be reconstituted consistent with subparagraph (d)(i). If, within 30 days of the date the arbitration proceedings are resumed under subparagraph (e), the disputing parties have not agreed on the appointment of a new presiding arbitrator, the Secretary-General, on the request of a disputing party, shall appoint the presiding arbitrator consistent with subparagraph (d)(i).

(iii) The Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 12.10 is a valid defense to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for purposes of the arbitration, to take a position on Article 12.10 not inconsistent with that of the respondent.

(e) The arbitration referred to in subparagraph (a) may proceed with respect to the claim:

(i) 10 days after the date the joint determination has been received, in accordance with subparagraph (c), by the disputing parties, the Committee, and, if constituted, the tribunal, or

(ii) 10 days after the expiration of the 60-day period extended to the authorities in subparagraph (d).

2. For purposes of this Article, the definitions of the following terms set out in Article 10.28 (Definitions) are incorporated, *mutatis mutandis*: disputing parties, disputing party, respondent, and Secretary-General.

Article 12.20: Definitions

For purposes of this Chapter:

claimant means an investor of a Party that is a party to an investment dispute with another Party;

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or **cross-border supply of financial services** means the supply of a financial service:

(a) from the territory of one Party into the territory of another Party,

(b) in the territory of one Party by a person of that Party to a person of another Party, or

(c) by a national of one Party in the territory of another Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of another Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

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

(i) life,

(ii) non-life;

(b) Reinsurance and retrocession;

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

(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 transactions;

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, 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 checks, 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;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means "investment" as defined in Article 10.28 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for purposes of Chapter Ten (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 10.28 (Definitions);

investor of a Party means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective nationality;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 1.3 (Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; for greater certainty, a public entity[6] shall not be considered a designated monopoly or a state enterprise for purposes of Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises); and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; for greater certainty, a self-regulatory organization shall not be considered a designated monopoly for purposes of Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises).

[6] The Federal Deposit Insurance Corporation of the United States shall be deemed to be within the definition of public entity for purposes of Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises).

Annex 12.1.3(a)

Understanding Concerning Article 12.1.3(a)

1. The Parties understand that this Chapter applies to measures adopted or maintained by a Party relating to activities and services described in Article 12.1.3(a) only to the extent that a Party allows its financial institutions to supply such activities and services in competition with a public entity or a financial institution. The Parties further understand that this Chapter does not apply to such measures: (a) to the extent that a Party reserves such activities and services to the government, a public entity, or a financial institution and they are not supplied in competition with another financial institution, or (b) relating to those contributions with respect to which the supply of such activities or services is so reserved.

2. For greater certainty, with respect to the activities or services referred to in Article 12.1.3(a), the Parties recognize that the taking of any of the following actions is not inconsistent with this Chapter.

A Party may:

(a) designate, formally or in effect, a monopoly, including a financial institution, to supply some or all activities or services;

(b) permit or require participants to place all or part of their relevant contributions under the management of an entity other than the government, a public entity, or a designated monopoly;

(c) preclude, whether permanently or temporarily, some or all participants from choosing to have certain activities or services supplied by an entity other than the government, a public entity, or a designated monopoly; and

(d) require that some or all activities or services be supplied by financial institutions located within the Party's territory. Such activities or services may include the management of some or all contributions or the provision of annuities or other withdrawal (distribution) options using certain contributions.

3. For purposes of this Annex, "contribution" means an amount paid by or on behalf of an individual with respect to, or otherwise subject to, a plan or system described in Article 12.1.3(a).

Annex 12.5.1

Cross-Border Trade

United States

Insurance and Insurance-Related Services

1. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.20 with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and

(ii) goods in international transit; and

(b) reinsurance and retrocession, services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service in Article 12.20.

2. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in paragraph (c) of the definition of cross-border supply of financial services in Article 12.20 with respect to insurance services.

Banking and Other Financial Services (Excluding Insurance)

3. Article 12.5.1 applies only with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service,[7] and advisory and other auxiliary financial services,[8] excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.[9]

Colombia

Insurance and insurance-related services

1. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.20 with respect to:

(a) insurance of risks relating to:

[7] It is understood that, where the financial information or financial data processing referred to in paragraph 3 of this annex involves personal data, the treatment of such personal data shall be in accordance with the United States' law regulating the protection of such data.

[8] It is understood that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 12.20.

[9] It is understood that a trading platform, whether electronic or physical, does not fall within the range of services specified in paragraph 3.

(i) international maritime shipping, internationalcommercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) consultancy, risk assessment, actuarial and claims settlement services; and

(d) brokerage of insurance risks relating to subparagraphs (a) and (b).

2. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in paragraph (c) of the definition of cross-border supply of financial services in Article 12.20 with respect to services listed in paragraph 1 above.

3. Colombia's commitments in paragraphs 1 and 2 with regard to insurance risks described in subparagraphs 1(a)(i) and (ii) and brokerage of such insurance risks shall become effective four years after the entry into force of this Agreement or when Colombia has adopted and implemented the necessary modifications to its relevant legislation, whichever occurs first.

Banking and other financial services (excluding insurance)

4. Article 12.5.1 applies only with respect to:

(a) provision and transfer of financial information as referred to in subparagraph (o) of the definition of financial service in Article 12.20;

(b) financial data processing[10] and related software as referred to in subparagraph (o) of the definition of financial service in Article 12.20;[11] and

(c) advisory and other auxiliary financial services,[12] excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service in Article 12.20.

5. Notwithstanding subparagraph 4(c), in the event that, after the date of entry into force of this Agreement, Colombia allows credit reference and analysis to be supplied by cross-border financial service suppliers, it shall accord national treatment (as specified in Article 12.2.3) to cross-border financial service suppliers of the other Parties. Nothing in this commitment shall be construed to prevent Colombia from subsequently restricting or prohibiting the supply of credit reference and analysis services by cross-border financial service suppliers.

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[10] It is understood that, where the financial information or financial data processing referred to in subparagraphs (a) and (b) of this annex involve personal data, the treatment of such personal data shall be in accordance with Colombian law regulating the protection of such data.

[11] It is understood that a trading platform, whether electronic or physical, does not fall within the range of services specified in paragraph 3.

[12] It is understood that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 12.20.

Annex 12.14

Expedited Availability of Insurance Services

United States

The United States should endeavor to maintain existing opportunities or may wish to consider policies or procedures such as not requiring product approval for insurance other than insurance sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable period of time; and not imposing limitations on the number or frequency of product introductions.

Colombia

Colombia shall endeavor to maintain existing procedures or may consider adopting measures such as not requiring product approval or authorization of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable time; and not imposing limitations on the number or frequency of product introductions.

Annex 12.15

Specific Commitments

United States

Portfolio Management

1. The United States shall allow a financial institution organized outside its territory to provide the following services to a collective investment scheme located in its territory:[13]

(a) investment advice; and

(b) portfolio management services, excluding:

(i) custodial services, unless they are related to managing a collective investment scheme,

(ii) trustee services, but not excluding the holding in trust of investments by a collective investment scheme established as a trust, and

(iii) execution services, unless they are related to managing a collective investment scheme.[14]

2. Paragraph 1 is subject to Articles 12.1 and 12.5.3.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** means an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940.

Insurance Company Branches

4. Recognizing the principles of federalism under the U.S. Constitution, the history of state regulation of insurance in the United States, and the *McCarran-Ferguson Act*, the United States will work with the National Association of Insurance Commissioners (NAIC) in its review of those states that do not allow initial entry of a non-U.S. insurance company as a branch to supply life, accident, health (excluding workers compensation) insurance, non-life insurance, or reinsurance and retrocession to determine whether such entry could be provided in the future. Those states are Arkansas, Arizona, Connecticut, Georgia, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, Vermont, and Wyoming.

[13] Notwithstanding paragraph 1, a Party may require a collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme, including the assets of the collective investment scheme.

[14] Custodial and trustee services are included in the scope of this specific commitment only with respect to investments for which the primary market is outside the United States.

Colombia[15]

A. Specific Commitment Regarding Portfolio Management

1. Not later than four years after the entry into force of the Agreement, Colombia shall allow a financial institution organized either inside or outside its territory to provide the following services to a collective investment scheme located in its territory:[16]

(a) investment advice; and

(b) portfolio management services, excluding:

(i) custodial services, unless they are related to managing a collective investment scheme,

(ii) trustee services, but not excluding the holding in trust of investments by a collective investment scheme established as a trust, and

(iii) execution services, unless they are related to managing a collective investment scheme.

2. This commitment is subject to Article 12.1 and to Article 12.5.3.

3. For purposes of this commitment, **collective investment scheme** means:

(i) a *fondo común ordinario* organized in accordance with the provisions of the *Estatuto Orgánico del Sistema Financiero* and managed by a *sociedad fiduciaria* (subparagaphs 3 and 4 of paragraph 2, Article 29 of the *Estatuto Orgánico del Sistema Financiero*);

(ii) a *fondo común especial* organized in accordance with the provisions of the *Estatuto Orgánico del Sistema Financiero* and managed by a trust company (paragraph 6, Article 146 of the *Estatuto Orgánico del Sistema Financiero*);

(iii) a *fondo de valores* organized in accordance with regulations pertaining to the market for public securities and managed by a *sociedad comisionista de bolsa* (Article 7, subparagraph (g) of Law 45 of 1990 and Title 4 of Resolution 400 of 1995 issued by the *Superintendencia de Valores*);

(iv) a *fondo de inversión* organized in accordance with regulations pertaining to the market for public securities and managed by a *sociedad administradora de inversión* (Decree 384 of 1980 and Title 4 of Resolution 400 of 1995 issued by the *Superintendencia de Valores*); and

(v) a *fondo voluntario de pensiones de jubilación e invalidez*, organized in accordance with the provisions of Article 169 of the *Estatuto Orgánico del Sistema Financiero* and managed by a *sociedad fiduciaria*, an insurance company, a *Sociedad Administradora de Fondos de Pensiones y de Cesantía*,

[15] The Parties understand that Colombia is committed to opening its financial services sector gradually, pursuant to the provisions of this Chapter, in a manner that benefits consumers and is based on prudential regulation, and in accordance with the provisions of Colombia's Political Constitution, including the provisions set forth in Article 13 thereof.

[16] Notwithstanding paragraph 1, a Party may require a collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme, including the assets of the collective investment scheme.

or a *Sociedad Administradora de Fondos de Cesantía* (in accordance with Articles 29(h), 183(3), and 30(1) of the *Estatuto Orgánico del Sistema Financiero*, respectively).

B. Establishment of Bank Branches

1. Notwithstanding the inclusion of the non-conforming measures of Colombia in Section B of Annex III, in relation to Article 12.4 for banking services, no later than four years after the entry into force of this Agreement, Colombia will allow banks of another Party to establish in its territory by way of branches.

2. For that purpose, Colombia may require that the capital assigned to the branches of banks of another Party in Colombia be effectively brought into Colombia and converted into local currency, in accordance with Colombian law. The operations of branches of banks of another Party shall be limited by the capital assigned and brought into Colombia.

3. For greater certainty, Colombia may choose how to regulate branches of banks of another Party, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves, and obligations regarding risk patrimony and their investments.[17]

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[17] The Parties understand that, for this purpose, Colombia may establish the following requirements, among others:

(a) require branches to comply with the same obligations currently required or that may be required in the future of banks established under Colombian law;

(b) ensure that mechanisms exist to ensure the availability to Colombia of information pertaining to a particular bank of another Party from that Party's financial supervisory or regulatory authorities before permitting the establishment of a branch by that bank;

(c) require a bank that seeks to establish through a branch to demonstrate that it fulfills the regulatory and prudential supervision requirements in its country of origin, in accordance with international practices;

(d) require that the acts undertaken and contracts entered into in Colombia by branches of banks of another Party established in Colombia be subject to Colombian law and authorities;

(e) issue regulations for the branches referred to in this section, which may relate to the following aspects of their operation, among others: the licensing regime; accounting; the responsibility of administrators; the authorized operations, including operations with the central bank; and responsibility vis-à-vis local creditors;

(f) require that any subsequent capitalization have the same treatment as the branch's initial capital;

(g) require that, for the purposes of transactions between a branch established in Colombia and its parent company or other related companies, each one of these entities be considered as an independent institution and that, without prejudice to the foregoing, a financial institution of another Party be liable for the obligations contracted by its branch in Colombia;

(h) require the owners and representatives of branches established in Colombia to comply with the solvency and moral integrity requirements established by law in Colombia that must be complied with by the shareholders of financial entities organized in Colombia; and

(i) allow branches established in Colombia to make transfers of their net profits, provided that no deficiencies arise in the solvency margin and other capital requirements contemplated in local regulations.

C. Establishment of Insurance Company Branches

1. Notwithstanding the inclusion of the non-conforming measures of Colombia in Section B of Annex III, in relation to Article 12.4 for insurance services, no later than four years after the entry into force of this Agreement, Colombia will allow insurance companies of another Party to establish in its territory by way of branches.

2. For greater certainty, Colombia may choose how to regulate branches of insurance companies of another Party, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves,[18] and obligations regarding risk patrimony and their investments.[19]

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[18] In accordance with Decreto 2779 of 2001, an insurance company established in Colombia may currently invest up to thirty percent of the value of its portfolio that corresponds to its technical reserves in instruments issued or guaranteed by foreign entities identified in that decree, such as fixed income securities (i) issued or guaranteed by a foreign government or foreign central bank, if the sovereign debt of the country is rated as investment grade; (ii) issued or guaranteed by a multilateral credit organization; (iii) issued by foreign non-banking entities; or (iv) guaranteed or accepted by commercial banks or investment banks, but in the case of clauses (iii) and (iv), only if the issuer is located in a country the sovereign debt of which is rated as investment grade.

[19] The Parties understand that, for this purpose, Colombia may establish the following requirements, among others:

(a) require branches to comply with the same obligations currently required or that may be required in the future of insurance companies established under Colombian law;

(b) ensure that mechanisms exist to ensure the availability to Colombia of information pertaining to a particular insurance company of another Party from that Party's financial supervisory or regulatory authorities before permitting the establishment of a branch by that insurance company;

(c) require an insurance company that seeks to establish through a branch to demonstrate that it fulfills the regulatory and prudential supervision requirements in its country of origin, in accordance with international practices;

(d) require that the acts undertaken in Colombia and contracts entered into in Colombia by branches of insurance companies of another Party established in Colombia be subject to Colombian law and authorities;

(e) issue regulations for the branches referred to in this section, which may relate to the following aspects of their operation, among others: the licensing regime; accounting; the responsibility of administrators; the authorized operations, including operations with the central bank; responsibility vis-à-vis local creditors;

(f) require that any subsequent capitalization or reserve increase have the same treatment as the branch's initial capital and reserves;

(g) require that, for the purposes of transactions between a branch established in Colombia and its parent company or other related companies, each one of these entities be considered as an independent institution and that, without prejudice to the foregoing, a financial institution of another Party be liable for the obligations contracted by its branch in Colombia;

(h) require the owners and representatives of branches established in Colombia to comply with the solvency and moral integrity requirements established by law in Colombia that must be complied with by the shareholders of financial entities organized in Colombia; and

(i) allow branches established in Colombia to make transfers of their net profits, provided that there is no deficit in the investment of their technical reserves that could constitute a breach of their contractual obligations, nor a deficit in their solvency margin or technical reserves that constitutes insufficient coverage from the claims rate deviation reserve and other risks that may arise in their operation, nor a deficit in other capital requirements contemplated in local regulations.

D. Cross-Border Consumption of Insurance and Insurance-Related Services

No later than four years after the entry into force of this Agreement, Colombia will allow, in accordance with Article 12.5.2, persons located in its territory, and its nationals wherever located, to purchase any insurance service[20] from cross-border financial service suppliers of another Party located in the territory of that other Party or of any other Party[21], except for the following services:[22]

(a) those insurance services the purchase of which is mandatory under Colombian law;

(b) those insurance services the purchase of which is prohibited under Colombian law prior to purchase of insurance services described in subparagraph (a) or participation in Colombia's social security system; and

(c) all insurance services, when the policy holder, insured, or beneficiary is a Colombian government ministry, department, or agency (*entidad del Estado*).

E. Pension Fund Managers

Notwithstanding the non-conforming measure of Colombia in Annex II referring to social services, and subject to Article 12.1, including Annex 12.1.3(a), Colombia shall, with regard to *Sociedades Administradoras de Fondos de Pensiones y Cesantías*, *Sociedades Administradoras de Fondos de Pensiones*, and *Sociedades Administradoras de Fondos de Cesantías* (collectively, "SAFPs"):[23]

(1) extend the obligations of Articles 12.2.1 and 12.2.2 to the supply by SAFPs that are financial institutions of another Party established in Colombia of those activities and services described in Article 12.1.3(a) that are not reserved for supply by the government of Colombia, a public entity, or a financial institution;

(2) adopt or maintain no measure that imposes limitations on the number of SAFPs in the form of either numerical quotas or the requirements of an economic needs test, with respect to investors of another Party seeking to establish SAFPs to supply those activities and services referred to in paragraph 1;

(3) no later than four years after entry into force of the Agreement, permit SAFPs to subcontract to financial institutions of another Party established in Colombia the services

[20] For greater certainty, policies covered by paragraphs (a) and (b) of the definition of financial service in Article 12.20 (Definitions) are financial instruments, consistent with the meaning of financial instruments in Article 12.5.3 (Cross-Border Trade).

[21] For greater certainty, Colombia may, as permitted under Article 12.5.3, require cross-border financial service suppliers to provide information such as the aggregate value of premiums paid to them by persons resident in Colombia.

[22] For greater certainty, the Parties understand that Colombia may, in accordance with subparagraph 4 of Annex 12.1.3(a), prohibit the purchase from insurance companies not established in Colombia of insurance services, including all types of lifetime annuities (*renta vitalicia*), death and disability insurance (*previsionales de invalidez y sobrevivencia*), and workers compensation insurance (*riesgos profesionales*), to the extent these services are described in Article 12.1.3(a).

[23] This commitment shall also apply with regard to any successor to SAFPs, in the context of the modification or adoption by Colombia of a privatized or partially privatized retirement plan or social security system. For greater certainty, this specific commitment applies only with regard to measures within the scope of this Chapter, as specified in Articles 12.1, including Annex 12.1.3 (a).

described in Annex 12.15(A)(1)(a)-(b) (Specific Commitment Regarding Portfolio Management);

(4) no later than four years after entry into force of the Agreement, and subject to Articles 12.1 and 12.5.3, permit a financial institution organized under the laws of the United States to provide to an SAFP, with respect to those assets, if any, that are permitted under relevant Colombian law to be invested outside the territory of Colombia, (i) investment advice; (ii) execution services in fulfillment of instructions from the SAFP, to the extent required by and consistent with Colombian law; and (iii) custodial services, if applicable law does not permit those assets to be held within the territory of Colombia.[24]

[24] Nothing in paragraph 4 of this specific commitment requires Colombia to permit a financial institution organized under the laws of the United States to make investment or other management decisions regarding the investment portfolio of an SAFP or to hold custody of the assets of an SAFP absent execution instructions from the SAFP.

Annex 12.16.1

Financial Services Committee

Authorities Responsible for Financial Services

The authority of each Party responsible for financial services is:

(a) for Colombia, the Ministry of Finance and Public Credit (*Ministerio de Hacienda y Crédito Público*), in coordination with the Ministry of Commerce, Industry and Tourism (*Ministerio de Comercio, Industria y Turismo*) and the Bank of the Republic (*Banco de la República*); and

(b) for the United States, the Department of the Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance.

UNDERSTANDINGS REGARDING FINANCIAL SERVICES AND SERVICES MEASURES

November 22, 2006

The Governments of the United States of America and the Republic of Colombia confirm the following understandings regarding the United States - Colombia Trade Promotion Agreement signed this day (the "Agreement") and confirm that these understandings constitute an integral part of the Agreement. For greater certainty,

(a) nothing in Article 12.6 (New Financial Services) of the Agreement prohibits a Party from requiring the issuance of a decree, resolution, or regulation by the executive branch, regulatory agencies, or central bank, in order to authorize new financial services not specifically authorized in its law;

(b) a Party may adopt excise or other taxes levied on cross-border services to the extent such taxes are consistent with Articles 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), 12.2, and 12.3, subject to Article 22.3 (Taxation) of the Agreement;

(c) with respect to cross-border trade in financial services, and without prejudice to other means of prudential regulation, a Party may require the authorization of cross-border financial service suppliers of another Party and of financial instruments;

(d) a Party may apply solvency and integrity requirements to branches of insurance companies of another Party established in its territory, including measures requiring that capital assigned to a branch and technical reserves be effectively brought into the Party's territory and converted into local currency, in accordance with the Party's law; and

(e) without limiting the other applications or meaning of Article 12.10.2, including its final sentence, Article 12.10.2 permits a Party to apply non-discriminatory exchange rate regulations of general application to the acquisition by its residents of financial services from cross-border financial service suppliers.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA:

Chapter Thirteen

Competition Policy, Designated Monopolies, and State Enterprises

Article 13.1: Objectives

Recognizing that the conduct subject to this Chapter has the potential to restrict bilateral trade and investment, the Parties believe that proscribing such conduct, implementing economically sound competition policies, and cooperating on matters covered by this Chapter will help secure the benefits of this Agreement.

Article 13.2: Competition Law and Anticompetitive Business Conduct

1. Each Party shall adopt or maintain national competition laws that proscribe anticompetitive business conduct and promote economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.

2. Each Party shall maintain an authority responsible for the enforcement of its national competition laws. The enforcement policy of each Party's central government competition authorities is not to discriminate on the basis of the nationality of the subjects of their proceedings.

3. Each Party shall ensure that:

   (a) before it imposes a sanction or remedy against any person for violating its competition law, it affords the person the right to be heard and to present evidence, except that it may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy; and

   (b) a court or other independent tribunal established under that Party's laws imposes or, at the person's request, reviews any such sanction or remedy.

4. Each Party other than the United States may implement its obligations under this Article through Andean Community competition laws or an Andean Community enforcement authority.

Article 13.3: Cooperation

1. The Parties agree to cooperate in the area of competition policy. The Parties recognize the importance of cooperation and coordination between their respective authorities to further effective competition law enforcement in the free trade area.

2. Accordingly, the Parties shall cooperate on issues of competition law enforcement, including notification of cases that affect the important interests of another Party, consultation, and exchange of information relating to the enforcement of each Party's competition laws and policies.

Article 13.4: Working Group

The Parties shall establish a working group comprising representatives of each Party. The working group shall endeavor to promote greater understanding, communication, and cooperation between the Parties with respect to matters covered by this Chapter. The working group shall report on the status of its efforts to the Commission within three years of entry

into force of this Agreement and may make any appropriate recommendations for future action that may further promote the achievement of the objectives of this Article.

Article 13.5: Designated Monopolies

1. Recognizing that designated monopolies should not operate in a manner that creates obstacles to trade and investment, each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any government monopoly that it designates or has designated:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;

(b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d);

(c) provides non-discriminatory treatment to covered investments, to goods of another Party, and to service suppliers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.

2. Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly.

3. This Article does not apply to procurement, as defined in Article 1.3 (Definitions of General Application).

Article 13.6: State Enterprises

1. The Parties recognize that state enterprises should not operate in a manner that creates obstacles to trade and investment. In that light, each Party shall ensure that any state enterprise that it establishes or maintains:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges; and

(b) accords non-discriminatory treatment in the sale of its goods or services to covered investments.

2. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise.

Article 13.7: Differences in Pricing

The charging of different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions, is not in itself inconsistent with Articles 13.5 and 13.6.

Article 13.8: Transparency and Information Requests

1. The Parties recognize the value of transparency of government competition policies.

2. On request, each Party shall make available to another Party public information concerning its:

(a) competition law enforcement activities;

(b) state enterprises and designated monopolies, public or private, at any level of government; and

(c) export associations registered or certified as such to the central government, including any conditions the Party imposes on them.

In a request under subparagraph (b), a Party shall indicate the entities or localities involved, specify the particular goods or services and markets concerned, and include indicia of practices that may restrict trade or investment between the Parties.

In a request under subparagraph (c), a Party shall specify the particular goods or services concerned.

3. On request, each Party shall make available to the other Party public information concerning exemptions provided under its competition laws. The requesting Party shall specify the particular goods or services and markets of interest and include indicia that the exemption may restrict trade or investment between the Parties.

Article 13.9: Consultations

To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of another Party, enter into consultations. In its request, the Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the other Party.

Article 13.10: Dispute Settlement

No Party may have recourse to dispute settlement under this Agreement for any matter arising under Article 13.2, 13.3, 13.4, or 13.9.

Article 13.11: Definitions

For purposes of this Chapter:

a **delegation** includes a legislative grant, and a government order, directive, or other act, transferring to the monopoly or state enterprise, or authorizing the exercise by the monopoly or state enterprise of, governmental authority;

designate means to establish, designate, or authorize a monopoly or to expand the scope of a monopoly to cover an additional good or service, whether formally or in effect;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the central government of a Party or by another such monopoly;

in accordance with commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

market means the geographic and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and

non-discriminatory treatment means the better of national treatment and most-favored-nation treatment, as set out in the relevant provisions of this Agreement.

Chapter Fourteen

Telecommunications

Article 14.1: Scope and Coverage

1. This Chapter applies to:

   (a) measures relating to access to and use of public telecommunications services;

   (b) measures relating to obligations of suppliers of public telecommunications services;

   (c) other measures relating to public telecommunications networks or services; and

   (d) measures relating to the supply of information services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, as set out in Article 14.2, this Chapter does not apply to any measure relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

   (a) require a Party (or require a Party to compel any enterprise) to establish, construct, acquire, lease, operate, or provide telecommunications networks or services where such networks or services are not offered to the public generally;

   (b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or

   (c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third persons.

Article 14.2: Access to and Use of Public Telecommunications Services[1]

1. Each Party shall ensure that enterprises of another Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that such enterprises are permitted to:

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

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

[1] For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply any public telecommunications service within its territory.

(c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;

(d) perform switching, signaling, processing, and conversion functions; and

(e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of another Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of any Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of non-public personal data of subscribers to public telecommunications services,

provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

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

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

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

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

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

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

(c) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Party's national law or regulation.

Article 14.3: Obligations Relating to Suppliers of Public Telecommunications Services[2]

Interconnection

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of another Party at reasonable rates.

   (b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and only use such information for the purpose of providing those services.

Resale

2. Each Party shall ensure that suppliers of public telecommunications services do not impose unreasonable or discriminatory conditions or limitations on the resale of those services.

Number Portability

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions.[3]

Dialing Parity

4. Each Party shall ensure that suppliers of a particular public telecommunications service in its territory provide dialing parity to suppliers of the same public telecommunications service of the other Party and provide suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers, directory assistance, directory listing, and operator services with no unreasonable dialing delays.

Article 14.4: Additional Obligations Relating to Major Suppliers of Public Telecommunications Services[4]

Treatment by Major Suppliers

1. Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of another Party treatment no less favorable than such major

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[2] This Article is subject to Annex 14-A. Paragraphs 2 through 4 of this Article do not apply with respect to suppliers of commercial mobile services. This exclusion shall not be construed to preclude a Party from imposing the requirements set forth in this Article on suppliers of commercial mobile services.

[3] In complying with this paragraph, any Party other than the United States may take into account the economic feasibility of providing number portability.

[4] This Article is subject to Annex 14-A. Paragraph 1, subparagraph (2)(b)(iii), and paragraphs 3 through 8 of this Article do not apply with respect to major suppliers of commercial mobile services. This exclusion is without prejudice to any rights or obligations that a Party may have under the GATS and shall not be construed to preclude a Party from imposing the requirements set out in this Article on major suppliers of commercial mobile services.

suppliers accord to their subsidiaries, their affiliates, or non-affiliated service suppliers regarding:

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

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

Competitive Safeguards

2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

(b) The anti-competitive practices referred to in subparagraph (a) include in particular:

(i) engaging in anti-competitive cross-subsidization;

(ii) using information obtained from competitors with anti-competitive results; and

(iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide public telecommunications services.

Resale

3. Each Party shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable rates, to suppliers of public telecommunications services of another Party, public telecommunications services that such major suppliers provide at retail to end-users that are not suppliers of public telecommunications services; and

(b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such services.[5]

Unbundling of Network Elements

4. (a) Each Party shall provide its telecommunications regulatory body or other relevant body the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services.

(b) Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain such elements, in accordance with its law or regulations.

[5] Where provided in its law or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

Interconnection

5. (a) General Terms and Conditions

Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of another Party:

(i) at any technically feasible point in the major suppliers' networks;

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(iii) of a quality no less favorable than that provided by such major suppliers for their own like services, for like services of non-affiliated service suppliers, or for their subsidiaries or other affiliates;

(iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

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

(b) Options for Interconnecting with Major Suppliers

Each Party shall ensure that suppliers of public telecommunications services of another Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

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

(ii) the terms and conditions of an interconnection agreement in force; or

(iii) through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require major suppliers in its territory to make publicly available reference interconnection offers or other standard interconnection offers containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of public telecommunications services.

(d) Public Availability of Procedures for Interconnection Negotiations

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

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

(i) Each Party shall require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body.[6]

(ii) Each Party shall make publicly available interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in its territory.

Provisioning and Pricing of Leased Circuits Services

6. (a) Each Party shall ensure that major suppliers in its territory provide enterprises of another Party leased circuits services that are public telecommunications services on terms and conditions, and at rates that are reasonable and non-discriminatory.

(b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer leased circuits services that are public telecommunications services to enterprises of another Party at capacity-based, cost-oriented prices.

Co-location

7. (a) Subject to subparagraphs (b) and (c), each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of another Party physical co-location of equipment necessary for interconnection on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

(b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide an alternative solution, such as facilitating virtual co-location, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

(c) Each Party may specify in its law or regulations which premises are subject to subparagraphs (a) and (b).

Access to Poles, Ducts, Conduits, and Rights-of-way

8. Each Party shall ensure that major suppliers in its territory afford access to poles, ducts, conduits, and rights-of-way owned or controlled by such major suppliers to suppliers of public telecommunications services of another Party on terms and conditions, and at rates, that are reasonable and non-discriminatory.

Article 14.5: Submarine Cable Systems

Each Party shall ensure that any enterprise that it authorizes to operate a submarine cable system in its territory as a public telecommunications service accords reasonable and non-discriminatory treatment with respect to access to that system (including landing facilities) to suppliers of public telecommunications services of another Party.

[6] In the United States, this obligation may be satisfied by requiring filing with a regulatory authority at the regional level.

Article 14.6: Conditions for the Supply of Information Services

1. No Party may require an enterprise in its territory that it classifies as a supplier of information services[7] and that supplies those services over facilities that it does not own to:

(a) supply those services to the public generally;

(b) cost-justify its rates for those services;

(c) file a tariff for those services;

(d) connect with any particular customer for the supply of those services; or

(e) conform with any particular standard or technical regulation for connecting to any network, other than a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of a supplier of information services that the Party has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

Article 14.7: Independent Regulatory Bodies and Government-owned Telecommunications Suppliers

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

3. No Party may accord more favorable treatment to a supplier of public telecommunications services or to a supplier of information services than that accorded to a like supplier of another Party on the basis that the supplier receiving more favorable treatment is owned, wholly or in part, by the central level of government of the Party.

Article 14.8: Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to maintain and shall administer those obligations in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 14.9: Licenses and Other Authorizations

1. Where a Party requires a supplier of public telecommunications services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:

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[7] For purposes of applying this Article, each Party may classify which services in its territory are information services.

(a) all applicable licensing or authorization criteria and procedures;

(b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and

(c) the terms and conditions of all licenses or authorizations it has issued.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

Article 14.10: Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequencies are not measures that are *per se* inconsistent with Article 11.4 (Market Access), either as it applies to cross-border trade in services or, through the operation of Article 11.1.3 (Scope and Coverage), to a covered investment of another Party. Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided that it does so in a manner that is consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for non-government telecommunications services, each Party shall endeavor to rely on an open and transparent public comment process that considers the overall public interest. Each Party shall endeavor to rely generally on market-based approaches in assigning spectrum for terrestrial non-government telecommunications services.

Article 14.11: Enforcement

Each Party shall provide its competent authority with the authority to enforce compliance with the Party's measures relating to the obligations set out in Articles 14.2 through 14.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses or other authorizations.

Article 14.12: Resolution of Telecommunications Disputes

Further to Articles 19.4 (Administrative Proceedings) and 19.5 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies

(a) (i) Enterprises of another Party may seek review by a telecommunications regulatory body or other relevant body to resolve disputes regarding the Party's measures relating to a matter set out in Articles 14.2 through 14.5.

(ii) Suppliers of public telecommunications services of another Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period after the supplier requests interconnection, by a telecommunications regulatory body[8] to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier.

Reconsideration

(b) Any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider[9] that determination or decision. No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.[10]

Judicial Review

(c) Any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain judicial review of such determination or decision by an independent judicial authority. An application for judicial review shall not constitute grounds for non-compliance with such a determination or decision unless stayed by the relevant judicial body.

Article 14.13: Transparency

Further to Articles 19.2 (Publication) and 19.3 (Notification and Provision of Information), each Party shall ensure that:

(a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;

(b) interested persons are provided, to the extent possible, with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and

(c) its measures relating to public telecommunications services are made publicly available, including measures relating to:

(i) tariffs and other terms and conditions of service;

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[8] The United States may comply with this obligation by providing for review by a regulatory authority at the regional level.

[9] With respect to the obligations of a Party other than the United States under this subparagraph, enterprises may not petition for reconsideration of rulings of general application, as defined in Article 19.6 (Definitions), unless provided for under its law and regulation.

[10] Notwithstanding this subparagraph, in Colombia, if a petition for reconsideration is filed, the determination or decision of the telecommunications regulatory body will not become effective pending the outcome of the reconsideration. Petitions for reconsideration shall be ruled upon promptly.

(ii) procedures relating to judicial and other adjudicatory proceedings;

(iii) specifications of technical interfaces;

(iv) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;

(v) conditions for attaching terminal or other equipment to the public telecommunications network; and

(vi) notification, permit, registration, or licensing requirements, if any.

Article 14.14: Flexibility in the Choice of Technologies

No Party may prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests.

Article 14.15: Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may forbear from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

(a) enforcement of that regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of that regulation is not necessary for the protection of consumers; and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

Article 14.16: Relationship to Other Chapters

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

Article 14.17: Definitions

For purposes of this Chapter:

co-location (physical) means physical access to and control over space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a major supplier to supply public telecommunications services;

commercial mobile services means public telecommunications services supplied through mobile wireless means;

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

dialing parity means the ability of an end-user to use an equal number of digits to access a particular public telecommunications service, regardless of the public telecommunications service supplier chosen by such end-user;

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

enterprise means an "enterprise" as defined in Article 1.3 (Definitions of General Application) and includes a branch of an enterprise;

enterprise of another Party means both an enterprise constituted or organized under the law of another Party and an enterprise owned or controlled by a person of another Party;

essential facilities means facilities of a public telecommunications network or service that:

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

(b) cannot feasibly be economically or technically substituted in order to supply a service;

information service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choosing;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities or

(b) use of its position in the market;

network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of such facility or equipment;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers without impairment of quality, reliability, or convenience when switching between like suppliers of public telecommunications services;

private network means a telecommunications network that is used exclusively for intra-enterprise communications;

public telecommunications network means telecommunications infrastructure which a Party requires to provide public telecommunications services between defined network termination points;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, *inter alia*, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, but does not include information services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means;

telecommunications regulatory body means a national body responsible for the regulation of telecommunications; and

user means an end-user or a supplier of public telecommunications services.

Annex 14-A

Rural Telephone Suppliers - Colombia

1. Colombia may designate and exempt a rural telephone company that has at least 80 percent of its total fixed subscriber lines in operation in rural areas from the obligations contained in paragraphs 2 through 4 of Article 14.3 and the obligations of Article 14.4. The total number of subscriber lines supplied by a rural telephone company includes all subscriber lines supplied by the company and by its owners, subsidiaries, and affiliates.

2. Colombia may exempt service suppliers that supply public telecommunications services in rural areas from the obligations contained in paragraphs 2 through 4 of Article 14.3 and from the obligations contained in paragraphs 3, 4, 6, and 7 of Article 14.4. Any exemption is applicable only with respect to the public telecommunications services supplied in rural areas.

3. For purposes of this Chapter, a rural area in Colombia is defined as a municipality with a total number of installed fixed lines of 4,500 or less.

4. The combined areas that Colombia designates as rural areas may not contain more than ten percent of the total number of fixed subscriber lines installed in its territory.

5. Nothing in this Annex shall be construed to preclude Colombia from imposing the requirements set out in Articles 14.3 and 14.4 on a rural telephone supplier.

Rural Telephone Suppliers – United States

1. A regulatory authority at the regional level in the United States may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the *Communications Act of 1934*, as amended, from the obligations contained in paragraphs 2 through 4 of Article 14.3 and from the obligations contained in Article 14.4.

2. Article 14.4 does not apply to the United States with respect to a rural telephone company, as defined in section 3(37) of the *Communications Act of 1934*, as amended, unless a regulatory authority at the regional level orders that the requirements described in that Article be applied to the company.

Chapter Fifteen

Electronic Commerce

Article 15.1: General

1. The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce.

2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes or other internal charges on the domestic sale of digital products, provided that such taxes or charges are imposed in a manner consistent with this Agreement.

Article 15.2: Electronic Supply of Services

For greater certainty, the Parties affirm that measures affecting the supply of a service delivered or performed electronically fall within the scope of the obligations contained in the relevant provisions of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), and Twelve (Financial Services), subject to any exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.

Article 15.3: Digital Products

1. No Party may apply customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.

2. For purposes of determining applicable customs duties, each Party shall determine the customs value of an imported carrier medium bearing a digital product based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.

3. No Party may accord less favorable treatment to some digital products than it accords to other like digital products:

(a) on the basis that

(i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory, or

(ii) the author, performer, producer, developer, or distributor of such digital products is a person of another Party or a non-Party, or

(b) so as otherwise to afford protection to other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.

4. (a) No Party may accord less favorable treatment to digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of another Party than it accords to like digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party.

(b) No Party may accord less favorable treatment to digital products whose author, performer, producer, developer, or distributor is a person of another Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.

5. Paragraphs 3 and 4 do not apply to measures adopted or maintained in accordance with Articles 10.13 (Non-Conforming Measures), 11.6 (Non-Conforming Measures), and 12.9 (Non-Conforming Measures).

Article 15.4: Transparency

Each Party shall publish or otherwise make publicly available its laws, regulations, and other measures of general application that pertain to electronic commerce.

Article 15.5: Consumer Protection

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.

2. The Parties recognize the importance of cooperation between their respective national consumer protection agencies on activities related to cross-border electronic commerce in order to enhance consumer protection.

Article 15.6: Authentication

No Party may adopt or maintain legislation for electronic authentication that would:

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

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

Article 15.7: Paperless Trade Administration

1. Each Party shall endeavor to make all trade administration documents available to the public in electronic form.

2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such documents.

Article 15.8: Definitions

For purposes of this Chapter:

authentication means the process or act of establishing the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

carrier medium means any physical object designed principally for use in storing a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes, but is not limited to, an optical medium, a floppy disk, or a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically;[1]

electronic transmission or **transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means; and

trade administration documents means forms that a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

[1] For greater certainty, digital products do not include digitized representations of financial instruments, including money.

Chapter Sixteen

Intellectual Property Rights

Article 16.1: General Provisions

1. Each Party shall, at a minimum, give effect to this Chapter.

International Agreements

2. Each Party shall ratify or accede to the following agreements by the date of entry into force of this Agreement:

(a) the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974);

(b) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended in 1980;

(c) the *WIPO Copyright Treaty* (1996); and

(d) the *WIPO Performances and Phonograms Treaty* (1996).

3. Each Party shall ratify or accede to the following agreements by January 1, 2008, or the date of entry into force of this Agreement, whichever is later:

(a) the *Patent Cooperation Treaty* (1970), as amended in 1979;

(b) the *Trademark Law Treaty* (1994); and

(c) the *International Convention for the Protection of New Varieties of Plants* (1991) (UPOV Convention).

4. Except as otherwise provided in Annex 16.1, each Party shall make all reasonable efforts to ratify or accede to the following agreements:

(a) the *Patent Law Treaty* (2000);

(b) the *Hague Agreement Concerning the International Registration of Industrial Designs* (1999); and

(c) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989).

5. Nothing in this Chapter shall be construed to prevent a Party from adopting measures necessary to prevent anticompetitive practices that may result from the abuse of the intellectual property rights set forth in this Chapter, provided that such measures are consistent with this Chapter.

6. Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations under the TRIPS Agreement and intellectual property agreements concluded or administered under the auspices of the World Intellectual Property Organization (WIPO) to which they are party.

More Extensive Protection and Enforcement

7. A Party may, but shall not be obliged to, implement in its domestic law more extensive protection and enforcement of intellectual property rights than is required under this Chapter, provided that such protection and enforcement do not contravene this Chapter.

National Treatment

8. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals[1] of the other Parties treatment no less favorable than it accords to its own nationals with regard to the protection[2] and enjoyment of such intellectual property rights and any benefits derived from such rights.

9. A Party may derogate from paragraph 8 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter and is not applied in a manner that would constitute a disguised restriction on trade.

10. Paragraph 8 does not apply to procedures provided in multilateral agreements to which the Parties are party concluded under the auspices of the WIPO in relation to the acquisition or maintenance of intellectual property rights.

Application of this Agreement to Existing Subject Matter and Prior Acts

11. Except as it provides otherwise, including in Article 16.7.2, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

12. Except as otherwise provided in this Chapter, including Article 16.7.2, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in the Party where the protection is claimed.

13. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Transparency

14. Further to Article 19.2 (Publication), and with the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights shall be in writing and shall be published,[3] or where publication is not practicable made

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[1] For purposes of Articles 16.1.8, 16.1.9, 16.3.1, and 16.6.4, a **national of a Party** shall also mean, in respect of the relevant right, an entity located in such Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Articles 16.1.2 through 16.1.4 and the TRIPS Agreement.

[2] For purposes of this paragraph, "protection" includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for purposes of this paragraph, "protection" also includes the prohibition on circumvention of effective technological measures set out in Article 16.7.4 and the rights and obligations concerning rights management information set out in Article 16.7.5.

[3] For greater certainty, a Party may satisfy the requirement to publish a law, regulation, or procedure by making it available to the public on the Internet.

publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

Article 16.2: Trademarks

1. No Party shall require, as a condition of registration, that signs be visually perceptible, nor may a Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or a scent.

2. Each Party shall provide that trademarks shall include collective and certification marks. Each Party shall also provide that signs that may serve, in the course of trade, as geographical indications may constitute certification or collective marks.[4]

3. In view of the obligations of Article 20 of the TRIPS Agreement, each Party shall ensure that its measures mandating the use of the term customary in common language as the common name for a good or service ("common name") including, *inter alia*, requirements concerning the relative size, placement, or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such good or service.[5]

4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion.

5. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

6. Article 6*bis* of the *Paris Convention for the Protection of Industrial Property* (1967) shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

7. In determining whether a trademark is well known, no Party shall require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services. For greater certainty, the sector of the public that normally deals with the relevant goods or services is determined according to each Party's domestic law.

8. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) a requirement to provide to the applicant a communication in writing, which may be electronic, of the reasons for a refusal to register a trademark;

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[4] **Geographical indications** means indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication. The term "originating" in this Chapter does not have the meaning ascribed to that term in Article 1.3 (Definitions of General Application).

[5] For greater certainty, the existence of such measures does not, *per se*, amount to impairment.

(b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;

(c) an opportunity for interested parties to petition to oppose a trademark application or to seek cancellation of a trademark after it has been registered; and

(d) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

9. Each Party shall provide:

(a) a system for the electronic application for, and electronic processing, registration, and maintenance of, trademarks;[6] and

(b) a publicly available electronic database, including an online database, of trademark applications and registrations.

10. Each Party shall provide that:

(a) each registration or publication that concerns a trademark application or registration and that indicates goods or services shall indicate the goods or services by their names, grouped according to the classes of the classification established by the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1979), as revised and amended (Nice Classification); and

(b) goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

11. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than ten years.

12. No Party may require recordation of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes.[7]

Article 16.3: Geographical Indications

1. If a Party provides the means to apply for protection or petition for recognition of geographical indications, through a system of protection of trademarks or otherwise, it shall accept those applications and petitions without the requirement for intercession by a Party on behalf of its nationals, and shall:

(a) process applications or petitions, as the case may be, for geographical indications with a minimum of formalities;

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[6] For greater certainty, such a system will be established according to each Party's domestic law.

[7] Nothing in this paragraph prevents a Party from requesting the presentation of evidence of a license for informational purposes.

(b) make its regulations governing filing of such applications or petitions, as the case may be, readily available to the public;

(c) provide that applications or petitions, as the case may be, for geographical indications are published for opposition, and shall provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel a registration resulting from an application or a petition; and

(d) provide that measures governing the filing of applications or petitions for geographical indications set out clearly the procedures for these actions. Such procedures shall include contact information sufficient for applicants or petitioners, as the case may be, to obtain specific procedural guidance regarding the processing of applications and petitions.

2. Each Party shall provide that grounds for refusing protection or recognition of a geographical indication include the following:

(a) the geographical indication is likely to cause confusion with a trademark that is the subject of a good-faith pending application or registration; and

(b) the geographical indication is likely to cause confusion with a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law.

Article 16.4: Domain Names on the Internet

1. In order to address the problem of trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy (1999).

2. Each Party shall require that the management of its ccTLD provide online public access to a reliable and accurate database of contact information on domain-name registrants.

Article 16.5: Copyrights

1. Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations under the *Berne Convention for the Protection of Literary and Artistic Works* (Berne Convention).

2. Each Party shall provide that authors[8] have the right to authorize or prohibit[9] all reproductions of their works, in any manner or form, permanent or temporary (including temporary storage in electronic form).

3. Each Party shall provide to authors the right to authorize the making available to the public of the original and copies[10] of their works through sale or other transfer of ownership.

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[8] References in this Chapter to "authors" include any successors in interest.

[9] With respect to copyrights in this Chapter, a right to authorize or prohibit, or a right to authorize, means an exclusive right.

[10] The expressions "copies" and "original and copies," being subject to the right of distribution under this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects.

4. Without prejudice to Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis*(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

5. Each Party shall provide that, where the term of protection of a work (including a photographic work) is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) on a basis other than the life of a natural person, the term shall be

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, or

(ii) failing such authorized publication within 50 years from the creation of the work, not less than 70 years from the end of the calendar year of the creation of the work.

6. Ownership of copyright in an artistic or literary work shall vest initially in the author or authors of the work.

Article 16.6: Related Rights

1. Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations under the *WIPO Performances and Phonograms Treaty* (1996).

2. Each Party shall provide that performers and producers of phonograms[11] have the right to authorize or prohibit[12] all reproductions of their performances[13] and phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form).

3. Each Party shall provide to performers and producers of phonograms the right to authorize the making available to the public of the original and copies[14] of their performances and phonograms through sale or other transfer of ownership.

4. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms to the performers and producers of phonograms who are nationals of another Party and to performances or phonograms first published or first fixed in the territory of a Party. A performance or phonogram shall be considered first published in the territory of a Party in which it is published within 30 days of its original publication.[15]

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[11] References in this Chapter to "performers" and "producers of phonograms" include any successors in interest.

[12] With respect to related rights in this Chapter, a right to authorize or prohibit, or a right to authorize, means an exclusive right.

[13] With respect to related rights in this Chapter, a "performance" refers to a performance fixed in a phonogram unless otherwise specified.

[14] The expressions "copies" and "original and copies," being subject to the right of distribution under this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects.

[15] For purposes of this Article and Article 16.7, fixation includes the finalization of the master tape or its equivalent.

5. Each Party shall provide to performers the right to authorize or prohibit (a) the broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast performance; and (b) the fixation of their unfixed performances.

6. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding subparagraph (a) and Article 16.7.8, the application of this right to analog transmissions and free over-the-air broadcasts, and exceptions or limitations to this right for such activity, shall be a matter of each Party's law.

(c) Any limitations to this right in respect of other noninteractive transmissions shall be in accordance with Article 16.7.8 and shall not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.

7. Each Party shall provide that, where the term of protection of a performance or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of that person and 70 years after that person's death; and

(b) on a basis other than the life of a natural person, the term shall be

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the performance or phonogram, or

(ii) failing such authorized publication within 50 years from the creation of the performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the performance or phonogram.

8. For purposes of this Article and Article 16.7, the following definitions apply with respect to performers and producers of phonograms:

(a) **broadcasting** means the transmission by wireless means or satellite to the public of sounds or sounds and images, or of the representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; "broadcasting" does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;

(b) **communication to the public** of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For purposes of paragraph 6, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public;

(c) **fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(d) **performers** means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(e) **phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

(f) **producer of a phonogram** means the person who, or the legal entity which, takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

(g) **publication** of a performance or a phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the rightholder, and provided that copies are offered to the public in reasonable quantity.

Article 16.7: Obligations Common to Copyright and Related Rights

1. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

2. Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to the subject matter, rights, and obligations in Articles 16.5 through 16.7.

3. Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right in a work, performance, or phonogram:

(a) may freely and separately transfer that right by contract; and

(b) by virtue of a contract, including contracts of employment underlying performances, the production of phonograms, and the creation of works, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.

4. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:

(i) circumvents without authority any effective technological measure that controls access to a protected work, performance, or phonogram; or

(ii) manufactures, imports, distributes, offers to the public, provides or otherwise traffics in devices, products, or components, or offers to the public or provides services, that:

(A) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure;

(B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

(C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure,

shall be liable and subject to the remedies set out in Article 16.11.15. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

(b) **Effective technological measure** means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, or phonogram, or protects any copyright or any rights related to copyright.

(c) In implementing subparagraph (a), no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such product does not otherwise violate any measures implementing subparagraph (a).

(d) Each Party shall provide that a violation of a measure implementing this paragraph is a separate civil or criminal offense, independent of any infringement that might occur under the Party's law on copyright and related rights.

(e) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to the activities below and in subparagraph (f), which shall be applied to relevant measures in accordance with subparagraph (g):

(i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

(ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance or display of a work, performance, or phonogram, and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and

analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;

(iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate on-line content in a technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii);

(iv) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;

(v) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram, not otherwise available to it, for the sole purpose of making acquisition decisions; and

(vi) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the on-line activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work.

(f) Noninfringing uses of a work, performance, or phonogram, in a particular class of works, performances, or phonograms, provided that any exception or limitation adopted in reliance on this subparagraph shall be based on the existence of substantial evidence, as found in a legislative or administrative proceeding, of an actual or likely adverse impact on those noninfringing uses; and provided further that a review of such finding, conducted in an administrative or legislative proceeding, shall be completed at intervals of not more than four years to determine whether there still exists substantial evidence of an actual or likely adverse impact on those noninfringing uses.

(g) The exceptions and limitations to measures implementing subparagraph (a) for the activities set forth in subparagraphs (e) and (f) may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) measures implementing subparagraph (a)(i) may be subject to exceptions and limitations with respect to each activity set forth in subparagraphs (e) and (f);

(ii) measures implementing subparagraph (a)(ii), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in subparagraphs (e)(i), (ii), (iii), and (iv); and

(iii) measures implementing subparagraph (a)(ii), as they apply to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (e)(i).

(h) Each Party may provide exceptions to any measure implementing the prohibitions referred to in subparagraph (a) for lawfully authorized investigative, protective, information security or intelligence activity carried

out by government employees, agents or contractors. For the purposes of this paragraph, the term "information security" means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

5. In order to provide adequate and effective legal remedies to protect rights management information:

(a) Each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or

(iii) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to the remedies set out in Article 16.11.15. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

(b) To the extent a Party adopts exceptions and limitations to measures implementing subparagraph (a), such exceptions and limitations shall be confined to lawfully authorized investigative, protective, information security or intelligence activity carried out by government employees, agents, or contractors. For the purposes of this paragraph, the term "information security" means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system or computer network.

(c) **Rights management information** means:

(i) information that identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;

(ii) information about the terms and conditions of the use of the work, performance, or phonogram; or

(iii) any numbers or codes that represent such information,

when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram, to the public.

6. Each Party shall issue appropriate laws, orders, regulations, or administrative or executive decrees mandating that its agencies use computer software only as authorized by the right holder. These measures shall actively regulate the acquisition and management of software for government use.

7. The Parties recognize the important role that collective management societies with voluntary membership can play in appropriate cases by facilitating, in a transparent manner, the collection and distribution of royalties.

8. With respect to Articles 16.5 through 16.7, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

9. Notwithstanding Articles 16.7.8 and 16.6.6(b), no Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.

10. No Party may subject the enjoyment and exercise of the rights of authors, performers, and producers of phonograms provided for in this Chapter to any formality.

Article 16.8: Protection of Encrypted Program-Carrying Satellite Signals

1. Each Party shall make it a criminal offense:

   (a) to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

   (b) willfully to receive or further distribute a program-carrying signal that originated as an encrypted satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.

Article 16.9: Patents

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. For the purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as being synonymous with the terms "non-obvious" and "useful," respectively.

2. Nothing in this Chapter shall be construed to prevent a Party from excluding inventions from patentability as set out in Articles 27.2 and 27.3 of the TRIPS Agreement. Notwithstanding the foregoing, a Party that does not provide patent protection for plants by the date of entry into force of this Agreement shall undertake all reasonable efforts to make such patent protection available consistent with paragraph 1. Any Party that provides patent protection for plants or animals on or after the date of entry into force of this Agreement shall maintain such protection.

3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. Without prejudice to Article 5.A(3) of the Paris Convention, each Party shall provide that a patent may be revoked or nullified only on grounds that would have justified a refusal to grant the patent according to its laws. However, a Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for revoking, nullifying, or holding a patent unenforceable.

5. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical product or agricultural chemical product, that Party shall provide that any product produced under such authority shall not be made, used, sold, offered for sale, or imported in the territory of that Party other than for purposes related to generating information to meet requirements for approval to market the product once the patent expires, and if the Party permits exportation, the product shall only be exported outside the territory of that Party for purposes of meeting marketing approval requirements of that Party.

6. (a) Each Party shall make best efforts to process patent applications and marketing approval applications expeditiously with a view to avoiding unreasonable delays. The Parties shall cooperate and provide assistance to one another to achieve these objectives.

(b) Each Party shall provide the means to and shall, at the request of the patent owner, compensate for unreasonable delays in the issuance of a patent, other than a patent for a pharmaceutical product, by restoring patent term or patent rights. Each Party may provide the means to and may, at the request of the patent owner, compensate for unreasonable delays in the issuance of a patent for a pharmaceutical product by restoring patent term or patent rights. Any restoration under this subparagraph shall confer all of the exclusive rights of a patent subject to the same limitations and exceptions applicable to the original patent. For purposes of this subparagraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.

(c) With respect to any pharmaceutical product that is covered by a patent, each Party may make available a restoration of the patent term or patent rights to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the marketing approval process related to the first commercial marketing of the product in that Party. Any restoration under this subparagraph shall confer all of the exclusive rights of a patent subject to the same limitations and exceptions applicable to the original patent.

7. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure (a) was made or authorized by, or derived from, the patent applicant, and (b) occurred within 12 months prior to the date of filing of the application in the territory of the Party.

8. Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations in connection with their applications. Each Party

shall provide that no amendment or correction shall introduce new matter into the disclosure of the invention as filed in the original application.

9. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be carried out by a person skilled in the art, without undue experimentation, as of the filing date and may require the applicant to indicate the best mode for carrying out the invention known to the inventor as of the filing date.

10. With the aim of ensuring that the claimed invention is sufficiently described, each Party shall provide that a claimed invention is sufficiently supported by its disclosure if the disclosure reasonably conveys to a person skilled in the art that the applicant was in possession of the claimed invention as of the filing date.

11. Each Party shall provide that a claimed invention is industrially applicable if it has a specific, substantial, and credible utility.[16]

Article 16.10: Measures Related to Certain Regulated Products[17]

Agricultural Chemical Products

1. (a) If a Party requires or permits, as a condition of granting marketing approval for a new agricultural chemical product, the submission of information concerning safety or efficacy of the product, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the Party, authorize another to market a same or a similar product based on:

   (i) the safety or efficacy information submitted in support of the marketing approval; or

   (ii) evidence of the marketing approval,

   for at least ten years from the date of marketing approval in the territory of the Party.

   (b) If a Party requires or permits, in connection with granting marketing approval for a new agricultural chemical product, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval in the other territory, the Party shall not, without the consent of a person that previously submitted the safety or efficacy information to obtain marketing approval in another territory, authorize another to market a same or a similar product based on:

   (i) the safety or efficacy information submitted in support of the prior marketing approval in the other territory; or

   (ii) evidence of prior marketing approval in the other territory,

   for at least ten years from the date of marketing approval of the new product in the territory of the Party. In order to receive protection under this

[16] For greater certainty, this paragraph is without prejudice to paragraphs 1 and 2.

[17] For greater certainty, the references in Article 16.13.2 to "this Chapter" include this Article 16.10.

subparagraph, a Party may require that the person providing the information in the other territory seek approval in the territory of the Party within five years after obtaining marketing approval in the other territory.

(c) For purposes of this Article, a new agricultural chemical product is one that contains a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

Pharmaceutical Products

2. (a) If a Party requires, as a condition for approving the marketing of a pharmaceutical product that utilizes a new chemical entity, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data are protected against unfair commercial use.

(b) Each Party shall provide that for data subject to subparagraph (a) that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence or bioavailability studies.

(c) Where a Party relies on a marketing approval granted by the other Party, and grants approval within six months of the filing of a complete application for marketing approval filed in the Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.

(d) A Party need not apply the provisions of subparagraphs (a), (b), and (c) with respect to a pharmaceutical product that contains a chemical entity that has been previously approved in the territory of the Party for use in a pharmaceutical product.

(e) Notwithstanding subparagraphs (a), (b), and (c), a Party may take measures to protect public health in accordance with:

(i) the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) (the "Declaration");

(ii) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration and in force between the Parties; and

(iii) any amendment of the TRIPS Agreement to implement the Declaration that enters into force with respect to the Parties.

3. Each Party shall provide:

(a) procedures, such as judicial or administrative proceedings, and remedies, such as preliminary injunctions or equivalent effective provisional measures, for the expeditious adjudication of disputes concerning the validity or infringement of a patent with respect to patent claims that cover an approved pharmaceutical product or its approved method of use;

(b) a transparent system to provide notice to a patent holder that another person is seeking to market an approved pharmaceutical product during the term of a patent covering the product or its approved method of use; and

(c) sufficient time and opportunity for a patent holder to seek, prior to the marketing of an allegedly infringing product, available remedies for an infringing product.

4. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on evidence of safety or efficacy information of a product that was previously approved, such as evidence of prior marketing approval in the territory of the Party or in another territory, the Party may implement the provisions of paragraph 3 by:

(a) implementing measures in its marketing approval process to prevent such other persons from marketing a product covered by a patent claiming the product or its approved method of use during the term of that patent, unless by consent or acquiescence of the patent owner;[18] and

(b) providing that the patent owner shall be informed of the identity of any such other person who requests marketing approval to enter the market during the term of a patent identified to the approving authority as covering that product;

provided that the Party also provides:

(c) an expeditious administrative or judicial procedure in which the person requesting marketing approval can challenge the validity or applicability of the identified patent; and

(d) effective rewards for a successful challenge of the validity or applicability of the patent.[19]

General Provisions

5. Subject to paragraph 2(e), when a product is subject to a system of marketing approval in the territory of a Party pursuant to paragraph 1 or 2 and is also covered by a patent in the territory of that Party, the Party shall not alter the term of protection that it provides pursuant to paragraph 1 or 2 in the event that the patent protection terminates on a date earlier than the end of the term of protection specified in paragraph 1 or 2.

[18] For greater certainty, the Parties recognize that this provision does not imply that the marketing approval authority should make patent validity or infringement determinations.

[19] A Party may comply with clause (d) by providing a period of marketing exclusivity for the first applicant to successfully challenge the validity or applicability of the patent.

Article 16.11: Enforcement of Intellectual Property Rights

General Obligations

1. Each Party understands that procedures and remedies set forth in this Article for enforcement of intellectual property rights are established in accordance with the principles of due process that each Party recognizes and the foundations of its own legal system.

2. Each Party shall provide that final judicial decisions and administrative rulings of general applicability pertaining to the enforcement of intellectual property rights shall be in writing and shall state any relevant findings of fact and the reasoning or the legal basis on which the decisions or rulings are based. Each Party shall also provide that such decisions or rulings shall be published[20] or, where publication is not practicable, otherwise made available to the public, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

3. Each Party shall publicize information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal systems, including any statistical information that the Party may collect for such purposes.

4. This Article does not create for the Parties any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general; or

(b) with respect to the distribution of resources for enforcement of intellectual property rights and the enforcement of law in general.

The Parties understand that a decision that a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter.

5. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner is the right holder in the work, performance, or phonogram as designated.[21] Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter.

Civil and Administrative Procedures and Remedies

6. Each Party shall make available to right holders[22] civil judicial procedures concerning the enforcement of any intellectual property right.

7. Each Party shall provide that:

(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder:

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[20] A Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

[21] For greater certainty, the Parties recognize that this provision does not address the allocation of rights among the right holders.

[22] For purposes of this Article, "right holder" includes federations and associations as well as exclusive licensees and other duly authorized licensees having the legal standing and authority to assert such rights. "Licensee" shall include the licensee of any one or more of the exclusive intellectual property rights.

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; and

(ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement and that are not taken into account in computing the amount of the damages referred to in clause (i); and

(b) in determining the amount of damages for infringement of intellectual property rights, its judicial authorities shall consider, *inter alia*, the value of the infringed-on good or service, according to the suggested retail price or other legitimate measure of value submitted by the right holder.

8. In civil judicial proceedings, each Party shall, at least with respect to infringement concerning copyright or related rights and trademark counterfeiting, establish or maintain pre-established damages, which shall be available on the election of the right holder as an alternative to actual damages. Such pre-established damages shall be set out in domestic law and determined by the judicial authorities, taking into account the aims of the intellectual property system, in an amount sufficient to compensate the right holder for the harm caused by the infringement and constitute a deterrent to future infringements.[23]

9. Each Party shall provide that its judicial authorities, except in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of copyright or related rights and trademark infringement, that the prevailing party shall be awarded payment of court costs or fees and reasonable attorney's fees by the losing party.

10. In civil judicial proceedings concerning copyright and related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, any related materials and implements, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

11. Each Party shall provide that:

(a) in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional circumstances;

(b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements; and

(c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

[23] For greater certainty, the Parties understand that the damages set forth in this paragraph do not constitute punitive damages.

12. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution, and to provide this information to the right holder.[24]

13. Each Party shall provide that the judicial authorities shall have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and their channels of distribution. Each Party shall provide that its judicial authorities shall have the authority to impose sanctions, in appropriate cases, on a party to a proceeding that fails to abide by valid orders issued by such authorities.

14. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures conform to principles equivalent in substance to those set out in this Chapter.

15. Each Party shall provide for civil remedies concerning the acts described in Articles 16.7.4 and 16.7.5. Available civil remedies shall include at least:

(a) provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;

(b) the opportunity for the right holder to elect between actual damages (plus any profits attributable to the prohibited activity not taken into account in computing those damages) or pre-established damages as provided in paragraph 8;

(c) payment to the prevailing right holder at the conclusion of civil judicial proceedings of court costs and fees, and reasonable attorney's fees, by the party engaged in the prohibited conduct; and

(d) destruction of devices and products found to be involved in the prohibited activity, at the discretion of the judicial authorities, as provided in subparagraphs (a) and (b) of paragraph 11.

No Party may make damages under this paragraph available against a nonprofit library, archive, educational institution, or public broadcasting entity that sustains the burden of proving that it was not aware and had no reason to believe that its acts constituted a prohibited activity.

16. In civil judicial proceedings concerning the enforcement of intellectual property rights, each Party shall provide that its judicial authorities shall have the authority to order a party to desist from an infringement, in order, *inter alia*, to prevent the entry into the channels of commerce in the jurisdiction of those authorities of imported goods that involve the infringement of an intellectual property right immediately after customs clearance of such goods, or to prevent their exportation.

17. In the event that a Party's judicial or other authorities appoint technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties to the litigation bear the costs of such experts, the Party should seek to

[24] For greater certainty, this provision does not apply to the extent that it would conflict with constitutional, common law, or statutory privilege.

ensure that such costs are closely related, *inter alia*, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

Provisional Measures

18. Each Party shall act on requests for relief *in audita altera parte* and execute such requests expeditiously according to its rules of judicial procedure.

19. Each Party shall provide that its judicial authorities shall have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

Special Requirements Related to Border Measures

20. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods,[25] into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures.

21. Each Party shall provide that the competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademarked goods, or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that such security may be in the form of a bond conditioned to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

22. Where its competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant its competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

23. Each Party shall provide that its competent authorities may initiate border measures *ex officio* with respect to merchandise for importation, exportation, or in transit, without the need

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[25] For purposes of paragraphs 20 through 25:

(a) **counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and

(b) **pirated copyright goods** means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

for a formal complaint from a private party or right holder. Such measures shall be used when there is reason to believe or suspect that such merchandise is counterfeit or pirated.

24. Each Party shall provide that goods that have been determined by its competent authorities to be pirated or counterfeit shall be destroyed, pursuant to a judicial order where required, unless the right holder consents to an alternate disposition. Counterfeit trademark goods may, in appropriate cases, be donated to charity for use outside the channels of commerce, when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized to permit the exportation of counterfeit or pirated goods, nor shall they be authorized to permit such goods to be subject to other customs procedures, except in exceptional circumstances.

25. When a Party establishes, in relation to border measures to obtain the enforcement of an intellectual property right, an application fee or merchandise storage fee, such fee shall not be set at an amount that unreasonably deters recourse to these measures.

Criminal Procedures and Remedies

26. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. Willful copyright or related rights piracy on a commercial scale includes:

(a) significant willful copyright or related rights infringements that have no direct or indirect motivation of financial gain; and

(b) willful infringements for purposes of commercial advantage or private financial gain.

Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities subject to criminal penalties to the same extent as the trafficking or distribution of such goods in domestic commerce.

27. Specifically, each Party shall provide:

(a) remedies that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the monetary incentive of the infringer. Each Party shall encourage its judicial authorities to impose fines at levels sufficient to provide a deterrent to future infringements;[26]

(b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements that have been used in the commission of the offense, any assets traceable to the infringing activity,[27] and any documentary evidence relevant to the offense. Each Party shall provide that items that are subject to seizure pursuant to any such judicial order need not be individually identified so long as they fall within general categories specified in the order;

[26] For greater certainty, this provision is without prejudice to the autonomy of the judicial authorities.

[27] For greater certainty, each Party recognizes that such authority may be provided under its general domestic criminal law.

(c) that its judicial authorities have the authority to order, among other measures, the forfeiture of any assets traceable to the infringing activity[25] and shall, except in exceptional cases, order the forfeiture and destruction of all counterfeit or pirated goods, and, at least with respect to willful copyright or related rights piracy, order the forfeiture and destruction of materials and implements that have been used in the creation of infringing goods. Each Party shall further provide that such forfeiture and destruction shall occur without compensation of any kind to the defendant; and

(d) that its authorities may initiate legal action *ex officio* with respect to the offenses described in this Chapter, without the need for a formal complaint by a private party or right holder.

28. Each Party shall also provide for criminal procedures and penalties to be applied in the following cases, even absent willful trademark counterfeiting or copyright piracy:

(a) knowing trafficking in counterfeit labels affixed or designed to be affixed to a phonogram, a copy of a computer program, documentation or packaging for a computer program, or a copy of a motion picture or other audiovisual work; and

(b) knowing trafficking in counterfeit documentation or packaging for a computer program.

Limitations on Liability for Service Providers

29. For the purpose of providing enforcement procedures that permit effective action against any act of copyright infringement covered under this Chapter, including expeditious remedies to prevent infringements and criminal and civil remedies, each Party shall provide, consistent with the framework set out in this Article:

(a) legal incentives for service providers to cooperate with copyright[28] owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth in this subparagraph (b).[29]

(i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions, and shall be confined to those functions:[30]

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[28] For purposes of this paragraph, "copyright" shall also include related rights.

[29] For greater certainty, the failure of a service provider to qualify for the limitations in subparagraph (b) does not itself result in liability. Furthermore, subparagraph (b) is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

[30] Each Party may request consultations with another Party to consider how to address under this paragraph functions of a similar nature that a Party identifies after the date of entry into force of this Agreement.

(A) transmitting, routing, or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;

(B) caching carried out through an automatic process;

(C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and

(D) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

(ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).

(iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) through (vii).

(iv) With respect to functions referred to in clause (i)(B), the limitations shall be conditioned on the service provider:

(A) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;

(B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available;

(C) not interfering with technology consistent with industry standards accepted in the Party's territory used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

(v) With respect to functions referred to in clauses (i)(C) and (D), the limitations shall be conditioned on the service provider:

(A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

(B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix); and

(C) publicly designating a representative to receive such notifications.

(vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:

(A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(B) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary, provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice of the court order proceedings referred to in this subparagraph and an opportunity to appear before the judicial authority.

(ix) For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures for effective notifications of claimed

infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.

(xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(xii) For purposes of the function referred to in clause (i)(A), **service provider** means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, and for purposes of the functions referred to in clauses (i)(B) through (D) **service provider** means a provider or operator of facilities for online services or network access.

Article 16.12: Promotion of Innovation and Technological Development

1. The Parties recognize the importance of promoting technological innovation, disseminating technological information, and building technological capacity, including, as appropriate, through collaborative scientific research projects between or among the Parties. Accordingly, the Parties will seek and encourage opportunities for science and technology cooperation and identify areas for such cooperation and, as appropriate, engage in collaborative scientific research projects.

2. The Parties shall give priority to collaborations that advance common goals in science, technology, and innovation and support partnerships between public and private research institutions and industry. Any such collaborative activities or transfer of technology shall be based on mutually agreed terms.

3. Each Party shall designate a contact point to facilitate the development of collaborative projects from the following offices responsible for science and technology cooperation, which shall review periodically the state of collaboration through mutually agreed means of communication:

(a) in the case of Colombia, the *Instituto Colombiano para el Desarollo de la Ciencia y la Tecnología "Francisco José de Caldas"* (COLCIENCIAS); and

(b) in the case of the United States, Office of Science and Technology Cooperation, Bureau of Oceans, and International Environmental and Scientific Affairs, U.S. Department of State;

or their successors.

Article 16.13: Understandings Regarding Certain Public Health Measures

1. The Parties affirm their commitment to the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2).

2. The Parties have reached the following understandings regarding this Chapter.

(a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all.

(b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilization of the TRIPS/health solution.

(c) With respect to the aforementioned matters, if an amendment of the TRIPS Agreement enters into force with respect to the Parties and a Party's application of a measure in conformity with that amendment violates this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the amendment.

Article 16.14: Final Provisions

1. Except as otherwise provided in Annex 16.1 and Article 16.1.3 and 16.1.4, each Party shall give effect to this Chapter on the date of entry into force of this Agreement.

2. A Party may delay giving effect to certain provisions of this Chapter as specified in Annex 16.1.

3. The Parties shall periodically review the implementation and operation of this Chapter and shall have the opportunity to undertake further negotiations to modify any of its provisions, including, as appropriate, consideration of an improvement in a Party's level of economic development.

Annex 16.1

Colombia

1. Colombia shall ratify or accede to the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989) by January 1, 2009.

2. Colombia may delay giving effect to certain provisions of this Chapter for no longer than the periods in this paragraph, beginning on the date of entry into force of this Agreement:

(a) with respect to Articles 16.2.9, 16.11.23, 16.11.28, and 16.11.29, one year;

(b) with respect to Article 16.11.8, 18 months;

(c) with respect to Article 16.9.6(b), two years;

(d) with respect to Articles 16.7.5(a)(ii) and 16.11.15, as it relates to enforcement of Article16.7.5(a)(ii), 30 months; and

(e) with respect to Articles 16.7.4(a)(ii), 16.7.4(g), 16.7.4(h), and 16.11.15, as it relates to the enforcement of Articles 16.7.4(a)(ii), 16.7.4(g), and 16.7.4(h), three years.

Chapter Seventeen

Labor

Article 17.1: Statement of Shared Commitments

1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO).

Article 17.2: Fundamental Labor Rights

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)* (ILO Declaration):[1] [2]

(a) freedom of association;

(b) the effective recognition of the right to collective bargaining;

(c) the elimination of all forms of compulsory or forced labor;

(d) the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and

(e) the elimination of discrimination in respect of employment and occupation.

2. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations implementing paragraph 1 in a manner affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with a fundamental right set out in that paragraph.

Article 17.3: Enforcement of Labor Laws

1. (a) A Party shall not fail to effectively enforce its labor laws, including those it adopts or maintains in accordance with Article 17.2.1, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.

(b) A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter. Each Party retains the right to the reasonable exercise of discretion and to *bona fide* decisions with regard to the allocation of resources between labor enforcement activities among the fundamental labor rights enumerated in Article 17.2.1, provided the exercise of such discretion and such decisions are not inconsistent with the obligations of this Chapter.[3]

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1 The obligations set out in Article 17.2, as they relate to the ILO, refer only to the ILO Declaration.

2 To establish a violation of an obligation under Article 17.2.1 a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation, or practice in a manner affecting trade or investment between the Parties.

3 For greater certainty, a Party retains the right to exercise reasonable enforcement discretion and to make *bona fide* decisions regarding the allocation of enforcement resources with respect to labor laws other than those relating to fundamental rights enumerated in Article 17.2.1.

2. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

Article 17.4: Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a legally recognized interest in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals, as provided in the Party's law.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent and, to this end, each Party shall ensure that:

(a) such proceedings comply with due process of law;

(b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;

(c) the parties to such proceedings are entitled to support or defend their respective positions including by presenting information or evidence; and

(d) such proceedings do not entail unreasonable charges, or time limits, or unwarranted delays.

3. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

(a) in writing and state the reasons on which the decisions are based;

(b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

(c) based on information or evidence in respect of which the parties to the proceedings were offered the opportunity to be heard.

4. Each Party shall provide, as appropriate, that parties to such proceedings have the right to seek review and, where warranted, correction of final decisions issued in such proceedings.

5. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

6. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws. Such remedies may include measures such as orders, fines, penalties, or temporary workplace closures.

7. Each Party shall promote public awareness of its labor laws, including by:

(a) ensuring the availability of public information related to its labor laws and enforcement and compliance procedures; and

(b) encouraging education of the public regarding its labor laws.

Article 17.5: Institutional Arrangements

1. The Parties hereby establish a Labor Affairs Council (Council) comprising cabinet-level or equivalent representatives of the Parties, who may be represented on the Council by their deputies or high-level designees.

2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary. The Council shall:

(a) oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation and Capacity Building Mechanism established under Article 17.6;

(b) develop general guidelines for consideration of communications referred to in paragraph 5(c);

(c) prepare reports, as appropriate, on matters related to the implementation of this Chapter and make such reports available to the public;

(d) endeavor to resolve matters referred to it under Article 17.7.4; and

(e) perform any other functions as the Parties may agree.

3. All decisions of the Council shall be taken by consensus, and shall be made public unless the Council otherwise decides.

4. Unless the Council otherwise decides, each of its meetings shall include a session at which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

5. Each Party shall designate an office within its labor ministry or equivalent entity that shall serve as a contact point with the other Parties and with the public. The contact points of each Party shall meet as often as they consider necessary or at the request of the Council. Each Party's contact point shall:

(a) assist the Council in carrying out its work, including coordination of the Labor Cooperation and Capacity Building Mechanism;

(b) cooperate with the other Parties' contact points and with relevant government organizations and agencies to:

(i) establish priorities, with a particular emphasis on the issues identified in paragraph 2 of Annex 17.6, regarding cooperative activities on labor matters,

(ii) develop specific cooperative and capacity-building activities according to such priorities,

(iii) exchange information on the labor laws and practices of each Party, including best practices and ways to improve them, and

(iv) seek support, as appropriate, from international organizations such as the ILO, the Inter-American Development Bank, the World Bank, and the Organization of American States, to advance common commitments regarding labor matters;

(c) provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to this Chapter and make such communications available to the other Party and, as appropriate, to the public; and

(d) provide for the receipt of cooperative consultation requests referred to in Article 17.7.1 and 17.7.4.

6. Each Party shall review communications received under paragraph 5(c) in accordance with domestic procedures.

7. Each Party may convene a new, or consult an existing, national labor advisory or consultative committee comprising representatives of its labor and business organizations and other members of its public to provide views on any issues related to this Chapter.

Article 17.6: Labor Cooperation and Capacity Building Mechanism

1. Recognizing that cooperation on labor issues plays an important role in advancing development in the territory of the Parties and in enhancing opportunities to improve labor standards, and to further advance common commitments regarding labor matters, including the principles embodied in the ILO Declaration and *ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)*, the Parties hereby establish a Labor Cooperation and Capacity Building Mechanism, as set out in Annex 17.6. This Mechanism shall operate in a manner that respects each Party's law and sovereignty.

2. The Parties shall strive to ensure that the activities undertaken through that Mechanism:

(a) are consistent with each Party's national programs, development strategies, and priorities;

(b) provide opportunities for public participation in the development and implementation of such activities; and

(c) take into account each Party's economy, culture, and legal system.

Article 17.7: Cooperative Labor Consultations

1. A Party may request cooperative labor consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 17.5.5.

2. The cooperative labor consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation related to the matter, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.

4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the Parties.[4]

5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

6. If the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 21.4 (Consultations) or a meeting of the Commission under Article 21.5 (Intervention of the Commission) and, as provided in Chapter Twenty-One (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may inform the Commission of how the Council has endeavored to resolve the matter through consultations.

7. No Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

Article 17.8: Definitions

For purposes of this Chapter:

labor laws means a Party's statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

(a) freedom of association;

(b) the effective recognition of the right to collective bargaining;

(c) the elimination of all forms of forced or compulsory labor;

(d) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;

(e) the elimination of discrimination in respect of employment and occupation; and

(f) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party; and

statutes and regulations and **statutes or regulations** means:

for the United States, acts of Congress or regulations promulgated pursuant to acts of Congress that are enforceable by action of the central level of government and, for purposes of this Chapter, includes the Constitution of the United States.

[4] For purposes of paragraphs 4, 5, and 6, the Council shall consist of the cabinet-level representatives of the consulting Parties or their high-level designees.

Annex 17.6

Labor Cooperation and Capacity Building Mechanism

1. Coordination and Oversight

The Council shall oversee the implementation of the Mechanism and, through each Party's contact point designated pursuant to Article 17.5.5, coordinate its activities.

2. Cooperation and Capacity Building Priorities

The Parties' contact points shall carry out the work of the Mechanism by developing and pursuing bilateral or regional cooperation activities on labor issues, which may include, but need not be limited to:

(a) *fundamental rights at work and their effective application*: cooperation on law and practice related to implementation and public awareness of the principles and rights contained in the ILO Declaration:

(i) freedom of association and the effective recognition of the right to collective bargaining,

(ii) elimination of all forms of forced or compulsory labor,

(iii) the effective abolition of child labor, and

(iv) the elimination of discrimination in respect of employment and occupation;

(b) *worst forms of child labor*: programs or other cooperation to promote compliance with ILO Convention 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor;

(c) *labor administration*: activities aimed at strengthening the institutional capacity of labor administrations and labor tribunals, especially professionalization of personnel and training, including with respect to technological skills;

(d) *labor inspectorates*: activities to improve labor law enforcement and compliance, including training and initiatives to strengthen and improve the efficiency of labor inspection systems;

(e) *alternative dispute resolution*: initiatives aimed at establishing and strengthening alternative dispute resolution mechanisms for labor disputes;

(f) *labor relations*: forms of cooperation to improve social dialogue among workers, employers, and governments, ensure productive labor relations, and contribute to efficiency and productivity in the workplace;

(g) *occupational safety and health*: forms of cooperation to improve preventive measures and reduce hazardous conditions in the workplace and measures to promote best practices and compliance with statutes and regulations;

(h) *working conditions*: forms of cooperation to increase public awareness and develop innovative methods for supervising compliance with statutes and

regulations pertaining to hours of work, minimum wages, and overtime, and other conditions of work;

(i) *migrant workers*: mechanisms and best practices to protect and promote the rights and welfare of migrant workers of the Parties, including joint efforts with relevant organizations and dissemination of information regarding labor rights of migrant workers in each Party's territory;

(j) *social assistance and training*: programs for social assistance, skills development, training, and worker adjustment, as well as other relevant programs;

(k) *technology and information exchange*: programs to exchange information and share experiences on methods to improve productivity, on the promotion of best labor practices, and on the effective use of technologies, including those that are Internet-based;

(l) *labor statistics:* development of methods for the Parties to generate comparable labor market statistics in a timely manner, including improvement of data collection systems;

(m) *employment opportunities*: development of programs to promote new employment opportunities and workforce modernization, including employment services;

(n) *gender*: development of programs on gender issues, including the elimination of discrimination in respect of employment and occupation;

(o) *best labor practices*: dissemination of information and promotion of best labor practices, including corporate social responsibility, that enhance competitiveness and worker welfare; and

(p) *issues related to small, medium, and micro-enterprises, and artisans*: promotion of fundamental rights at work, improvement of working conditions, competitiveness, and productivity levels, and public awareness of relevant laws.

3. Implementation of Cooperative Activities

The Parties shall use any means they deem appropriate to carry out activities pursued under paragraph 2, including:

(a) technical assistance programs, including by providing human, technical, and material resources, as appropriate;

(b) exchange of official delegations, professionals, and specialists, including through study visits and other technical exchanges;

(c) exchange of information on standards, regulations, procedures, and best practices;

(d) exchange or development of pertinent studies, publications, and monographs;

(e) joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;

(f) development of joint research projects, studies, and reports, whereby expertise from independent specialists may be solicited;

(g) exchanges on technical labor matters, including through the use of expertise from academic institutions and other similar entities; and

(h) exchanges on technology issues, including information systems.

4. Public Participation

In identifying areas for labor cooperation and capacity building and in carrying out cooperative activities, each Party shall consider the views of its worker and employer representatives, as well as the views of other members of the public.

Chapter Eighteen

Environment

Objectives

Recognizing that each Party has sovereign rights and responsibilities with respect to its natural resources, the objectives of this Chapter are to contribute to the Parties' efforts to ensure that trade and environmental policies are mutually supportive, to promote the optimal use of resources in accordance with the objective of sustainable development, and to strive to strengthen the links between the Parties' trade and environmental policies and practices, which may take place through environmental cooperation and collaboration.

Article 18.1: Levels of Protection

Recognizing the sovereign right of each Party to establish its own levels of domestic environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall strive to ensure that those laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve its respective levels of environmental protection.

Article 18.2: Environmental Agreements[1]

A Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the multilateral environmental agreements listed in Annex 18.2 ("covered agreements").[2]

Article 18.3: Enforcement of Environmental Laws

1. (a) A Party shall not fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.

   (b) (i) The Parties recognize that each Party retains the right to exercise prosecutorial discretion and to make decisions regarding the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws and all laws, regulations, and other measures to fulfill a Party's obligations under the covered agreements, a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable, articulable, *bona fide* exercise of such discretion, or results from a reasonable, articulable, *bona fide* decision regarding the allocation of such resources.

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[1] To establish a violation of Article 18.2 a Party must demonstrate that the other Party has failed to adopt, maintain, or implement laws, regulations, or other measures to fulfill an obligation under a covered agreement in a manner affecting trade or investment between the Parties.

[2] For purposes of Article 18.2: (1) "covered agreements" shall encompass those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which both Parties are party; and (2) a Party's "obligations" shall be interpreted to reflect, *inter alia,* existing and future reservations, exemptions, and exceptions applicable to it under the relevant agreement.

(ii) The Parties recognize the importance of the covered agreements. Accordingly, where a course of action or inaction relates to laws, regulations, and other measures to fulfill its obligations under covered agreements, that shall be relevant to a determination under clause (i) regarding whether an allocation of resources is reasonable and *bona fide*.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws in a manner affecting trade or investment between the Parties.

3. Paragraph 2 shall not apply where a Party waives or derogates from an environmental law pursuant to a provision in law providing for waivers or derogations, provided that the waiver or derogation is not inconsistent with the Party's obligations under a covered agreement.

4. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.

Article 18.4: Procedural Matters

1. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws, and that each Party's competent authorities shall give such requests due consideration in accordance with its law.

2. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to provide sanctions or remedies for violations of its environmental laws.

(a) Such proceedings shall be fair, equitable, and transparent and, to this end, shall comply with due process of law, and be open to the public except where the administration of justice otherwise requires.

(b) Tribunals that conduct or review such proceedings shall be impartial and independent and shall not have any substantial interest in the outcome of the matter.

3. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter shall have appropriate access to the proceedings referred to in paragraph 2.

4. Each Party shall provide persons with a legally recognized interest under its law in a particular matter appropriate and effective access to remedies for violations of that Party's environmental laws or for violations of a legal duty under that Party's law relating to the environment or environmental conditions affecting human health, which may include rights such as:

(a) to sue another person under that Party's jurisdiction for damages under that Party's laws;

(b) to seek injunctive relief where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person subject to that Party's jurisdiction;

(c) to seek sanctions or remedies such as monetary penalties, emergency closures, temporary suspension of activities, or orders to mitigate the consequences of such violations; or

(d) to request a tribunal to order that Party's competent authorities to take appropriate action to enforce its environmental laws in order to protect the environment or to avoid environmental harm.

5. Each Party shall provide appropriate and effective sanctions or remedies for violations of that Party's environmental laws that:

(a) take into consideration, as appropriate, the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and

(b) may include administrative, civil, and criminal remedies and sanctions, such as compliance agreements, penalties, fines, imprisonment, injunctions, closure of facilities, or requirements to take remedial action or pay for the cost of containing or cleaning up pollution.

Article 18.5: Mechanisms to Enhance Environmental Performance

1. The Parties recognize that flexible, voluntary, and incentive-based mechanisms can contribute to the achievement and maintenance of environmental protection, complementing the procedures set out in Article 18.4, as appropriate, and in accordance with its law and policy, each Party shall encourage the development and use of such mechanisms, which may include:

(a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:

(i) partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific organizations,

(ii) voluntary guidelines for environmental performance, or

(iii) voluntary sharing of information and expertise among authorities, interested parties, and the public concerning: methods for achieving high levels of environmental protection, voluntary environmental auditing and reporting, ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or

(b) incentives, including market-based incentives where appropriate, to encourage conservation, restoration, sustainable use, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for exchanging permits or other instruments to help achieve environmental goals.

2. As appropriate and feasible and in accordance with its law, each Party shall encourage:

(a) the maintenance, development, or improvement of performance goals and standards used in measuring environmental performance; and

(b) flexible means to achieve such goals and meet such standards.

Article 18.6: Environmental Affairs Council

1. The Parties hereby establish an Environmental Affairs Council (Council). Each Party shall designate a senior level official with environmental responsibilities to represent it on the Council and an office in its appropriate ministry or government entity to serve as its contact point for carrying out the work of the Council.

2. The Council shall:

(a) consider and discuss the implementation of this Chapter;

(b) provide periodical reports to the Free Trade Commission regarding the implementation of this Chapter;

(c) provide for public participation in its work, including by:

(i) establishing mechanisms to exchange information and discuss matters related to the implementation of this Chapter with the public,

(ii) receiving and considering input in setting the agenda for Council meetings, and

(iii) receiving public views and comments on the issues the public considers relevant to the Council's work and requesting public views and comments on the issues the Council considers relevant to its work;

(d) consider and discuss the implementation of the environmental cooperation agreement (ECA) signed by the Parties, including its work program and cooperative activities, and submit any comments and recommendations, including comments and recommendations received from the public, to the Parties and to the Environmental Cooperation Commission established under the ECA;

(e) endeavor to resolve matters referred to it under Article 18.12.4; and

(f) perform any other functions as the Parties may agree.

3. The Council shall meet within the first year after the date of entry into force of this Agreement and annually thereafter, unless the Parties otherwise agree.

4. All decisions of the Council shall be taken by consensus except as provided in Article 18.9.2 and 18.9.7. All decisions of the Council shall be made public, unless the Council decides otherwise.

5. Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members have an opportunity to meet with the public to discuss matters related to the implementation of this Chapter.

Article 18.7: Opportunities for Public Participation

1. Each Party shall promote public awareness of its environmental laws by ensuring that information is available to the public regarding its environmental laws, enforcement, and compliance procedures, including procedures for interested persons to request a Party's competent authorities to investigate alleged violations of its environmental laws.

2. Each Party shall seek to accommodate requests from persons of any Party for information or to exchange views regarding the Party's implementation of this Chapter.

3. Each Party shall provide for the receipt of written submissions from persons of that Party that concern matters related to the implementation of specific provisions of this Chapter. A Party shall respond in writing, except for good cause, to each such submission that states that it is made pursuant to this Article. Each Party shall make such submissions and responses available to the public in a timely and easily accessible manner.

4. Each Party shall convene a new, or consult an existing, national consultative or advisory committee, comprising persons of the Party with relevant experience, including experience in business and environmental matters. Each Party shall solicit the committee's views on matters related to the implementation of this Chapter including, as appropriate, on issues raised in submissions the Party receives pursuant to this Article.

5. Each Party shall solicit public views on matters related to the implementation of this Chapter including, as appropriate, on issues raised in submissions it receives and shall make such views it receives in writing available to the public in a timely and easily accessible manner.

6. Each time it meets, the Council shall consider input received from each Party's consultative or advisory committee concerning implementation of this Chapter. After each meeting, the Council shall provide the public a written summary of its discussions on these matters and shall, as appropriate, provide recommendations to the Environmental Cooperation Commission on such matters.

Article 18.8: Submissions on Enforcement Matters

1. Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body (secretariat) that the Parties designate.[3]

2. The secretariat may consider a submission under this Article if the secretariat finds that the submission:

(a) is in writing in either English or Spanish;

(b) clearly identifies the person making the submission;

(c) provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based and identification of the environmental laws of which the failure to enforce is asserted;

(d) appears to be aimed at promoting enforcement rather than at harassing industry;

(e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and

(f) is filed by a person of a Party, except as provided in paragraph 3.

[3] The Parties shall designate the secretariat and provide for related arrangements through an exchange of letters or understanding between the Parties.

3. The Parties recognize that the *North American Agreement on Environmental Cooperation* (NAAEC) provides that a person or organization residing or established in the territory of the United States may file a submission under that agreement with the Secretariat of the NAAEC Commission for Environmental Cooperation asserting that the United States is failing to effectively enforce its environmental laws.[4] In light of the availability of that procedure, a person of the United States who considers that the United States is failing to effectively enforce its environmental laws may not file a submission under this Article. For greater certainty, a person of a Party other than the United States who considers that the United States is failing to effectively enforce its environmental laws may file a submission with the secretariat.

4. Where the secretariat determines that a submission meets the criteria set out in paragraph 2, the secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the secretariat shall be guided by whether:

(a) the submission is not frivolous and alleges harm to the person making the submission;

(b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA;

(c) private remedies available under the Party's law have been pursued; and

(d) the submission is drawn exclusively from mass media reports.

Where the secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

5. The Party shall advise the secretariat within 45 days or, in exceptional circumstances and on notification to the secretariat, within 60 days of delivery of the request:

(a) whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, in which case the secretariat shall proceed no further; and

(b) of any other information the Party wishes to submit, such as:

(i) whether the matter was previously the subject of a judicial or administrative proceeding,

(ii) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued, or

(iii) information concerning relevant capacity-building activities under the ECA.

[4] Arrangements will be made for the United States to make available in a timely manner to the other Parties all such submissions, U.S. written responses, and factual records developed in connection with those submissions. At the request of any Party, the Council shall discuss such documents.

Article 18.9: Factual Records and Related Cooperation

1. If the secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons.

2. The secretariat shall prepare a factual record if any member of the Council instructs it to do so.

3. The preparation of a factual record by the secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.

4. In preparing a factual record, the secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific, or other information:

(a) that is publicly available;

(b) submitted by interested persons;

(c) submitted by national advisory or consultative committees;

(d) developed by independent experts; or

(e) developed under the ECA.

5. The secretariat shall submit a draft factual record to the Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter.

6. The secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.

7. The secretariat shall make the final factual record publicly available, normally within 60 days following its submission, if any member of the Council instructs it to do so.

8. The Council shall consider the final factual record in light of the objectives of this Chapter and the ECA. The Council shall, as appropriate, provide recommendations to the Environmental Cooperation Commission related to matters addressed in the factual record, including recommendations related to the further development of the Party's mechanisms for monitoring its environmental enforcement.

9. The Council shall, after five years, review the implementation of this Article and Article 18.8 and report the results of its review, and any associated recommendations, to the Commission.

Article 18.10: Environmental Cooperation

1. The Parties recognize the importance of strengthening their capacity to protect the environment and of promoting sustainable development in concert with strengthening their trade and investment relations.

2. The Parties are committed to expanding their cooperative relationship on environmental matters, recognizing it will help them achieve their shared environmental goals and objectives, including the development and improvement of environmental protection, practices, and technologies.

3. The Parties are committed to undertaking cooperative environmental activities pursuant to the ECA, including activities related to implementation of this Chapter. Activities that the Parties undertake pursuant to the ECA will be coordinated and reviewed by the Environmental Cooperation Commission established under the ECA. The Parties also acknowledge the importance of environmental cooperation activities in other fora.

4. Each Party shall take into account public comments and recommendations it receives regarding cooperative environmental activities undertaken pursuant to this Chapter and the ECA.

5. The Parties shall, as appropriate, share information on their experiences in assessing and taking into account environmental effects of trade agreements and policies.

Article 18.11: Biological Diversity

1. The Parties recognize the importance of the conservation and sustainable use[5] of biological diversity and their role in achieving sustainable development.

2. Accordingly, the Parties remain committed to promoting and encouraging the conservation and sustainable use of biological diversity and all its components and levels, including plants, animals, and habitat, and reiterate their commitments in Article 18.1.

3. The Parties recognize the importance of respecting and preserving traditional knowledge and practices of indigenous and other communities that contribute to the conservation and sustainable use of biological diversity.

4. The Parties also recognize the importance of public participation and consultations, as provided by domestic law, on matters concerning the conservation and sustainable use of biological diversity. The Parties may make information publicly available about programs and activities, including cooperative programs, it undertakes related to the conservation and sustainable use of biological diversity.

5. To this end, the Parties will enhance their cooperative efforts on these matters, including through the ECA.

Article 18.12: Environmental Consultations and Panel Procedure

1. A Party may request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to a contact point designated by the other Party for this purpose.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue. If the matter arises under Article 18.2, or under both that Article and another provision of this Chapter, and involves an issue related to a Party's obligations under a covered agreement, the Parties shall endeavor to address the matter through a mutually agreeable consultative or other procedure, if any, under

[5] For purposes of this Chapter, sustainable use means non-consumptive or consumptive use in a sustainable manner.

the relevant agreement, unless the procedure could result in unreasonable delay.[6]

4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the other consulting Parties.[7]

5. (a) The Council shall promptly convene and shall endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

(b) When the matter arises under Article 18.2, or under both that Article and another provision of this Chapter, and involves an issue relating to a Party's obligations under a covered agreement, the Council shall:

(i) through a mechanism that the Council establishes, consult fully with any entity authorized to address the issue under the relevant agreement; and

(ii) defer to interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement.

6. If the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 21.4 (Consultations) or a meeting of the Commission under Article 21.5 (Intervention of the Commission) and, as provided in Chapter Twenty-One (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may inform the Commission of how the Council has endeavored to resolve the matter through consultations.

7. No Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with paragraphs 1 through 5.

8. In a dispute arising under Article 18.2, or under both that Article and another provision of this Chapter, that involves an issue relating to a Party's obligations under a covered agreement, a panel convened under Chapter Twenty-One (Dispute Settlement) shall in making its findings and determination under Articles 21.13 (Initial Report) and 21.14 (Final Report):[8]

(a) consult fully, through a mechanism that the Council establishes, concerning that issue with any entity authorized to address the issue under the relevant environmental agreement;

(b) defer to any interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the

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[6] The Parties understand that for purposes of paragraph 3, where a covered agreement requires a decision to be taken by consensus, such a requirement could create an unreasonable delay.

[7] For purposes of paragraphs 4, 5, and 6, the Council shall consist of senior level officials with environmental responsibilities of the consulting Parties or their designees.

[8] For greater certainty, the consultations and guidance in this paragraph are without prejudice to a panel's ability to seek information and technical guidance from any person or body consistent with Article 21.12 (Role of Experts).

Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement; and

(c) where the agreement admits of more than one permissible interpretation relevant to an issue in the dispute and the Party complained against relies on one such interpretation, accept that interpretation for purposes of its findings and determination under Articles 21.13 and 21.14.[9]

Article 18.13: Relationship to Environmental Agreements

1. The Parties recognize that multilateral environmental agreements to which they are all party, play an important role globally and domestically in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives thereof. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are all party and trade agreements to which they are all party.

2. To this end, the Parties shall consult, as appropriate, with respect to negotiations on environmental issues of mutual interest.

3. Each Party recognizes the importance to it of the multilateral environmental agreements to which it is a party.

4. In the event of any inconsistency between a Party's obligations under this Agreement and a covered agreement, the Party shall seek to balance its obligations under both agreements, but this shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade.[10]

Article 18.14: Definitions

For purposes of this Chapter:

environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas.[11]

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

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[9] The guidance in subparagraph (c) shall prevail over any other interpretative guidance.

[10] For greater certainty, paragraph 4 is without prejudice to multilateral environmental agreements other than covered agreements.

[11] The Parties recognize that such protection or conservation may include the protection or conservation of biological diversity.

Laws, regulations, and all other measures to fulfill its obligations under a covered agreement means a Party's laws, regulations, and other measures at the central level of government.

For the United States, **statute or regulation** means an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the central level of government.

For Colombia, **statute or regulation** means a law of Congress or Decree or Resolution promulgated by the central level of government to implement a law of Congress that is enforceable by action of the central level of government.

For Colombia, **indigenous and other communities** means those communities which are defined in Article 1 of Andean Decision 391.

Annex 18.2

Covered Agreements

1. For purposes of this Chapter, **covered agreement** means a multilateral environmental agreement listed below to which both Parties are party:

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

(b) the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal, September 16, 1987, as adjusted and amended;

(c) the *Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973*, done at London, February 17, 1978, as amended;

(d) the *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*, done at Ramsar, February 2, 1971, as amended;

(e) the *Convention on the Conservation of Antarctic Marine Living Resources*, done at Canberra, May 20, 1980;

(f) the *International Convention for the Regulation of Whaling*, done at Washington, December 2, 1946; and

(g) the *Convention for the Establishment of an Inter-American Tropical Tuna Commission*, done at Washington, May 31, 1949.

2. The Parties may agree in writing to modify the list in paragraph 1 to include any other multilateral environmental agreement.

Chapter Nineteen

Transparency

Section A: Transparency

Article 19.1: Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

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

Article 19.2: Publication

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

2. To the extent possible, each Party shall:

   (a) publish in advance any such measure that it proposes to adopt; and

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

Article 19.3: Notification and Provision of Information

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

2. On request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

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

Article 19.4: Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 19.2 to particular persons, goods, or services of another Party in specific cases that:

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

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

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

Article 19.5: Review and Appeal

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

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

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

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

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

Article 19.6: Definitions

For purposes of this Section:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of another Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Section B: Anti-Corruption

Article 19.7: Statement of Principle

1. The Parties affirm their commitment to prevent and combat corruption, including bribery, in international trade and investment.

2. The Parties are hereby committed to promoting, facilitating, and supporting international cooperation in the prevention and fight against corruption.

Article 19.8: Cooperation in International Fora

1. The Parties recognize the importance of regional and multilateral initiatives to prevent and combat corruption, including bribery, in international trade and investment. The Parties

shall work jointly to encourage and support appropriate initiatives in relevant international fora.

2. The Parties reaffirm their existing rights and obligations under the 1996 Inter-American Convention Against Corruption and shall work toward the implementation of measures to prevent and combat corruption consistent with the 2003 United Nations Convention Against Corruption.

Article 19.9: Anti-Corruption Measures

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

(a) a public official of that Party or a person who performs public functions for that Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(b) any person subject to the jurisdiction of that Party intentionally to offer or grant, directly or indirectly, to a public official of that Party or a person who performs public functions for that Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(c) any person subject to the jurisdiction of that Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

(d) any person subject to the jurisdiction of that Party to aid or abet, or to conspire in, the commission of any of the offenses described in subparagraphs (a) through (c) .

2. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 1.

3. In the event that, under the legal system of a Party, criminal responsibility is not applicable to enterprises, that Party shall ensure that enterprises shall be subject to effective, proportionate, and dissuasive non-criminal sanctions, including monetary sanctions, for any of the offenses described in paragraph 1.

4. Each Party shall endeavor to adopt or maintain appropriate measures to protect persons who, in good faith, report acts of corruption, including bribery, described in paragraph 1.

Article 19.10: Definitions

For purposes of this Section:

act or refrain from acting in relation to the performance of official duties includes any use of the official's position, whether or not within the official's authorized competence;

foreign official means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as procurement, at the central level of government; and

public official means any official or employee of a Party at the central level of government, whether appointed or elected.

Chapter Twenty

Administration of the Agreement and Trade Capacity Building

Section A: Administration of the Agreement

Article 20.1: The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties, as set out in Annex 20.1, or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee the further elaboration of this Agreement;

(c) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;

(d) supervise the work of all committees, councils, and working groups established under this Agreement and recommend appropriate actions;

(e) establish the amount of remuneration and expenses that will be paid to panelists;

(f) consider any other matter that may affect the operation of this Agreement; and

(g) establish and modify the Commission's rules of procedure.

3. The Commission may:

(a) establish and delegate responsibilities to committees and working groups;

(b) modify:

(i) the Schedules attached to Annex 2.3 (Tariff Elimination), by accelerating tariff elimination,

(ii) the rules of origin established in Annex 3-A (Textiles Rules of Origin) and Annex 4.1 (Specific Rules of Origin), and

(iii) Annex 9.1 (Government Procurement);

(c) issue interpretations of the provisions of this Agreement;

(d) consider any amendments to this Agreement;

(e) seek the advice of non-governmental persons or groups; and

(f) take such other action in the exercise of its functions as the Parties may agree.

4. Each Party shall implement, in accordance with its applicable legal procedures, any modification referred to in subparagraph 3(b) within such period as the Parties may agree.

5. The Commission may review the impacts, including any benefits, of the Agreement on the small and medium-size businesses of the Parties. Toward that end, the Commission may:

(a) designate working groups to evaluate the effects of the Agreement on small and medium-size businesses and make relevant recommendations to the Commission, including working plans focused on the needs of small and medium-size businesses. Any working group recommendations with respect to trade capacity building shall be referred to the Committee for Trade Capacity Building for consideration; and

(b) receive information, input and views from representatives of small and medium-size businesses and their business associations.

6. All decisions of the Commission shall be taken by consensus, except as the Commission may otherwise decide.

7. The Commission shall convene at least once a year in regular session, except as the Commission may otherwise decide. Regular sessions of the Commission shall be chaired successively by each Party.

Article 20.2: Free Trade Agreement Coordinators

1. Each Party shall appoint a free trade agreement coordinator, as set out in Annex 20.1.

2. The coordinators shall work jointly to develop agendas and make other preparations for Commission meetings and shall follow-up on Commission decisions as appropriate.

Article 20.3: Administration of Dispute Settlement Proceedings

1. Each Party shall:

(a) designate an office that shall provide administrative assistance to the panels established under Chapter Twenty-One (Dispute Settlement) and perform such other functions as the Commission may direct; and

(b) notify the Commission of the location of its designated office.

2. Each Party shall be responsible for the operation and costs of its designated office.

Section B: Trade Capacity Building

Article 20.4: Committee on Trade Capacity Building

1. Recognizing that trade capacity building is a catalyst for the reforms and investments necessary to foster trade-driven economic growth, poverty reduction, and adjustment to liberalized trade, the Parties hereby establish a Committee on Trade Capacity Building, comprising representatives of each Party.

2. In furtherance of the Parties' ongoing trade capacity building efforts, and in order to assist each Party other than the United States in implementing this Agreement and adjust to more liberalized trade, each such Party should periodically update and provide to the Committee its national trade capacity building strategy.

3. The Committee shall:

(a) seek the prioritization of trade capacity building projects;

(b) invite appropriate international donor institutions, private sector entities, and non-governmental organizations to assist in the development and implementation of trade capacity building projects in accordance with the priorities set out in each national trade capacity building strategy;

(c) work with other committees or working groups established under this Agreement and related cooperation mechanisms, including through joint meetings, in support of the development and implementation of trade capacity building projects, particularly regarding commitments pursuant to the Agreement, in accordance with the priorities set out in each national trade capacity building strategy;

(d) monitor and assess progress, including development of mechanisms as appropriate, in implementing trade capacity building projects; and

(e) provide a report annually to the Commission, describing the Committee's activities unless the Committee decides otherwise.

4. During the transition period, the Committee shall meet at least twice a year, unless the Committee decides otherwise.

5. The Committee shall establish rules and procedures for the conduct of its work. All decisions of the Committee shall be taken by consensus, unless the Committee decides otherwise.

6. The Committee may establish *ad hoc* working groups, which may comprise government or non-government representatives, or both.

7. The Parties hereby establish a working group on customs administration and trade facilitation, which shall work under and report to the Committee. The initial focus of this working group should be related to implementation of Chapter Five (Customs Administration and Trade Facilitation) and any other priority the Committee designates.

Annex 20.1

The Free Trade Commission

The Free Trade Commission shall be composed of:

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

(b) in the case of the United States, the United States Trade Representative,

or their successors.

Free Trade Agreement Coordinators

The free trade agreement coordinators shall consist of:

(a) in the case of Colombia, the office designated by the *Ministro de Comercio, Industria y Turismo*; and

(b) in the case of the United States, the Assistant United States Trade Representative for the Americas,

or their successors.

Chapter Twenty-One

Dispute Settlement

Section A: Dispute Settlement

Article 21.1: Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation, consultations, or other means to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 21.2: Scope of Application

1. 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 interpretation or application of this Agreement or wherever a Party considers that:

(a) an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement;

(b) another Party has otherwise failed to carry out its obligations under this Agreement; or

(c) a benefit the Party could reasonably have expected to accrue to it under Chapter Two (National Treatment and Market Access for Goods), Three (Textiles and Apparel), Four (Rules of Origin and Origin Procedures), Nine (Government Procurement), Eleven (Cross-Border Trade in Services), or Sixteen (Intellectual Property Rights) is being nullified or impaired as a result of a measure of another Party that is not inconsistent with this Agreement. No Party may invoke this subparagraph with respect to a benefit under Chapter Eleven (Cross-Border Trade in Services) or Sixteen (Intellectual Property Rights) if the measure is subject to an exception under Article 22.1 (General Exceptions).

2. For greater certainty, this Chapter does not apply to disputes between Andean Community members concerning a breach of Andean Community Law.

Article 21.3: Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another free trade agreement to which the disputing Parties are party 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 21.4: Consultations

1. Any Party may request in writing consultations with any other Party with respect to any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement. If a Party requests such consultations, the other Party shall promptly reply to the request for consultations, and shall enter into consultations in good faith.

2. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

3. A Party that considers it has a substantial trade interest in the matter may participate in the consultations on delivery of written notice to the other Parties within seven days of the date of delivery of the request for consultations. The Party shall include in its notice an explanation of its substantial trade interest in the matter.

4. Consultations may be held in person or by any technological means available to the Parties. If in person, consultations shall be held in the capital of the consulted Party, unless otherwise agreed.

5. In the consultations, each Party shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation and application of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

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

Article 21.5: Intervention of the Commission

1. If the consulting Parties fail to resolve a matter pursuant to Article 21.4 within:

(a) 60 days of delivery of a request for consultations;

(b) 15 days of delivery of a request for consultations in matters regarding perishable goods; or

(c) such other period as they may agree,

any such Party may request in writing a meeting of the Commission.[1]

2. A consulting Party may also request in writing a meeting of the Commission where consultations have been held pursuant to Article 17.7 (Cooperative Labor Consultations), 18.12 (Environmental Consultations and Panel Procedure), or 7.7 (Committee on Technical Barriers to Trade).

3. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.

4. Unless it decides otherwise, the Commission shall convene within ten days of delivery of the request and shall endeavor to resolve the dispute promptly. To assist the Parties reach a mutually satisfactory resolution of the dispute, the Commission may:

[1] For purposes of this paragraph and paragraph 4, the Commission shall consist of the cabinet-level representatives of the consulting Parties, as set out in Annex 20.1 (The Free Trade Commission), or their designees.

(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, or mediation; or

(c) make recommendations.

5. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure or matter. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.[2]

6. The Commission may meet in person or through any other technological means available to the Parties that will allow them to carry out this stage of the proceedings.

Article 21.6: Request for an Arbitral Panel

1. If the consulting Parties fail to resolve a matter within:

(a) 30 days after the Commission has convened pursuant to Article 21.5;

(b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 21.5.5;

(c) 30 days after a Party has delivered a request for consultations under Article 21.4 in a matter regarding perishable goods, if the Commission has not convened pursuant to Article 21.5.4;

(d) 75 days after a Party has delivered a request for consultations under Article 21.4, if the Commission has not convened pursuant to Article 21.5.4; or

(e) such other period as the consulting Parties may agree,

any consulting Party that participated at a meeting of the Commission or requested a meeting of the Commission, if the Commission has not convened, may request in writing the establishment of an arbitral panel to consider the matter. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.

2. An arbitral panel shall be established upon delivery of a request.

3. A Party that is eligible under paragraph 1 to request the establishment of a panel and considers it has a substantial interest in the matter may join the arbitral panel proceedings as a complaining Party on delivery of written notice to the other Parties. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of delivery of the request by the Party for the establishment of a panel.

4. If a Party does not join as a complaining Party in accordance with paragraph 3, it normally shall refrain thereafter from initiating or continuing:

(a) a dispute settlement procedure under this Agreement; or

[2] For purposes of this paragraph, the Commission shall consist of the cabinet-level representatives of the consulting Parties in the relevant proceedings, as set out in Annex 20.1 (The Free Trade Commission), or their designees.

(b) a dispute settlement proceeding under the WTO Agreement or under another free trade agreement to which it and the Party complained against are party, on grounds that are substantially equivalent to those available to it under this Agreement,

regarding the same matter in the absence of a significant change in economic or commercial circumstances.

5. Unless otherwise agreed by the disputing Parties, the panel shall be selected and perform its functions in a manner consistent with the provisions of this Chapter and the Model Rules of Procedure.

6. An arbitral panel may not be established to review a proposed measure.

Article 21.7: Indicative Roster

1. The Parties shall establish within six months of the date of entry into force of this Agreement and maintain an indicative roster of individuals who are willing and able to serve as panelists. Unless the Parties otherwise agree, three members of the roster shall be nationals of each Party, and two members of the roster shall be individuals who are not nationals of any Party. The roster members shall be appointed by consensus, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

2. Parties may have recourse to the indicative roster even if the roster is not complete.

Article 21.8: Qualifications of Panelists

1. All panelists shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from any Party; and

(d) comply with a code of conduct established by the Parties.

2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 21.5.4.

Article 21.9: Panel Selection

1. The Parties shall apply the following procedures in selecting a panel:

(a) the panel shall comprise three members;

(b) within 15 days of the delivery of the request for the establishment of the panel, the complaining Party or Parties shall appoint one panelist and the Party complained against shall appoint one panelist, in consultation with each other. If the complaining Party or Parties or the Party complained against fail to appoint a panelist within such period, a panelist shall be selected by lot from

the indicative roster established under Article 21.7 within 3 days after expiration of this 15-day period;

(c) the Parties shall endeavor to agree on a third panelist who shall serve as chair within 15 days from the date the second panelist has been appointed or selected. If the Parties are unable to agree on the chair, the chair shall be selected by lot from among the indicative roster members who are not nationals of the disputing Parties within 3 days after expiration of this 15-day period;

(d) each disputing Party shall endeavor to select panelists who have expertise or experience relevant to the subject matter of the dispute. In addition, in any dispute arising under Chapter Seventeen (Labor) or Eighteen (Environment), panelists other than those selected by lot shall have expertise or experience relevant to the subject matter under dispute.

2. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 21.10: Rules of Procedure

1. The Parties shall establish by the date of entry into force of this Agreement Model Rules of Procedure, which shall ensure:

(a) a right to at least one hearing before the panel, which, subject to subparagraph (e), shall be open to the public;

(b) an opportunity for each disputing Party to provide initial and rebuttal written submissions;

(c) that each participating Party's written submissions, written versions of its oral statement, and written responses to a request or questions from the panel shall be public, subject to subparagraph (e);

(d) that the panel will consider requests from non-governmental entities in the disputing Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;

(e) the protection of confidential information;

(f) that the Parties have the right to make and receive written submissions and make and hear oral arguments in either English or Spanish; and

(g) that unless otherwise agreed by the disputing Parties, hearings shall be held in the capital of the Party complained against.

2. Unless the disputing Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. The Parties may modify the Model Rules of Procedure.

4. Unless the disputing Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referenced in the panel request and to make findings, determinations,

and recommendations as provided in Articles 21.10.6 and 21.13.3 and to deliver the written reports referred to in Articles 21.13 and 21.14."

5. If a complaining Party in its panel request has identified that a measure has nullified or impaired benefits, in the sense of Article 21.2, the terms of reference shall so indicate.

6. If a disputing Party wishes the panel to make findings as to the level of adverse trade effects on any Party of a Party's failure to conform with the obligations of this Agreement or of a Party's measure found to have caused nullification or impairment in the sense of Article 21.2, the terms of reference shall so indicate.

Article 21.11: Third Party Participation

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties, shall be entitled to attend all hearings, to make written and oral submissions to the panel, and to receive written submissions of the disputing Parties in accordance with the Model Rules of Procedure.

Article 21.12: Role of Experts

On request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.

Article 21.13: Initial Report

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties, and on any information before it pursuant to Article 21.12.

2. If the disputing Parties request, the panel may make recommendations for resolution of the dispute.

3. Unless the disputing Parties otherwise agree, the panel shall, within 120 days after the last panelist is selected, present to the disputing Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under Article 21.10.6;

(b) its determination as to whether a disputing Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Article 21.2, or any other determination requested in the terms of reference; and

(c) its recommendations, if the disputing Parties have requested them, for resolution of the dispute.

4. Panelists may furnish separate opinions on matters not unanimously agreed.

5. A disputing Party may submit written comments or requests for clarifications to the panel on its initial report within 14 days of presentation of the report or within such other period as the disputing Parties may agree.

6. After considering written comments or requests for clarifications on the initial report, the panel shall reply to such requests and to the extent it considers appropriate, make further examinations and reconsider its report.

Article 21.14: Final Report

1. The panel shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree. The disputing Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

Article 21.15: Implementation of Final Report

1. On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. If, in its final report, the panel determines that a disputing Party has not conformed with its obligations under this Agreement or that a disputing Party's measure is causing nullification or impairment in the sense of Article 21.2, the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

Article 21.16: Non-Implementation – Suspension of Benefits

1. If a panel has made a determination of the type described in Article 21.15.2, and the disputing Parties are unable to reach agreement on a resolution pursuant to Article 21.15 within 45 days of receiving the final report, or such other period as the disputing Parties agree, the Party complained against shall enter into negotiations with the complaining Party or Parties with a view to developing mutually acceptable compensation.

2. If the disputing Parties:

   (a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or

   (b) have agreed on compensation or on a resolution pursuant to Article 21.15 and a complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

any such complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend.[3] Subject to paragraph 5, the complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:

   (a) the level of benefits proposed to be suspended is manifestly excessive; or

   (b) it has eliminated the non-conformity or the nullification or impairment that the panel has found,

[3] For greater certainty, the phrase "the level of benefits that the Party proposes to suspend" refers to the level of concessions under the Agreement the suspension of which a complaining Party considers will have an effect equivalent to that of the disputed measure.

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the disputing Parties within 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect. In determining the level of benefits that may be suspended, the panel shall take into account any findings by the panel on the level of adverse trade effects if a request for such findings was made under Article 21.10.6.

4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. In considering what benefits to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Article 21.2; and

(b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

6. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the complaining Party that it will pay an annual monetary assessment. The disputing Parties shall consult, beginning no later than 10 days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the disputing Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

7. Unless the Commission otherwise decides, a monetary assessment shall be paid to the complaining Party in U.S. dollars, or in an equivalent amount of the currency of the Party complained against, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Commission may decide that an assessment shall be paid into a fund established by the Commission and expended at the direction of the Commission for appropriate initiatives to facilitate trade between the disputing Parties including by further reducing unreasonable trade barriers or by assisting a disputing Party in carrying out its obligations under this Agreement.

8. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.

9. Compensation, the payment of monetary assessments, and the suspension of benefits are intended as temporary measures pending the elimination of any non-conformity or nullification or impairment that the panel has found.

Article 21.17: Compliance Review

1. Without prejudice to the procedures set out in Article 21.16.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the complaining Party or Parties. The panel shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party or Parties shall promptly reinstate any benefits that Party has or those Parties have suspended under Article 21.16 and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 21.16.6.

Article 21.18: Five-Year Review

The Commission shall review the operation and effectiveness of Article 21.16 not later than five years after the Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been paid in five proceedings initiated under this Chapter, whichever occurs first.

Section B: Domestic Proceedings and Private Commercial Dispute Settlement

Article 21.19: Referral of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed information on or interpretation of the Agreement received from the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree on the information or interpretation requested, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 21.20: Private Rights

No Party may provide for a right of action under its law against any other Party on the ground that the other Party has failed to conform with its obligations under this Agreement.

Article 21.21: Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 *United Nations Convention on the Recognition and Enforcement*

of Foreign Arbitral Awards or the 1975 *Inter-American Convention on International Commercial Arbitration.*

Chapter Twenty-Two

Exceptions

Article 22.1: General Exceptions

1. For purposes of Chapters Two through Seven (National Treatment and Market Access for Goods, Textiles and Apparel, Rules of Origin and Origin Procedures, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of the GATT 1994 and its interpretive 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 the GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Eleven, Fourteen, and Fifteen[1] (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of the 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 the GATS include environmental measures necessary to protect human, animal, or plant life or health.

Article 22.2: Essential Security

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.[2]

Article 22.3: Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between two or more Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Notwithstanding paragraph 2:

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[1] This Article is without prejudice to whether digital products should be classified as goods or services.

[2] For greater certainty, if a Party invokes Article 22.2 in an arbitral proceeding initiated under Chapter Ten (Investment) or Chapter Twenty-One (Dispute Settlement), the tribunal or panel hearing the matter shall find that the exception applies.

(a) Article 2.2 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 2.11 (Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article 11.2 (National Treatment) and Article 12.2 (National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and

(b) Articles 10.3 (National Treatment) and 10.4 (Most-Favored-Nation Treatment), Articles 11.2 (National Treatment) and 11.3 (Most-Favored-Nation Treatment), and Articles 12.2 (National Treatment) and 12.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers,

except that nothing in the articles referred to in subparagraphs (a) and (b) shall apply:

(c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to any tax convention;

(d) to a non-conforming provision of any existing taxation measure;

(e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of the GATS); or

(h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 10.9 (Performance Requirements) shall apply to taxation measures.

6. Article 10.7 (Expropriation and Compensation) and Article 10.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or investment authorization. However, no investor may invoke Article 10.7 (Expropriation and Compensation) as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.7 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities of the Parties of the claimant and the respondent set out in Annex 22.3 at the time that it gives its notice of intent under

Article 10.16 (Submission of a Claim to Arbitration) the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 10.16 (Submission of a Claim to Arbitration).

Article 22.4: Disclosure of Information

Nothing in this Agreement shall be construed to require 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 enterprises, public or private.

Article 22.5: Definitions

For purposes of this Chapter:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and **taxation measures** do not include:

(a) a customs duty; or

(b) the measures listed in exceptions (b) and (c) of the definition of customs duty.

Annex 22.3

Competent Authorities

For purposes of Article 22.3:

competent authorities means

(a) in the case of Colombia, the *Viceministro Técnico del Ministerio de Hacienda y Crédito Público*; and

(b) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury,

or their successors.

Chapter Twenty-Three

Final Provisions

Article 23.1: Annexes, Appendices, and Footnotes

The Annexes, Appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

Article 23.2: Amendments

1. The Parties may agree on any amendment to this Agreement.

2. When so agreed, and approved in accordance with the legal requirements of each Party, an amendment shall constitute an integral part of this Agreement and shall enter into force on such date as the Parties may agree.

Article 23.3: Amendment of the WTO Agreement

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult with a view to amending the relevant provision of this Agreement, as appropriate, in accordance with Article 23.2.

Article 23.4: Entry into Force and Termination

1. This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications certifying that they have completed their respective legal requirements or on such other date as the Parties may agree.

2. Any Party may terminate this Agreement by written notification to the other Party, and such termination shall take effect six months after the date of the notification.

Article 23.5: Accession

Any country or group of countries including, in particular, Latin American countries, may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Parties, and following approval in accordance with the legal requirements of each Party and acceding country.

Article 23.6: Authentic Texts

The English and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE, at Washington, District of Columbia, in duplicate, this 22nd day of November, 2006.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA:

UNDERSTANDINGS REGARDING
BIODIVERSITY AND TRADITIONAL KNOWLEDGE

November 22, 2006

The Governments of the United States of America and the Republic of Colombia have reached the following understandings concerning biodiversity and traditional knowledge in connection with the United States – Colombia Trade Promotion Agreement signed this day:

The Parties recognize the importance of traditional knowledge and biodiversity, as well as the potential contribution of traditional knowledge and biodiversity to cultural, economic, and social development.

The Parties recognize the importance of the following: (1) obtaining informed consent from the appropriate authority prior to accessing genetic resources under the control of such authority; (2) equitably sharing the benefits arising from the use of traditional knowledge and genetic resources; and (3) promoting quality patent examination to ensure the conditions of patentability are satisfied.

The Parties recognize that access to genetic resources or traditional knowledge, as well as the equitable sharing of benefits that may result from use of those resources or that knowledge, can be adequately addressed through contracts that reflect mutually agreed terms between users and providers.

Each Party shall endeavor to seek ways to share information that may have a bearing on the patentability of inventions based on traditional knowledge or genetic resources by providing:

(a) publicly accessible databases that contain relevant information; and

(b) an opportunity to cite, in writing, to the appropriate examining authority prior art that may have a bearing on patentability.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA:
_____	_____

Tab 2: Draft of an Implementing Bill Described in Section 2103(b)(3) of the Act

(Original Signature of Member)

110TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

_____ (by request) introduced the following bill; which was referred to the Committee on _____

A BILL

To implement the United States-Colombia Trade Promotion Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "United States-Colombia Trade Promotion Agreement Implementation Act".

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.
Sec. 3. Definitions.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

Sec. 101. Approval and entry into force of the Agreement.
Sec. 102. Relationship of the Agreement to United States and State law.
Sec. 103. Implementing actions in anticipation of entry into force and initial regulations.
Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions.
Sec. 105. Administration of dispute settlement proceedings.
Sec. 106. Arbitration of claims.
Sec. 107. Effective dates; effect of termination.

TITLE II—CUSTOMS PROVISIONS

Sec. 201. Tariff modifications.
Sec. 202. Additional duties on certain agricultural goods.
Sec. 203. Rules of origin.
Sec. 204. Customs user fees.
Sec. 205. Disclosure of incorrect information; false certifications of origin; denial of preferential tariff treatment.
Sec. 206. Reliquidation of entries.
Sec. 207. Recordkeeping requirements.
Sec. 208. Enforcement relating to trade in textile or apparel goods.
Sec. 209. Regulations.

TITLE III—RELIEF FROM IMPORTS

Sec. 301. Definitions.

Subtitle A—Relief From Imports Benefiting From the Agreement

Sec. 311. Commencing of action for relief.
Sec. 312. Commission action on petition.
Sec. 313. Provision of relief.
Sec. 314. Termination of relief authority.
Sec. 315. Compensation authority.
Sec. 316. Confidential business information.

Subtitle B—Textile and Apparel Safeguard Measures

Sec. 321. Commencement of action for relief.
Sec. 322. Determination and provision of relief.
Sec. 323. Period of relief.
Sec. 324. Articles exempt from relief.
Sec. 325. Rate after termination of import relief.
Sec. 326. Termination of relief authority.
Sec. 327. Compensation authority.
Sec. 328. Confidential business information.

Subtitle C—Cases Under Title II of the Trade Act of 1974

Sec. 331. Findings and action on goods of Colombia.

TITLE IV—PROCUREMENT

Sec. 401. Eligible products.

TITLE V—OFFSETS

Sec. 501. Customs user fees.
Sec. 502. Time for payment of corporate estimated taxes.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to approve and implement the free trade
4 agreement between the United States and Colombia
5 entered into under the authority of section 2103(b)
6 of the Bipartisan Trade Promotion Authority Act of
7 2002 (19 U.S.C. 3803(b));

8 (2) to strengthen and develop economic rela-
9 tions between the United States and Colombia for
10 their mutual benefit;

11 (3) to establish free trade between the United
12 States and Colombia through the reduction and
13 elimination of barriers to trade in goods and services
14 and to investment; and

15 (4) to lay the foundation for further coopera-
16 tion to expand and enhance the benefits of the
17 Agreement.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

1 (1) AGREEMENT.—The term "Agreement"
2 means the United States-Colombia Trade Promotion
3 Agreement approved by Congress under section
4 101(a)(1).
5 (2) COMMISSION.—The term "Commission"
6 means the United States International Trade Com-
7 mission.
8 (3) HTS.—The term "HTS" means the Har-
9 monized Tariff Schedule of the United States.
10 (4) TEXTILE OR APPAREL GOOD.—The term
11 "textile or apparel good" means a good listed in the
12 Annex to the Agreement on Textiles and Clothing
13 referred to in section 101(d)(4) of the Uruguay
14 Round Agreements Act (19 U.S.C. 3511(d)(4)),
15 other than a good listed in Annex 3-C of the Agree-
16 ment.

17 TITLE I—APPROVAL OF, AND 18 GENERAL PROVISIONS RE- 19 LATING TO, THE AGREEMENT

20 SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE 21 AGREEMENT.

22 (a) APPROVAL OF AGREEMENT AND STATEMENT OF
23 ADMINISTRATIVE ACTION.—Pursuant to section 2105 of
24 the Bipartisan Trade Promotion Authority Act of 2002

1 (19 U.S.C. 3805) and section 151 of the Trade Act of
2 1974 (19 U.S.C. 2191), Congress approves—
3 (1) the United States-Colombia Trade Pro-
4 motion Agreement entered into on November 22,
5 2006, with the Government of Colombia, as amend-
6 ed on June 28, 2007, by the United States and Co-
7 lombia, and submitted to Congress on
8 _____, 2008; and
9 (2) the statement of administrative action pro-
10 posed to implement the Agreement that was sub-
11 mitted to Congress on _____, 2008.
12 (b) CONDITIONS FOR ENTRY INTO FORCE OF THE
13 AGREEMENT.—At such time as the President determines
14 that Colombia has taken measures necessary to comply
15 with those provisions of the Agreement that are to take
16 effect on the date on which the Agreement enters into
17 force, the President is authorized to exchange notes with
18 the Government of Colombia providing for the entry into
19 force, on or after January 1, 2009, of the Agreement with
20 respect to the United States.
21 **SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED**
22 **STATES AND STATE LAW.**
23 (a) RELATIONSHIP OF AGREEMENT TO UNITED
24 STATES LAW.—

1 (1) UNITED STATES LAW TO PREVAIL IN CON-
2 FLICT.—No provision of the Agreement, nor the ap-
3 plication of any such provision to any person or cir-
4 cumstance, which is inconsistent with any law of the
5 United States shall have effect.
6 (2) CONSTRUCTION.—Nothing in this Act shall
7 be construed—
8 (A) to amend or modify any law of the
9 United States; or
10 (B) to limit any authority conferred under
11 any law of the United States,
12 unless specifically provided for in this Act.
13 (b) RELATIONSHIP OF AGREEMENT TO STATE
14 LAW.—
15 (1) LEGAL CHALLENGE.—No State law, or the
16 application thereof, may be declared invalid as to
17 any person or circumstance on the ground that the
18 provision or application is inconsistent with the
19 Agreement, except in an action brought by the
20 United States for the purpose of declaring such law
21 or application invalid.
22 (2) DEFINITION OF STATE LAW.—For purposes
23 of this subsection, the term "State law" includes—
24 (A) any law of a political subdivision of a
25 State; and

1 (B) any State law regulating or taxing the
2 business of insurance.
3 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-
4 VATE REMEDIES.—No person other than the United
5 States—
6 (1) shall have any cause of action or defense
7 under the Agreement or by virtue of congressional
8 approval thereof; or
9 (2) may challenge, in any action brought under
10 any provision of law, any action or inaction by any
11 department, agency, or other instrumentality of the
12 United States, any State, or any political subdivision
13 of a State, on the ground that such action or inac-
14 tion is inconsistent with the Agreement.
15 **SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF**
16 **ENTRY INTO FORCE AND INITIAL REGULA-**
17 **TIONS.**
18 (a) IMPLEMENTING ACTIONS.—
19 (1) PROCLAMATION AUTHORITY.—After the
20 date of the enactment of this Act—
21 (A) the President may proclaim such ac-
22 tions, and
23 (B) other appropriate officers of the
24 United States Government may issue such reg-
25 ulations,

1 as may be necessary to ensure that any provision of
2 this Act, or amendment made by this Act, that takes
3 effect on the date on which the Agreement enters
4 into force is appropriately implemented on such
5 date, but no such proclamation or regulation may
6 have an effective date earlier than the date on which
7 the Agreement enters into force.

8 (2) EFFECTIVE DATE OF CERTAIN PROCLAIMED
9 ACTIONS.—Any action proclaimed by the President
10 under the authority of this Act that is not subject
11 to the consultation and layover provisions under sec-
12 tion 104 may not take effect before the 15th day
13 after the date on which the text of the proclamation
14 is published in the Federal Register.

15 (3) WAIVER OF 15-DAY RESTRICTION.—The 15-
16 day restriction contained in paragraph (2) on the
17 taking effect of proclaimed actions is waived to the
18 extent that the application of such restriction would
19 prevent the taking effect on the date the Agreement
20 enters into force of any action proclaimed under this
21 section.

22 (b) INITIAL REGULATIONS.—Initial regulations nec-
23 essary or appropriate to carry out the actions required by
24 or authorized under this Act or proposed in the statement
25 of administrative action submitted under section

1 101(a)(2) to implement the Agreement shall, to the max-
2 imum extent feasible, be issued within 1 year after the
3 date on which the Agreement enters into force. In the case
4 of any implementing action that takes effect on a date
5 after the date on which the Agreement enters into force,
6 initial regulations to carry out that action shall, to the
7 maximum extent feasible, be issued within 1 year after
8 such effective date.

9 **SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR,**
10 **AND EFFECTIVE DATE OF, PROCLAIMED AC-**
11 **TIONS.**

12 If a provision of this Act provides that the implemen-
13 tation of an action by the President by proclamation is
14 subject to the consultation and layover requirements of
15 this section, such action may be proclaimed only if—

16 (1) the President has obtained advice regarding
17 the proposed action from—

18 (A) the appropriate advisory committees
19 established under section 135 of the Trade Act
20 of 1974 (19 U.S.C. 2155); and

21 (B) the Commission;

22 (2) the President has submitted to the Com-
23 mittee on Finance of the Senate and the Committee
24 on Ways and Means of the House of Representatives
25 a report that sets forth—

1 (A) the action proposed to be proclaimed
2 and the reasons therefor; and
3 (B) the advice obtained under paragraph
4 (1);
5 (3) a period of 60 calendar days, beginning on
6 the first day on which the requirements set forth in
7 paragraphs (1) and (2) have been met, has expired;
8 and
9 (4) the President has consulted with the com-
10 mittees referred to in paragraph (2) regarding the
11 proposed action during the period referred to in
12 paragraph (3).

13 **SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PRO-**
14 **CEEDINGS.**

15 (a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—
16 The President is authorized to establish or designate with-
17 in the Department of Commerce an office that shall be
18 responsible for providing administrative assistance to pan-
19 els established under chapter 21 of the Agreement. The
20 office shall not be considered to be an agency for purposes
21 of section 552 of title 5, United States Code.

22 (b) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated for each fiscal year after
24 fiscal year 2008 to the Department of Commerce such
25 sums as may be necessary for the establishment and oper-

1 ations of the office established or designated under sub-
2 section (a) and for the payment of the United States share
3 of the expenses of panels established under chapter 21 of
4 the Agreement.

5 **SEC. 106. ARBITRATION OF CLAIMS.**

6 The United States is authorized to resolve any claim
7 against the United States covered by article
8 10.16.1(a)(i)(C) or article 10.16.1(b)(i)(C) of the Agree-
9 ment, pursuant to the Investor-State Dispute Settlement
10 procedures set forth in section B of chapter 10 of the
11 Agreement.

12 **SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.**

13 (a) EFFECTIVE DATES.—Except as provided in sub-
14 section (b), this Act and the amendments made by this
15 Act take effect on the date on which the Agreement enters
16 into force.

17 (b) EXCEPTIONS.—Sections 1 through 3 and this
18 title take effect on the date of the enactment of this Act.

19 (c) TERMINATION OF THE AGREEMENT.—On the
20 date on which the Agreement terminates, this Act (other
21 than this subsection) and the amendments made by this
22 Act shall cease to have effect.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—

(1) PROCLAMATION AUTHORITY.—The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or excise treatment, or

(C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 3.3.13, and Annex 2.3 of the Agreement.

(2) EFFECT ON GSP STATUS.—Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall, on the date on which the Agreement enters into force, terminate the designation of Colombia as a beneficiary developing country for purposes of title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.).

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover provisions of section 104, the President may proclaim—

1 (1) such modifications or continuation of any
2 duty,
3 (2) such modifications as the United States
4 may agree to with Colombia regarding the staging of
5 any duty treatment set forth in Annex 2.3 of the
6 Agreement,
7 (3) such continuation of duty-free or excise
8 treatment, or
9 (4) such additional duties,
10 as the President determines to be necessary or appropriate
11 to maintain the general level of reciprocal and mutually
12 advantageous concessions with respect to Colombia pro-
13 vided for by the Agreement.
14 (c) CONVERSION TO AD VALOREM RATES.—For pur-
15 poses of subsections (a) and (b), with respect to any good
16 for which the base rate in the Schedule of the United
17 States to Annex 2.3 of the Agreement is a specific or com-
18 pound rate of duty, the President may substitute for the
19 base rate an ad valorem rate that the President deter-
20 mines to be equivalent to the base rate.
21 (d) TARIFF RATE QUOTAS.—In implementing the
22 tariff rate quotas set forth in Appendix I to the Schedule
23 of the United States to Annex 2.3 of the Agreement, the
24 President shall take such action as may be necessary to
25 ensure that imports of agricultural goods do not disrupt

1 the orderly marketing of commodities in the United
2 States.

3 **SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICUL-**
4 **TURAL GOODS.**

5 (a) DEFINITIONS.—In this section:

6 (1) APPLICABLE NTR (MFN) RATE OF DUTY.—
7 The term "applicable NTR (MFN) rate of duty"
8 means, with respect to a safeguard good, a rate of
9 duty equal to the lowest of—

10 (A) the base rate in the Schedule of the
11 United States to Annex 2.3 of the Agreement;

12 (B) the column 1 general rate of duty that
13 would, on the day before the date on which the
14 Agreement enters into force, apply to a good
15 classifiable in the same 8-digit subheading of
16 the HTS as the safeguard good; or

17 (C) the column 1 general rate of duty that
18 would, at the time the additional duty is im-
19 posed under subsection (b), apply to a good
20 classifiable in the same 8-digit subheading of
21 the HTS as the safeguard good.

22 (2) SCHEDULE RATE OF DUTY.—The term
23 "schedule rate of duty" means, with respect to a
24 safeguard good, the rate of duty for that good that

1 is set forth in the Schedule of the United States to
2 Annex 2.3 of the Agreement.
3 (3) SAFEGUARD GOOD.—The term "safeguard
4 good" means a good—
5 (A) that is included in the Schedule of the
6 United States to Annex 2.18 of the Agreement;
7 (B) that qualifies as an originating good
8 under section 203, except that operations per-
9 formed in or material obtained from the United
10 States shall be considered as if the operations
11 were performed in, and the material was ob-
12 tained from, a country that is not a party to
13 the Agreement; and
14 (C) for which a claim for preferential tariff
15 treatment under the Agreement has been made.
16 (b) ADDITIONAL DUTIES ON SAFEGUARD GOODS.—
17 (1) IN GENERAL.—In addition to any duty pro-
18 claimed under subsection (a) or (b) of section 201,
19 the Secretary of the Treasury shall assess a duty, in
20 the amount determined under paragraph (2), on a
21 safeguard good imported into the United States in
22 a calendar year if the Secretary determines that,
23 prior to such importation, the total volume of that
24 safeguard good that is imported into the United
25 States in that calendar year exceeds 140 percent of

1 the volume that is provided for that safeguard good
2 in the corresponding year in the applicable table
3 contained in Appendix I of the General Notes to the
4 Schedule of the United States to Annex 2.3 of the
5 Agreement. For purposes of this subsection, year 1
6 in that table corresponds to the calendar year in
7 which the Agreement enters into force.
8 (2) CALCULATION OF ADDITIONAL DUTY.—The
9 additional duty on a safeguard good under this sub-
10 section shall be—
11 (A) in years 1 through 4, an amount equal
12 to 100 percent of the excess of the applicable
13 NTR (MFN) rate of duty over the schedule
14 rate of duty;
15 (B) in years 5 through 7, an amount equal
16 to 75 percent of the excess of the applicable
17 NTR (MFN) rate of duty over the schedule
18 rate of duty; and
19 (C) in years 8 through 9, an amount equal
20 to 50 percent of the excess of the applicable
21 NTR (MFN) rate of duty over the schedule
22 rate of duty.
23 (3) NOTICE.—Not later than 60 days after the
24 Secretary of the Treasury first assesses an addi-
25 tional duty in a calendar year on a good under this

1 subsection, the Secretary shall notify the Govern-
2 ment of Colombia in writing of such action and shall
3 provide to that Government data supporting the as-
4 sessment of the additional duty.
5 (c) EXCEPTIONS.—No additional duty shall be as-
6 sessed on a good under subsection (b) if, at the time of
7 entry, the good is subject to import relief under—
8 (1) subtitle A of title III of this Act; or
9 (2) chapter 1 of title II of the Trade Act of
10 1974 (19 U.S.C. 2251 et seq.).
11 (d) TERMINATION.—The assessment of an additional
12 duty on a good under subsection (b) shall cease to apply
13 to that good on the date on which duty-free treatment
14 must be provided to that good under the Schedule of the
15 United States to Annex 2.3 of the Agreement.
16 **SEC. 203. RULES OF ORIGIN.**
17 (a) APPLICATION AND INTERPRETATION.—In this
18 section:
19 (1) TARIFF CLASSIFICATION.—The basis for
20 any tariff classification is the HTS.
21 (2) REFERENCE TO HTS.—Whenever in this
22 section there is a reference to a chapter, heading, or
23 subheading, such reference shall be a reference to a
24 chapter, heading, or subheading of the HTS.

1 (3) COST OR VALUE.—Any cost or value re-
2 ferred to in this section shall be recorded and main-
3 tained in accordance with the generally accepted ac-
4 counting principles applicable in the territory of the
5 country in which the good is produced (whether Co-
6 lombia or the United States).
7 (b) ORIGINATING GOODS.—For purposes of this Act
8 and for purposes of implementing the preferential tariff
9 treatment provided for under the Agreement, except as
10 otherwise provided in this section, a good is an originating
11 good if—
12 (1) the good is a good wholly obtained or pro-
13 duced entirely in the territory of Colombia, the
14 United States, or both;
15 (2) the good—
16 (A) is produced entirely in the territory of
17 Colombia, the United States, or both, and—
18 (i) each of the nonoriginating mate-
19 rials used in the production of the good
20 undergoes an applicable change in tariff
21 classification specified in Annex 3-A or
22 Annex 4.1 of the Agreement; or
23 (ii) the good otherwise satisfies any
24 applicable regional value-content or other

1 requirements specified in Annex 3-A or
2 Annex 4.1 of the Agreement; and
3 (B) satisfies all other applicable require-
4 ments of this section; or
5 (3) the good is produced entirely in the terri-
6 tory of Colombia, the United States, or both, exclu-
7 sively from materials described in paragraph (1) or
8 (2).
9 (c) REGIONAL VALUE-CONTENT.—
10 (1) IN GENERAL.—For purposes of subsection
11 (b)(2), the regional value-content of a good referred
12 to in Annex 4.1 of the Agreement, except for goods
13 to which paragraph (4) applies, shall be calculated
14 by the importer, exporter, or producer of the good,
15 on the basis of the build-down method described in
16 paragraph (2) or the build-up method described in
17 paragraph (3).
18 (2) BUILD-DOWN METHOD.—
19 (A) IN GENERAL.—The regional value-con-
20 tent of a good may be calculated on the basis
21 of the following build-down method:

$$\text{RVC} = \frac{\text{AV–VNM}}{\text{AV}} \times 100$$

22 (B) DEFINITIONS.—In subparagraph (A):
23 (i) AV.—The term "AV" means the
24 adjusted value of the good.

(ii) RVC.—The term "RVC" means the regional value-content of the good, expressed as a percentage.

(iii) VNM.—The term "VNM" means the value of nonoriginating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(3) BUILD-UP METHOD.—

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-up method:

$$\text{RVC} = \frac{\text{VOM}}{\text{AV}} \times 100$$

(B) DEFINITIONS.—In subparagraph (A):

(i) AV.—The term "AV" means the adjusted value of the good.

(ii) RVC.—The term "RVC" means the regional value-content of the good, expressed as a percentage.

(iii) VOM.—The term "VOM" means the value of originating materials that are acquired or self-produced, and used by the producer in the production of the good.

1 (4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE
2 GOODS.—
3 (A) IN GENERAL.—For purposes of sub-
4 section (b)(2), the regional value-content of an
5 automotive good referred to in Annex 4.1 of the
6 Agreement shall be calculated by the importer,
7 exporter, or producer of the good, on the basis
8 of the following net cost method:

$$\text{RVC} = \frac{\text{NC-VNM}}{\text{NC}} \times 100$$

9 (B) DEFINITIONS.—In subparagraph (A):
10 (i) AUTOMOTIVE GOOD.—The term
11 "automotive good" means a good provided
12 for in any of subheadings 8407.31 through
13 8407.34, subheading 8408.20, heading
14 8409, or any of headings 8701 through
15 8708.
16 (ii) RVC.—The term "RVC" means
17 the regional value-content of the auto-
18 motive good, expressed as a percentage.
19 (iii) NC.—The term "NC" means the
20 net cost of the automotive good.
21 (iv) VNM.—The term "VNM" means
22 the value of nonoriginating materials that
23 are acquired and used by the producer in
24 the production of the automotive good, but

1 does not include the value of a material
2 that is self-produced.
3 (C) MOTOR VEHICLES.—
4 (i) BASIS OF CALCULATION.—For
5 purposes of determining the regional value-
6 content under subparagraph (A) for an
7 automotive good that is a motor vehicle
8 provided for in any of headings 8701
9 through 8705, an importer, exporter, or
10 producer may average the amounts cal-
11 culated under the formula contained in
12 subparagraph (A), over the producer's fis-
13 cal year—
14 (I) with respect to all motor vehi-
15 cles in any one of the categories de-
16 scribed in clause (ii); or
17 (II) with respect to all motor ve-
18 hicles in any such category that are
19 exported to the territory of the United
20 States or Colombia.
21 (ii) CATEGORIES.—A category is de-
22 scribed in this clause if it—
23 (I) is the same model line of
24 motor vehicles, is in the same class of
25 motor vehicles, and is produced in the

same plant in the territory of Colombia or the United States, as the good described in clause (i) for which regional value-content is being calculated;

(II) is the same class of motor vehicles, and is produced in the same plant in the territory of Colombia or the United States, as the good described in clause (i) for which regional value-content is being calculated; or

(III) is the same model line of motor vehicles produced in the territory of Colombia or the United States as the good described in clause (i) for which regional value-content is being calculated.

(D) OTHER AUTOMOTIVE GOODS.—For purposes of determining the regional value-content under subparagraph (A) for automotive materials provided for in any of subheadings 8407.31 through 8407.34, in subheading 8408.20, or in heading 8409, 8706, 8707, or 8708, that are produced in the same plant, an importer, exporter, or producer may—

1 (i) average the amounts calculated
2 under the formula contained in subpara-
3 graph (A) over—
4 (I) the fiscal year of the motor
5 vehicle producer to whom the auto-
6 motive goods are sold,
7 (II) any quarter or month, or
8 (III) the fiscal year of the pro-
9 ducer of such goods,
10 if the goods were produced during the fis-
11 cal year, quarter, or month that is the
12 basis for the calculation;
13 (ii) determine the average referred to
14 in clause (i) separately for such goods sold
15 to 1 or more motor vehicle producers; or
16 (iii) make a separate determination
17 under clause (i) or (ii) for such goods that
18 are exported to the territory of Colombia
19 or the United States.
20 (E) CALCULATING NET COST.—The im-
21 porter, exporter, or producer of an automotive
22 good shall, consistent with the provisions re-
23 garding allocation of costs provided for in gen-
24 erally accepted accounting principles, determine

1 the net cost of the automotive good under sub-
2 paragraph (B) by—
3 (i) calculating the total cost incurred
4 with respect to all goods produced by the
5 producer of the automotive good, sub-
6 tracting any sales promotion, marketing,
7 and after-sales service costs, royalties,
8 shipping and packing costs, and nonallow-
9 able interest costs that are included in the
10 total cost of all such goods, and then rea-
11 sonably allocating the resulting net cost of
12 those goods to the automotive good;
13 (ii) calculating the total cost incurred
14 with respect to all goods produced by that
15 producer, reasonably allocating the total
16 cost to the automotive good, and then sub-
17 tracting any sales promotion, marketing,
18 and after-sales service costs, royalties,
19 shipping and packing costs, and nonallow-
20 able interest costs that are included in the
21 portion of the total cost allocated to the
22 automotive good; or
23 (iii) reasonably allocating each cost
24 that forms part of the total cost incurred
25 with respect to the automotive good so that

1 the aggregate of these costs does not in-
2 clude any sales promotion, marketing, and
3 after-sales service costs, royalties, shipping
4 and packing costs, or nonallowable interest
5 costs.
6 (d) VALUE OF MATERIALS.—
7 (1) IN GENERAL.—For the purpose of calcu-
8 lating the regional value-content of a good under
9 subsection (c), and for purposes of applying the de
10 minimis rules under subsection (f), the value of a
11 material is—
12 (A) in the case of a material that is im-
13 ported by the producer of the good, the ad-
14 justed value of the material;
15 (B) in the case of a material acquired in
16 the territory in which the good is produced, the
17 value, determined in accordance with Articles 1
18 through 8, Article 15, and the corresponding in-
19 terpretive notes, of the Agreement on Imple-
20 mentation of Article VII of the General Agree-
21 ment on Tariffs and Trade 1994 referred to in
22 section 101(d)(8) of the Uruguay Round Agree-
23 ments Act (19 U.S.C. 3511(d)(8)), as set forth
24 in regulations promulgated by the Secretary of
25 the Treasury providing for the application of

1 such Articles in the absence of an importation
2 by the producer; or
3 (C) in the case of a material that is self-
4 produced, the sum of—
5 (i) all expenses incurred in the pro-
6 duction of the material, including general
7 expenses; and
8 (ii) an amount for profit equivalent to
9 the profit added in the normal course of
10 trade.
11 (2) FURTHER ADJUSTMENTS TO THE VALUE OF
12 MATERIALS.—
13 (A) ORIGINATING MATERIAL.—The fol-
14 lowing expenses, if not included in the value of
15 an originating material calculated under para-
16 graph (1), may be added to the value of the
17 originating material:
18 (i) The costs of freight, insurance,
19 packing, and all other costs incurred in
20 transporting the material within or be-
21 tween the territory of Colombia, the United
22 States, or both, to the location of the pro-
23 ducer.
24 (ii) Duties, taxes, and customs broker-
25 age fees on the material paid in the terri-

1 tory of Colombia, the United States, or
2 both, other than duties or taxes that are
3 waived, refunded, refundable, or otherwise
4 recoverable, including credit against duty
5 or tax paid or payable.
6 (iii) The cost of waste and spoilage re-
7 sulting from the use of the material in the
8 production of the good, less the value of
9 renewable scrap or byproducts.
10 (B) NONORIGINATING MATERIAL.—The
11 following expenses, if included in the value of a
12 nonoriginating material calculated under para-
13 graph (1), may be deducted from the value of
14 the nonoriginating material:
15 (i) The costs of freight, insurance,
16 packing, and all other costs incurred in
17 transporting the material within or be-
18 tween the territory of Colombia, the United
19 States, or both, to the location of the pro-
20 ducer.
21 (ii) Duties, taxes, and customs broker-
22 age fees on the material paid in the terri-
23 tory of Colombia, the United States, or
24 both, other than duties or taxes that are
25 waived, refunded, refundable, or otherwise

1 recoverable, including credit against duty
2 or tax paid or payable.
3 (iii) The cost of waste and spoilage re-
4 sulting from the use of the material in the
5 production of the good, less the value of
6 renewable scrap or byproducts.
7 (iv) The cost of originating materials
8 used in the production of the nonorigi-
9 nating material in the territory of Colom-
10 bia, the United States, or both.
11 (e) ACCUMULATION.—
12 (1) ORIGINATING MATERIALS USED IN PRODUC-
13 TION OF GOODS OF ANOTHER COUNTRY.—Origi-
14 nating materials from the territory of Colombia or
15 the United States that are used in the production of
16 a good in the territory of the other country shall be
17 considered to originate in the territory of such other
18 country.
19 (2) MULTIPLE PRODUCERS.—A good that is
20 produced in the territory of Colombia, the United
21 States, or both, by 1 or more producers, is an origi-
22 nating good if the good satisfies the requirements of
23 subsection (b) and all other applicable requirements
24 of this section.

1 (f) DE MINIMIS AMOUNTS OF NONORIGINATING MA-
2 TERIALS.—
3 (1) IN GENERAL.—Except as provided in para-
4 graphs (2) and (3), a good that does not undergo a
5 change in tariff classification pursuant to Annex 4.1
6 of the Agreement is an originating good if—
7 (A)(i) the value of all nonoriginating mate-
8 rials that—
9 (I) are used in the production of the
10 good, and
11 (II) do not undergo the applicable
12 change in tariff classification (set forth in
13 Annex 4.1 of the Agreement),
14 does not exceed 10 percent of the adjusted
15 value of the good;
16 (ii) the good meets all other applicable re-
17 quirements of this section; and
18 (iii) the value of such nonoriginating mate-
19 rials is included in the value of nonoriginating
20 materials for any applicable regional value-con-
21 tent requirement for the good; or
22 (B) the good meets the requirements set
23 forth in paragraph 2 of Annex 4.6 of the Agree-
24 ment.

1 (2) EXCEPTIONS.—Paragraph (1) does not
2 apply to the following:
3 (A) A nonoriginating material provided for
4 in chapter 4, or a nonoriginating dairy prepara-
5 tion containing over 10 percent by weight of
6 milk solids provided for in subheading 1901.90
7 or 2106.90, that is used in the production of a
8 good provided for in chapter 4.
9 (B) A nonoriginating material provided for
10 in chapter 4, or a nonoriginating dairy prepara-
11 tion containing over 10 percent by weight of
12 milk solids provided for in subheading 1901.90,
13 that is used in the production of any of the fol-
14 lowing goods:
15 (i) Infant preparations containing
16 over 10 percent by weight of milk solids
17 provided for in subheading 1901.10.
18 (ii) Mixes and doughs, containing over
19 25 percent by weight of butterfat, not put
20 up for retail sale, provided for in sub-
21 heading 1901.20.
22 (iii) Dairy preparations containing
23 over 10 percent by weight of milk solids
24 provided for in subheading 1901.90 or
25 2106.90.

1 (iv) Goods provided for in heading
2 2105.
3 (v) Beverages containing milk pro-
4 vided for in subheading 2202.90.
5 (vi) Animal feeds containing over 10
6 percent by weight of milk solids provided
7 for in subheading 2309.90.
8 (C) A nonoriginating material provided for
9 in heading 0805, or any of subheadings
10 2009.11 through 2009.39, that is used in the
11 production of a good provided for in any of sub-
12 headings 2009.11 through 2009.39, or in fruit
13 or vegetable juice of any single fruit or vege-
14 table, fortified with minerals or vitamins, con-
15 centrated or unconcentrated, provided for in
16 subheading 2106.90 or 2202.90.
17 (D) A nonoriginating material provided for
18 in heading 0901 or 2101 that is used in the
19 production of a good provided for in heading
20 0901 or 2101.
21 (E) A nonoriginating material provided for
22 in chapter 15 that is used in the production of
23 a good provided for in any of headings 1501
24 through 1508, or any of headings 1511 through
25 1515.

1 (F) A nonoriginating material provided for
2 in heading 1701 that is used in the production
3 of a good provided for in any of headings 1701
4 through 1703.
5 (G) A nonoriginating material provided for
6 in chapter 17 that is used in the production of
7 a good provided for in subheading 1806.10.
8 (H) Except as provided in subparagraphs
9 (A) through (G) and Annex 4.1 of the Agree-
10 ment, a nonoriginating material used in the
11 production of a good provided for in any of
12 chapters 1 through 24, unless the nonorigi-
13 nating material is provided for in a different
14 subheading than the good for which origin is
15 being determined under this section.
16 (I) A nonoriginating material that is a tex-
17 tile or apparel good.
18 (3) TEXTILE OR APPAREL GOODS.—
19 (A) IN GENERAL.—Except as provided in
20 subparagraph (B), a textile or apparel good
21 that is not an originating good because certain
22 fibers or yarns used in the production of the
23 component of the good that determines the tar-
24 iff classification of the good do not undergo an
25 applicable change in tariff classification, set

1 forth in Annex 3-A of the Agreement, shall be
2 considered to be an originating good if—
3 (i) the total weight of all such fibers
4 or yarns in that component is not more
5 than 10 percent of the total weight of that
6 component; or
7 (ii) the yarns are those described in
8 section 204(b)(3)(B)(vi)(IV) of the Andean
9 Trade Preference Act (19 U.S.C.
10 3203(b)(3)(B)(vi)(IV)) (as in effect on the
11 date of the enactment of this Act).
12 (B) CERTAIN TEXTILE OR APPAREL
13 GOODS.—A textile or apparel good containing
14 elastomeric yarns in the component of the good
15 that determines the tariff classification of the
16 good shall be considered to be an originating
17 good only if such yarns are wholly formed in
18 the territory of Colombia, the United States, or
19 both.
20 (C) YARN, FABRIC, OR FIBER.—For pur-
21 poses of this paragraph, in the case of a good
22 that is a yarn, fabric, or fiber, the term "com-
23 ponent of the good that determines the tariff
24 classification of the good" means all of the fi-
25 bers in the good.

1 (g) FUNGIBLE GOODS AND MATERIALS.—

2 (1) IN GENERAL.—

3 (A) CLAIM FOR PREFERENTIAL TARIFF

4 TREATMENT.—A person claiming that a fun-

5 gible good or fungible material is an originating

6 good may base the claim either on the physical

7 segregation of the fungible good or fungible ma-

8 terial or by using an inventory management

9 method with respect to the fungible good or

10 fungible material.

11 (B) INVENTORY MANAGEMENT METHOD.—

12 In this subsection, the term "inventory manage-

13 ment method" means—

14 (i) averaging;

15 (ii) "last-in, first-out";

16 (iii) "first-in, first-out"; or

17 (iv) any other method—

18 (I) recognized in the generally

19 accepted accounting principles of the

20 country in which the production is

21 performed (whether Colombia or the

22 United States); or

23 (II) otherwise accepted by that

24 country.

1 (2) ELECTION OF INVENTORY METHOD.—A
2 person selecting an inventory management method
3 under paragraph (1) for a particular fungible good
4 or fungible material shall continue to use that meth-
5 od for that fungible good or fungible material
6 throughout the fiscal year of such person.
7 (h) ACCESSORIES, SPARE PARTS, OR TOOLS.—
8 (1) IN GENERAL.—Subject to paragraphs (2)
9 and (3), accessories, spare parts, or tools delivered
10 with a good that form part of the good's standard
11 accessories, spare parts, or tools shall—
12 (A) be treated as originating goods if the
13 good is an originating good; and
14 (B) be disregarded in determining whether
15 all the nonoriginating materials used in the pro-
16 duction of the good undergo the applicable
17 change in tariff classification set forth in Annex
18 4.1 of the Agreement.
19 (2) CONDITIONS.—Paragraph (1) shall apply
20 only if—
21 (A) the accessories, spare parts, or tools
22 are classified with and not invoiced separately
23 from the good, regardless of whether such ac-
24 cessories, spare parts, or tools are specified or

1 are separately identified in the invoice for the
2 good; and
3 (B) the quantities and value of the acces-
4 sories, spare parts, or tools are customary for
5 the good.
6 (3) REGIONAL VALUE-CONTENT.—If the good is
7 subject to a regional value-content requirement, the
8 value of the accessories, spare parts, or tools shall
9 be taken into account as originating or nonorigi-
10 nating materials, as the case may be, in calculating
11 the regional value-content of the good.
12 (i) PACKAGING MATERIALS AND CONTAINERS FOR
13 RETAIL SALE.—Packaging materials and containers in
14 which a good is packaged for retail sale, if classified with
15 the good, shall be disregarded in determining whether all
16 the nonoriginating materials used in the production of the
17 good undergo the applicable change in tariff classification
18 set forth in Annex 3-A or Annex 4.1 of the Agreement,
19 and, if the good is subject to a regional value-content re-
20 quirement, the value of such packaging materials and con-
21 tainers shall be taken into account as originating or non-
22 originating materials, as the case may be, in calculating
23 the regional value-content of the good.
24 (j) PACKING MATERIALS AND CONTAINERS FOR
25 SHIPMENT.—Packing materials and containers for ship-

1 ment shall be disregarded in determining whether a good
2 is an originating good.
3 (k) INDIRECT MATERIALS.—An indirect material
4 shall be treated as an originating material without regard
5 to where it is produced.
6 (l) TRANSIT AND TRANSHIPMENT.—A good that has
7 undergone production necessary to qualify as an origi-
8 nating good under subsection (b) shall not be considered
9 to be an originating good if, subsequent to that produc-
10 tion, the good—
11 (1) undergoes further production or any other
12 operation outside the territory of Colombia or the
13 United States, other than unloading, reloading, or
14 any other operation necessary to preserve the good
15 in good condition or to transport the good to the ter-
16 ritory of Colombia or the United States; or
17 (2) does not remain under the control of cus-
18 toms authorities in the territory of a country other
19 than Colombia or the United States.
20 (m) GOODS CLASSIFIABLE AS GOODS PUT UP IN
21 SETS.—Notwithstanding the rules set forth in Annex 3-
22 A and Annex 4.1 of the Agreement, goods classifiable as
23 goods put up in sets for retail sale as provided for in Gen-
24 eral Rule of Interpretation 3 of the HTS shall not be con-
25 sidered to be originating goods unless—

1 (1) each of the goods in the set is an origi-
2 nating good; or
3 (2) the total value of the nonoriginating goods
4 in the set does not exceed—
5 (A) in the case of textile or apparel goods,
6 10 percent of the adjusted value of the set; or
7 (B) in the case of a good, other than a tex-
8 tile or apparel good, 15 percent of the adjusted
9 value of the set.
10 (n) DEFINITIONS.—In this section:
11 (1) ADJUSTED VALUE.—The term "adjusted
12 value" means the value determined in accordance
13 with Articles 1 through 8, Article 15, and the cor-
14 responding interpretive notes, of the Agreement on
15 Implementation of Article VII of the General Agree-
16 ment on Tariffs and Trade 1994 referred to in sec-
17 tion 101(d)(8) of the Uruguay Round Agreements
18 Act (19 U.S.C. 3511(d)(8)), adjusted, if necessary,
19 to exclude any costs, charges, or expenses incurred
20 for transportation, insurance, and related services
21 incident to the international shipment of the mer-
22 chandise from the country of exportation to the
23 place of importation.

1 (2) CLASS OF MOTOR VEHICLES.—The term
2 "class of motor vehicles" means any one of the fol-
3 lowing categories of motor vehicles:
4 (A) Motor vehicles provided for in sub-
5 heading 8701.20, 8704.10, 8704.22, 8704.23,
6 8704.32, or 8704.90, or heading 8705 or 8706,
7 or motor vehicles for the transport of 16 or
8 more persons provided for in subheading
9 8702.10 or 8702.90.
10 (B) Motor vehicles provided for in sub-
11 heading 8701.10 or any of subheadings
12 8701.30 through 8701.90.
13 (C) Motor vehicles for the transport of 15
14 or fewer persons provided for in subheading
15 8702.10 or 8702.90, or motor vehicles provided
16 for in subheading 8704.21 or 8704.31.
17 (D) Motor vehicles provided for in any of
18 subheadings 8703.21 through 8703.90.
19 (3) FUNGIBLE GOOD OR FUNGIBLE MATE-
20 RIAL.—The term "fungible good" or "fungible mate-
21 rial" means a good or material, as the case may be,
22 that is interchangeable with another good or mate-
23 rial for commercial purposes and the properties of
24 which are essentially identical to such other good or
25 material.

1 (4) GENERALLY ACCEPTED ACCOUNTING PRIN-
2 CIPLES.—The term "generally accepted accounting
3 principles" means the recognized consensus or sub-
4 stantial authoritative support in the territory of Co-
5 lombia or the United States, as the case may be,
6 with respect to the recording of revenues, expenses,
7 costs, assets, and liabilities, the disclosure of infor-
8 mation, and the preparation of financial statements.
9 The principles may encompass broad guidelines of
10 general application as well as detailed standards,
11 practices, and procedures.
12 (5) GOOD WHOLLY OBTAINED OR PRODUCED
13 ENTIRELY IN THE TERRITORY OF COLOMBIA, THE
14 UNITED STATES, OR BOTH.—The term "good wholly
15 obtained or produced entirely in the territory of Co-
16 lombia, the United States, or both" means any of
17 the following:
18 (A) Plants and plant products harvested or
19 gathered in the territory of Colombia, the
20 United States, or both.
21 (B) Live animals born and raised in the
22 territory of Colombia, the United States, or
23 both.

1 (C) Goods obtained in the territory of Co-
2 lombia, the United States, or both from live
3 animals.
4 (D) Goods obtained from hunting, trap-
5 ping, fishing, or aquaculture conducted in the
6 territory of Colombia, the United States, or
7 both.
8 (E) Minerals and other natural resources
9 not included in subparagraphs (A) through (D)
10 that are extracted or taken from the territory
11 of Colombia, the United States, or both.
12 (F) Fish, shellfish, and other marine life
13 taken from the sea, seabed, or subsoil outside
14 the territory of Colombia or the United States
15 by—
16 (i) a vessel that is registered or re-
17 corded with Colombia and flying the flag of
18 Colombia; or
19 (ii) a vessel that is documented under
20 the laws of the United States.
21 (G) Goods produced on board a factory
22 ship from goods referred to in subparagraph
23 (F), if such factory ship—
24 (i) is registered or recorded with Co-
25 lombia and flies the flag of Colombia; or

1 (ii) is a vessel that is documented
2 under the laws of the United States.
3 (H)(i) Goods taken by Colombia or a per-
4 son of Colombia from the seabed or subsoil out-
5 side the territorial waters of Colombia, if Co-
6 lombia has rights to exploit such seabed or sub-
7 soil.
8 (ii) Goods taken by the United States or a
9 person of the United States from the seabed or
10 subsoil outside the territorial waters of the
11 United States, if the United States has rights
12 to exploit such seabed or subsoil.
13 (I) Goods taken from outer space, if the
14 goods are obtained by Colombia or the United
15 States or a person of Colombia or the United
16 States and not processed in the territory of a
17 country other than Colombia or the United
18 States.
19 (J) Waste and scrap derived from—
20 (i) manufacturing or processing oper-
21 ations in the territory of Colombia, the
22 United States, or both; or
23 (ii) used goods collected in the terri-
24 tory of Colombia, the United States, or

1 both, if such goods are fit only for the re-
2 covery of raw materials.
3 (K) Recovered goods derived in the terri-
4 tory of Colombia, the United States, or both,
5 from used goods, and used in the territory of
6 Colombia, the United States, or both, in the
7 production of remanufactured goods.
8 (L) Goods, at any stage of production, pro-
9 duced in the territory of Colombia, the United
10 States, or both, exclusively from—
11 (i) goods referred to in any of sub-
12 paragraphs (A) through (J); or
13 (ii) the derivatives of goods referred
14 to in clause (i).
15 (6) IDENTICAL GOODS.—The term "identical
16 goods" means goods that are the same in all re-
17 spects relevant to the rule of origin that qualifies the
18 goods as originating goods.
19 (7) INDIRECT MATERIAL.—The term "indirect
20 material" means a good used in the production, test-
21 ing, or inspection of another good but not physically
22 incorporated into that other good, or a good used in
23 the maintenance of buildings or the operation of
24 equipment associated with the production of another
25 good, including—

1 (A) fuel and energy;
2 (B) tools, dies, and molds;
3 (C) spare parts and materials used in the
4 maintenance of equipment or buildings;
5 (D) lubricants, greases, compounding ma-
6 terials, and other materials used in production
7 or used to operate equipment or buildings;
8 (E) gloves, glasses, footwear, clothing,
9 safety equipment, and supplies;
10 (F) equipment, devices, and supplies used
11 for testing or inspecting the good;
12 (G) catalysts and solvents; and
13 (H) any other goods that are not incor-
14 porated into the other good but the use of
15 which in the production of the other good can
16 reasonably be demonstrated to be a part of that
17 production.
18 (8) MATERIAL.—The term "material" means a
19 good that is used in the production of another good,
20 including a part or an ingredient.
21 (9) MATERIAL THAT IS SELF-PRODUCED.—The
22 term "material that is self-produced" means an orig-
23 inating material that is produced by a producer of
24 a good and used in the production of that good.

1 (10) MODEL LINE OF MOTOR VEHICLES.—The
2 term "model line of motor vehicles" means a group
3 of motor vehicles having the same platform or model
4 name.
5 (11) NET COST.—The term "net cost" means
6 total cost minus sales promotion, marketing, and
7 after-sales service costs, royalties, shipping and
8 packing costs, and nonallowable interest costs that
9 are included in the total cost.
10 (12) NONALLOWABLE INTEREST COSTS.—The
11 term "nonallowable interest costs" means interest
12 costs incurred by a producer that exceed 700 basis
13 points above the applicable official interest rate for
14 comparable maturities of the country in which the
15 producer is located.
16 (13) NONORIGINATING GOOD OR NONORIGI-
17 NATING MATERIAL.—The terms "nonoriginating
18 good" and "nonoriginating material" mean a good
19 or material, as the case may be, that does not qual-
20 ify as originating under this section.
21 (14) PACKING MATERIALS AND CONTAINERS
22 FOR SHIPMENT.—The term "packing materials and
23 containers for shipment" means goods used to pro-
24 tect another good during its transportation and does

1 not include the packaging materials and containers
2 in which the other good is packaged for retail sale.
3 (15) PREFERENTIAL TARIFF TREATMENT.—
4 The term "preferential tariff treatment" means the
5 customs duty rate, and the treatment under article
6 2.10.4 of the Agreement, that is applicable to an
7 originating good pursuant to the Agreement.
8 (16) PRODUCER.—The term "producer" means
9 a person who engages in the production of a good
10 in the territory of Colombia or the United States.
11 (17) PRODUCTION.—The term "production"
12 means growing, mining, harvesting, fishing, raising,
13 trapping, hunting, manufacturing, processing, as-
14 sembling, or disassembling a good.
15 (18) REASONABLY ALLOCATE.—The term "rea-
16 sonably allocate" means to apportion in a manner
17 that would be appropriate under generally accepted
18 accounting principles.
19 (19) RECOVERED GOODS.—The term "recov-
20 ered goods" means materials in the form of indi-
21 vidual parts that are the result of—
22 (A) the disassembly of used goods into in-
23 dividual parts; and
24 (B) the cleaning, inspecting, testing, or
25 other processing that is necessary for improve-

1 ment to sound working condition of such indi-
2 vidual parts.
3 (20) REMANUFACTURED GOOD.—The term "re-
4 manufactured good" means an industrial good as-
5 sembled in the territory of Colombia or the United
6 States, or both, that is classified under chapter 84,
7 85, 87, or 90 or heading 9402, other than a good
8 classified under heading 8418 or 8516, and that—
9 (A) is entirely or partially comprised of re-
10 covered goods; and
11 (B) has a similar life expectancy and en-
12 joys a factory warranty similar to such a good
13 that is new.
14 (21) TOTAL COST.—
15 (A) IN GENERAL.—The term "total
16 cost"—
17 (i) means all product costs, period
18 costs, and other costs for a good incurred
19 in the territory of Colombia, the United
20 States, or both; and
21 (ii) does not include profits that are
22 earned by the producer, regardless of
23 whether they are retained by the producer
24 or paid out to other persons as dividends,

1 or taxes paid on those profits, including
2 capital gains taxes.
3 (B) OTHER DEFINITIONS.—In this para-
4 graph:
5 (i) PRODUCT COSTS.—The term
6 "product costs" means costs that are asso-
7 ciated with the production of a good and
8 include the value of materials, direct labor
9 costs, and direct overhead.
10 (ii) PERIOD COSTS.—The term "pe-
11 riod costs" means costs, other than prod-
12 uct costs, that are expensed in the period
13 in which they are incurred, such as selling
14 expenses and general and administrative
15 expenses.
16 (iii) OTHER COSTS.—The term "other
17 costs" means all costs recorded on the
18 books of the producer that are not product
19 costs or period costs, such as interest.
20 (22) USED.—The term "used" means utilized
21 or consumed in the production of goods.
22 (o) PRESIDENTIAL PROCLAMATION AUTHORITY.—
23 (1) IN GENERAL.—The President is authorized
24 to proclaim, as part of the HTS—

1 (A) the provisions set forth in Annex 3-A
2 and Annex 4.1 of the Agreement; and
3 (B) any additional subordinate category
4 that is necessary to carry out this title con-
5 sistent with the Agreement.
6 (2) FABRICS AND YARNS NOT AVAILABLE IN
7 COMMERCIAL QUANTITIES IN THE UNITED
8 STATES.—The President is authorized to proclaim
9 that a fabric or yarn is added to the list in Annex
10 3-B of the Agreement in an unrestricted quantity, as
11 provided in article 3.3.5(e) of the Agreement.
12 (3) MODIFICATIONS.—
13 (A) IN GENERAL.—Subject to the consulta-
14 tion and layover provisions of section 104, the
15 President may proclaim modifications to the
16 provisions proclaimed under the authority of
17 paragraph (1)(A), other than provisions of
18 chapters 50 through 63 (as included in Annex
19 3-A of the Agreement).
20 (B) ADDITIONAL PROCLAMATIONS.—Not-
21 withstanding subparagraph (A), and subject to
22 the consultation and layover provisions of sec-
23 tion 104, the President may proclaim before the
24 end of the 1-year period beginning on the date
25 of the enactment of this Act, modifications to

1 correct any typographical, clerical, or other non-
2 substantive technical error regarding the provi-
3 sions of chapters 50 through 63 (as included in
4 Annex 3-A of the Agreement).
5 (4) FABRICS, YARNS, OR FIBERS NOT AVAIL-
6 ABLE IN COMMERCIAL QUANTITIES IN COLOMBIA
7 AND THE UNITED STATES.—
8 (A) IN GENERAL.—Notwithstanding para-
9 graph (3)(A), the list of fabrics, yarns, and fi-
10 bers set forth in Annex 3-B of the Agreement
11 may be modified as provided for in this para-
12 graph.
13 (B) DEFINITIONS.—In this paragraph:
14 (i) The term "interested entity"
15 means the Government of Colombia, a po-
16 tential or actual purchaser of a textile or
17 apparel good, or a potential or actual sup-
18 plier of a textile or apparel good.
19 (ii) All references to "day" and
20 "days" exclude Saturdays, Sundays, and
21 legal holidays observed by the Government
22 of the United States.
23 (C) REQUESTS TO ADD FABRICS, YARNS,
24 OR FIBERS.—(i) An interested entity may re-
25 quest the President to determine that a fabric,

1 yarn, or fiber is not available in commercial
2 quantities in a timely manner in Colombia and
3 the United States and to add that fabric, yarn,
4 or fiber to the list in Annex 3-B of the Agree-
5 ment in a restricted or unrestricted quantity.
6 (ii) After receiving a request under clause
7 (i), the President may determine whether—
8 (I) the fabric, yarn, or fiber is avail-
9 able in commercial quantities in a timely
10 manner in Colombia or the United States;
11 or
12 (II) any interested entity objects to
13 the request.
14 (iii) The President may, within the time
15 periods specified in clause (iv), proclaim that
16 the fabric, yarn, or fiber that is the subject of
17 the request is added to the list in Annex 3-B
18 of the Agreement in an unrestricted quantity,
19 or in any restricted quantity that the President
20 may establish, if the President has determined
21 under clause (ii) that—
22 (I) the fabric, yarn, or fiber is not
23 available in commercial quantities in a
24 timely manner in Colombia and the United
25 States; or

1 (II) no interested entity has objected
2 to the request.
3 (iv) The time periods within which the
4 President may issue a proclamation under
5 clause (iii) are—
6 (I) not later than 30 days after the
7 date on which a request is submitted under
8 clause (i); or
9 (II) not later than 44 days after the
10 request is submitted, if the President de-
11 termines, within 30 days after the date on
12 which the request is submitted, that the
13 President does not have sufficient informa-
14 tion to make a determination under clause
15 (ii).
16 (v) Notwithstanding section 103(a)(2), a
17 proclamation made under clause (iii) shall take
18 effect on the date on which the text of the proc-
19 lamation is published in the Federal Register.
20 (vi) Not later than 6 months after pro-
21 claiming under clause (iii) that a fabric, yarn,
22 or fiber is added to the list in Annex 3-B of the
23 Agreement in a restricted quantity, the Presi-
24 dent may eliminate the restriction if the Presi-
25 dent determines that the fabric, yarn, or fiber

1 is not available in commercial quantities in a
2 timely manner in Colombia and the United
3 States.
4 (D) DEEMED APPROVAL OF REQUEST.—If,
5 after an interested entity submits a request
6 under subparagraph (C)(i), the President does
7 not, within the applicable time period specified
8 in subparagraph (C)(iv), make a determination
9 under subparagraph (C)(ii) regarding the re-
10 quest, the fabric, yarn, or fiber that is the sub-
11 ject of the request shall be considered to be
12 added, in an unrestricted quantity, to the list in
13 Annex 3-B of the Agreement beginning—
14 (i) 45 days after the date on which
15 the request was submitted; or
16 (ii) 60 days after the date on which
17 the request was submitted, if the President
18 made a determination under subparagraph
19 (C)(iv)(II).
20 (E) REQUESTS TO RESTRICT OR REMOVE
21 FABRICS, YARNS, OR FIBERS.—(i) Subject to
22 clause (ii), an interested entity may request the
23 President to restrict the quantity of, or remove
24 from the list in Annex 3-B of the Agreement,
25 any fabric, yarn, or fiber—

1 (I) that has been added to that list in
2 an unrestricted quantity pursuant to para-
3 graph (2) or subparagraph (C)(iii) or (D)
4 of this paragraph; or
5 (II) with respect to which the Presi-
6 dent has eliminated a restriction under
7 subparagraph (C)(vi).
8 (ii) An interested entity may submit a re-
9 quest under clause (i) at any time beginning 6
10 months after the date of the action described in
11 subclause (I) or (II) of that clause.
12 (iii) Not later than 30 days after the date
13 on which a request under clause (i) is sub-
14 mitted, the President may proclaim an action
15 provided for under clause (i) if the President
16 determines that the fabric, yarn, or fiber that
17 is the subject of the request is available in com-
18 mercial quantities in a timely manner in Colom-
19 bia or the United States.
20 (iv) A proclamation under clause (iii) shall
21 take effect no earlier than the date that is 6
22 months after the date on which the text of the
23 proclamation is published in the Federal Reg-
24 ister.

1 (F) PROCEDURES.—The President shall
2 establish procedures—
3 (i) governing the submission of a re-
4 quest under subparagraphs (C) and (E);
5 and
6 (ii) providing an opportunity for inter-
7 ested entities to submit comments and sup-
8 porting evidence before the President
9 makes a determination under subpara-
10 graph (C) (ii) or (vi) or (E)(iii).

11 **SEC. 204. CUSTOMS USER FEES.**

12 (a) IN GENERAL.—Section 13031(b) of the Consoli-
13 dated Omnibus Budget Reconciliation Act of 1985 (19
14 U.S.C. 58c(b)) is amended by adding after paragraph
15 (18), the following:
16 "(19) No fee may be charged under subsection
17 (a)(9) or (10) with respect to goods that qualify as
18 originating goods under section 203 of the United
19 States-Colombia Trade Promotion Agreement Imple-
20 mentation Act. Any service for which an exemption
21 from such fee is provided by reason of this para-
22 graph may not be funded with money contained in
23 the Customs User Fee Account.".
24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall take effect on October 1, 2013.

1 (c) REFUND.—Any fee described in paragraph (19)
2 of section 13031(b) of the Consolidated Omnibus Budget
3 Reconciliation Act of 1985 (19 U.S.C. 58c(b)) (as added
4 by subsection (a)) that is paid on or after the date that
5 the United States-Colombia Trade Promotion Agreement
6 enters into force and before October 1, 2013, shall be re-
7 funded with interest if application for such refund is made
8 on or after October 1, 2013, and before July 1, 2014.

9 **SEC. 205. DISCLOSURE OF INCORRECT INFORMATION;**
10 **FALSE CERTIFICATIONS OF ORIGIN; DENIAL**
11 **OF PREFERENTIAL TARIFF TREATMENT.**

12 (a) DISCLOSURE OF INCORRECT INFORMATION.—
13 Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592)
14 is amended—
15 (1) in subsection (c)—
16 (A) by redesignating paragraph (11) as
17 paragraph (12); and
18 (B) by inserting after paragraph (10) the
19 following new paragraph:
20 "(11) PRIOR DISCLOSURE REGARDING CLAIMS
21 UNDER THE UNITED STATES-COLOMBIA TRADE PRO-
22 MOTION AGREEMENT.—An importer shall not be
23 subject to penalties under subsection (a) for making
24 an incorrect claim that a good qualifies as an origi-
25 nating good under section 203 of the United States-

1 Colombia Trade Promotion Agreement Implementa-
2 tion Act if the importer, in accordance with regula-
3 tions issued by the Secretary of the Treasury,
4 promptly and voluntarily makes a corrected declara-
5 tion and pays any duties owing with respect to that
6 good."; and
7 (2) by adding at the end the following new sub-
8 section:
9 "(j) FALSE CERTIFICATIONS OF ORIGIN UNDER THE
10 UNITED STATES- COLOMBIA TRADE PROMOTION AGREE-
11 MENT.—
12 "(1) IN GENERAL.—Subject to paragraph (2),
13 it is unlawful for any person to certify falsely, by
14 fraud, gross negligence, or negligence, in a CTPA
15 certification of origin (as defined in section
16 508(i)(1)(B) of this Act) that a good exported from
17 the United States qualifies as an originating good
18 under the rules of origin provided for in section 203
19 of the United States-Colombia Trade Promotion
20 Agreement Implementation Act. The procedures and
21 penalties of this section that apply to a violation of
22 subsection (a) also apply to a violation of this sub-
23 section.
24 "(2) PROMPT AND VOLUNTARY DISCLOSURE OF
25 INCORRECT INFORMATION.—No penalty shall be im-

1 posed under this subsection if, promptly after an ex-
2 porter or producer that issued a CTPA certification
3 of origin has reason to believe that such certification
4 contains or is based on incorrect information, the ex-
5 porter or producer voluntarily provides written no-
6 tice of such incorrect information to every person to
7 whom the certification was issued.
8 "(3) EXCEPTION.—A person shall not be con-
9 sidered to have violated paragraph (1) if—
10 "(A) the information was correct at the
11 time it was provided in a CTPA certification of
12 origin but was later rendered incorrect due to
13 a change in circumstances; and
14 "(B) the person promptly and voluntarily
15 provides written notice of the change in cir-
16 cumstances to all persons to whom the person
17 provided the certification.".
18 (b) DENIAL OF PREFERENTIAL TARIFF TREAT-
19 MENT.—Section 514 of the Tariff Act of 1930 (19 U.S.C.
20 1514) is amended by adding at the end the following new
21 subsection:
22 "(j) DENIAL OF PREFERENTIAL TARIFF TREAT-
23 MENT UNDER THE UNITED STATES-COLOMBIA TRADE
24 PROMOTION AGREEMENT.—If U.S. Customs and Border
25 Protection or U.S. Immigration and Customs Enforce-

1 ment of the Department of Homeland Security finds indi-
2 cations of a pattern of conduct by an importer, exporter,
3 or producer of false or unsupported representations that
4 goods qualify under the rules of origin provided for in sec-
5 tion 203 of the United States-Colombia Trade Promotion
6 Agreement Implementation Act, U.S. Customs and Border
7 Protection, in accordance with regulations issued by the
8 Secretary of the Treasury, may suspend preferential tariff
9 treatment under the United States-Colombia Trade Pro-
10 motion Agreement to entries of identical goods covered by
11 subsequent representations by that importer, exporter, or
12 producer until U.S. Customs and Border Protection deter-
13 mines that representations of that person are in con-
14 formity with such section 203.".

15 **SEC. 206. RELIQUIDATION OF ENTRIES.**

16 Subsection (d) of section 520 of the Tariff Act of
17 1930 (19 U.S.C. 1520(d)) is amended in the matter pre-
18 ceding paragraph (1)—

19 (1) by striking "or"; and

20 (2) by striking "for which" and inserting ", or
21 section 203 of the United States-Colombia Trade
22 Promotion Agreement Implementation Act for
23 which".

1 **SEC. 207. RECORDKEEPING REQUIREMENTS.**

2 Section 508 of the Tariff Act of 1930 (19 U.S.C.
3 1508) is amended—

4 (1) by redesignating subsection (i) as subsection
5 (j);

6 (2) by inserting after subsection (h) the fol-
7 lowing new subsection:

8 "(i) CERTIFICATIONS OF ORIGIN FOR GOODS EX-
9 PORTED UNDER THE UNITED STATES-COLOMBIA TRADE
10 PROMOTION AGREEMENT.—

11 "(1) DEFINITIONS.—In this subsection:

12 "(A) RECORDS AND SUPPORTING DOCU-
13 MENTS.—The term 'records and supporting
14 documents' means, with respect to an exported
15 good under paragraph (2), records and docu-
16 ments related to the origin of the good,
17 including—

18 "(i) the purchase, cost, and value of,
19 and payment for, the good;

20 "(ii) the purchase, cost, and value of,
21 and payment for, all materials, including
22 indirect materials, used in the production
23 of the good; and

24 "(iii) the production of the good in
25 the form in which it was exported.

1 "(B) CTPA CERTIFICATION OF ORIGIN.—
2 The term 'CTPA certification of origin' means
3 the certification established under article 4.15
4 of the United States-Colombia Trade Promotion
5 Agreement that a good qualifies as an origi-
6 nating good under such Agreement.
7 "(2) EXPORTS TO COLOMBIA.—Any person who
8 completes and issues a CTPA certification of origin
9 for a good exported from the United States shall
10 make, keep, and, pursuant to rules and regulations
11 promulgated by the Secretary of the Treasury,
12 render for examination and inspection all records
13 and supporting documents related to the origin of
14 the good (including the certification or copies there-
15 of).
16 "(3) RETENTION PERIOD.—The person who
17 issues a CTPA certification of origin shall keep the
18 records and supporting documents relating to that
19 certification of origin for a period of at least 5 years
20 after the date on which the certification is issued.";
21 and
22 (3) in subsection (j), as so redesignated by
23 striking "(f), (g), or (h)" and inserting "(f), (g), (h),
24 or (i)".

1 **SEC. 208. ENFORCEMENT RELATING TO TRADE IN TEXTILE**
2 **OR APPAREL GOODS.**
3 (a) ACTION DURING VERIFICATION.—
4 (1) IN GENERAL.—If the Secretary of the
5 Treasury requests the Government of Colombia to
6 conduct a verification pursuant to article 3.2 of the
7 Agreement for purposes of making a determination
8 under paragraph (2), the President may direct the
9 Secretary to take appropriate action described in
10 subsection (b) while the verification is being con-
11 ducted.
12 (2) DETERMINATION.—A determination under
13 this paragraph is a determination of the Secretary
14 that—
15 (A) an exporter or producer in Colombia is
16 complying with applicable customs laws, regula-
17 tions, and procedures regarding trade in textile
18 or apparel goods, or
19 (B) a claim that a textile or apparel good
20 exported or produced by such exporter or
21 producer—
22 (i) qualifies as an originating good
23 under section 203, or
24 (ii) is a good of Colombia,
25 is accurate.

1 (b) APPROPRIATE ACTION DESCRIBED.—Appropriate
2 action under subsection (a)(1) includes—
3 (1) suspension of preferential tariff treatment
4 under the Agreement with respect to—
5 (A) any textile or apparel good exported or
6 produced by the person that is the subject of a
7 verification under subsection (a)(1) regarding
8 compliance described in subsection (a)(2)(A), if
9 the Secretary determines that there is insuffi-
10 cient information to support any claim for pref-
11 erential tariff treatment that has been made
12 with respect to any such good; or
13 (B) the textile or apparel good for which a
14 claim of preferential tariff treatment has been
15 made that is the subject of a verification under
16 subsection (a)(1) regarding a claim described in
17 subsection (a)(2)(B), if the Secretary deter-
18 mines that there is insufficient information to
19 support that claim;
20 (2) denial of preferential tariff treatment under
21 the Agreement with respect to—
22 (A) any textile or apparel good exported or
23 produced by the person that is the subject of a
24 verification under subsection (a)(1) regarding
25 compliance described in subsection (a)(2)(A), if

1 the Secretary determines that the person has
2 provided incorrect information to support any
3 claim for preferential tariff treatment that has
4 been made with respect to any such good; or
5 (B) the textile or apparel good for which a
6 claim of preferential tariff treatment has been
7 made that is the subject of a verification under
8 subsection (a)(1) regarding a claim described in
9 subsection (a)(2)(B), if the Secretary deter-
10 mines that a person has provided incorrect in-
11 formation to support that claim;
12 (3) detention of any textile or apparel good ex-
13 ported or produced by the person that is the subject
14 of a verification under subsection (a)(1) regarding
15 compliance described in subsection (a)(2)(A) or a
16 claim described in subsection (a)(2)(B), if the Sec-
17 retary determines that there is insufficient informa-
18 tion to determine the country of origin of any such
19 good; and
20 (4) denial of entry into the United States of
21 any textile or apparel good exported or produced by
22 the person that is the subject of a verification under
23 subsection (a)(1) regarding compliance described in
24 subsection (a)(2)(A) or a claim described in sub-
25 section (a)(2)(B), if the Secretary determines that

1 the person has provided incorrect information as to
2 the country of origin of any such good.
3 (c) ACTION ON COMPLETION OF A VERIFICATION.—
4 On completion of a verification under subsection (a), the
5 President may direct the Secretary to take appropriate ac-
6 tion described in subsection (d) until such time as the Sec-
7 retary receives information sufficient to make the deter-
8 mination under subsection (a)(2) or until such earlier date
9 as the President may direct.
10 (d) APPROPRIATE ACTION DESCRIBED.—Appro-
11 priate action under subsection (c) includes—
12 (1) denial of preferential tariff treatment under
13 the Agreement with respect to—
14 (A) any textile or apparel good exported or
15 produced by the person that is the subject of a
16 verification under subsection (a)(1) regarding
17 compliance described in subsection (a)(2)(A), if
18 the Secretary determines that there is insuffi-
19 cient information to support, or that the person
20 has provided incorrect information to support,
21 any claim for preferential tariff treatment that
22 has been made with respect to any such good;
23 or
24 (B) the textile or apparel good for which a
25 claim of preferential tariff treatment has been

1 made that is the subject of a verification under
2 subsection (a)(1) regarding a claim described in
3 subsection (a)(2)(B), if the Secretary deter-
4 mines that there is insufficient information to
5 support, or that a person has provided incorrect
6 information to support, that claim; and
7 (2) denial of entry into the United States of
8 any textile or apparel good exported or produced by
9 the person that is the subject of a verification under
10 subsection (a)(1) regarding compliance described in
11 subsection (a)(2)(A) or a claim described in sub-
12 section (a)(2)(B), if the Secretary determines that
13 there is insufficient information to determine, or
14 that the person has provided incorrect information
15 as to, the country of origin of any such good.
16 (e) PUBLICATION OF NAME OF PERSON.—In accord-
17 ance with article 3.2.6 of the Agreement, the Secretary
18 may publish the name of any person that the Secretary
19 has determined—
20 (1) is engaged in circumvention of applicable
21 laws, regulations, or procedures affecting trade in
22 textile or apparel goods; or
23 (2) has failed to demonstrate that it produces,
24 or is capable of producing, textile or apparel goods.

1 (f) VERIFICATIONS IN THE UNITED STATES.—If the
2 government of a country that is a party to a free trade
3 agreement with the United States makes a request for a
4 verification pursuant to that agreement, the Secretary
5 may request a verification of the production of any textile
6 or apparel good in order to assist that government in
7 determining—
8 (1) whether a claim of origin under the agree-
9 ment for a textile or apparel good is accurate; or
10 (2) whether an exporter, producer, or other en-
11 terprise located in the United States involved in the
12 movement of textile or apparel goods from the
13 United States to the territory of the requesting gov-
14 ernment is complying with applicable customs laws,
15 regulations, and procedures regarding trade in tex-
16 tile or apparel goods.
17 **SEC. 209. REGULATIONS.**
18 The Secretary of the Treasury shall prescribe such
19 regulations as may be necessary to carry out—
20 (1) subsections (a) through (n) of section 203;
21 (2) the amendment made by section 204; and
22 (3) any proclamation issued under section
23 203(o).

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

(1) COLOMBIAN ARTICLE.—The term "Colombian article" means an article that qualifies as an originating good under section 203(b).

(2) COLOMBIAN TEXTILE OR APPAREL ARTICLE.—The term "Colombian textile or apparel article" means a textile or apparel good (as defined in section 3(4)) that is a Colombian article.

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commis-

1 sion, unless subsection (d) applies, shall promptly initiate
2 an investigation to determine whether, as a result of the
3 reduction or elimination of a duty provided for under the
4 Agreement, a Colombian article is being imported into the
5 United States in such increased quantities, in absolute
6 terms or relative to domestic production, and under such
7 conditions that imports of the Colombian article constitute
8 a substantial cause of serious injury or threat thereof to
9 the domestic industry producing an article that is like, or
10 directly competitive with, the imported article.

11 (c) APPLICABLE PROVISIONS.—The following provi-
12 sions of section 202 of the Trade Act of 1974 (19 U.S.C.
13 2252) apply with respect to any investigation initiated
14 under subsection (b):

15 (1) Paragraphs (1)(B) and (3) of subsection
16 (b).

17 (2) Subsection (c).

18 (3) Subsection (i).

19 (d) ARTICLES EXEMPT FROM INVESTIGATION.—No
20 investigation may be initiated under this section with re-
21 spect to any Colombian article if, after the date on which
22 the Agreement enters into force, import relief has been
23 provided with respect to that Colombian article under this
24 subtitle.

1 **SEC. 312. COMMISSION ACTION ON PETITION.**

2 (a) DETERMINATION.—Not later than 120 days after
3 the date on which an investigation is initiated under sec-
4 tion 311(b) with respect to a petition, the Commission
5 shall make the determination required under that section.

6 (b) APPLICABLE PROVISIONS.—For purposes of this
7 subtitle, the provisions of paragraphs (1), (2), and (3) of
8 section 330(d) of the Tariff Act of 1930 (19 U.S.C.
9 1330(d) (1), (2), and (3)) shall be applied with respect
10 to determinations and findings made under this section
11 as if such determinations and findings were made under
12 section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

13 (c) ADDITIONAL FINDING AND RECOMMENDATION IF
14 DETERMINATION AFFIRMATIVE.—

15 (1) IN GENERAL.—If the determination made
16 by the Commission under subsection (a) with respect
17 to imports of an article is affirmative, or if the
18 President may consider a determination of the Com-
19 mission to be an affirmative determination as pro-
20 vided for under paragraph (1) of section 330(d) of
21 the Tariff Act of 1930 (19 U.S.C. 1330(d)), the
22 Commission shall find, and recommend to the Presi-
23 dent in the report required under subsection (d), the
24 amount of import relief that is necessary to remedy
25 or prevent the injury found by the Commission in
26 the determination and to facilitate the efforts of the

1 domestic industry to make a positive adjustment to
2 import competition.
3 (2) LIMITATION ON RELIEF.—The import relief
4 recommended by the Commission under this sub-
5 section shall be limited to the relief described in sec-
6 tion 313(c).
7 (3) VOTING; SEPARATE VIEWS.—Only those
8 members of the Commission who voted in the af-
9 firmative under subsection (a) are eligible to vote on
10 the proposed action to remedy or prevent the injury
11 found by the Commission. Members of the Commis-
12 sion who did not vote in the affirmative may submit,
13 in the report required under subsection (d), separate
14 views regarding what action, if any, should be taken
15 to remedy or prevent the injury.
16 (d) REPORT TO PRESIDENT.—Not later than the
17 date that is 30 days after the date on which a determina-
18 tion is made under subsection (a) with respect to an inves-
19 tigation, the Commission shall submit to the President a
20 report that includes—
21 (1) the determination made under subsection
22 (a) and an explanation of the basis for the deter-
23 mination;
24 (2) if the determination under subsection (a) is
25 affirmative, any findings and recommendations for

1 import relief made under subsection (c) and an ex-
2 planation of the basis for each recommendation; and
3 (3) any dissenting or separate views by mem-
4 bers of the Commission regarding the determination
5 referred to in paragraph (1) and any finding or rec-
6 ommendation referred to in paragraph (2).
7 (e) PUBLIC NOTICE.—Upon submitting a report to
8 the President under subsection (d), the Commission shall
9 promptly make public the report (with the exception of
10 information which the Commission determines to be con-
11 fidential) and shall publish a summary of the report in
12 the Federal Register.
13 **SEC. 313. PROVISION OF RELIEF.**
14 (a) IN GENERAL.—Not later than the date that is
15 30 days after the date on which the President receives the
16 report of the Commission in which the Commission's de-
17 termination under section 312(a) is affirmative, or which
18 contains a determination under section 312(a) that the
19 President considers to be affirmative under paragraph (1)
20 of section 330(d) of the Tariff Act of 1930 (19 U.S.C.
21 1330(d)(1)), the President, subject to subsection (b), shall
22 provide relief from imports of the article that is the subject
23 of such determination to the extent that the President de-
24 termines necessary to remedy or prevent the injury found
25 by the Commission and to facilitate the efforts of the do-

1 mestic industry to make a positive adjustment to import
2 competition.
3 (b) EXCEPTION.—The President is not required to
4 provide import relief under this section if the President
5 determines that the provision of the import relief will not
6 provide greater economic and social benefits than costs.
7 (c) NATURE OF RELIEF.—
8 (1) IN GENERAL.—The import relief that the
9 President is authorized to provide under this section
10 with respect to imports of an article is as follows:
11 (A) The suspension of any further reduc-
12 tion provided for under Annex 2.3 of the Agree-
13 ment in the duty imposed on the article.
14 (B) An increase in the rate of duty im-
15 posed on the article to a level that does not ex-
16 ceed the lesser of—
17 (i) the column 1 general rate of duty
18 imposed under the HTS on like articles at
19 the time the import relief is provided; or
20 (ii) the column 1 general rate of duty
21 imposed under the HTS on like articles on
22 the day before the date on which the
23 Agreement enters into force.
24 (2) PROGRESSIVE LIBERALIZATION.—If the pe-
25 riod for which import relief is provided under this

1 section is greater than 1 year, the President shall
2 provide for the progressive liberalization (described
3 in article 8.2.2 of the Agreement) of such relief at
4 regular intervals during the period of its application.
5 (d) PERIOD OF RELIEF.—
6 (1) IN GENERAL.—Subject to paragraph (2),
7 any import relief that the President provides under
8 this section may not be in effect for more than 2
9 years.
10 (2) EXTENSION.—
11 (A) IN GENERAL.—Subject to subpara-
12 graph (C), the President, after receiving a de-
13 termination from the Commission under sub-
14 paragraph (B) that is affirmative, or which the
15 President considers to be affirmative under
16 paragraph (1) of section 330(d) of the Tariff
17 Act of 1930 (19 U.S.C. 1330(d)(1)), may ex-
18 tend the effective period of any import relief
19 provided under this section by up to 2 years, if
20 the President determines that—
21 (i) the import relief continues to be
22 necessary to remedy or prevent serious in-
23 jury and to facilitate adjustment by the do-
24 mestic industry to import competition; and

1 (ii) there is evidence that the industry
2 is making a positive adjustment to import
3 competition.
4 (B) ACTION BY COMMISSION.—
5 (i) INVESTIGATION.—Upon a petition
6 on behalf of the industry concerned that is
7 filed with the Commission not earlier than
8 the date that is 9 months, and not later
9 than the date that is 6 months, before the
10 date on which any action taken under sub-
11 section (a) is to terminate, the Commission
12 shall conduct an investigation to determine
13 whether action under this section continues
14 to be necessary to remedy or prevent seri-
15 ous injury and whether there is evidence
16 that the industry is making a positive ad-
17 justment to import competition.
18 (ii) NOTICE AND HEARING.—The
19 Commission shall publish notice of the
20 commencement of any proceeding under
21 this subparagraph in the Federal Register
22 and shall, within a reasonable time there-
23 after, hold a public hearing at which the
24 Commission shall afford interested parties
25 and consumers an opportunity to be

1 present, to present evidence, and to re-
2 spond to the presentations of other parties
3 and consumers, and otherwise to be heard.
4 (iii) REPORT.—The Commission shall
5 submit to the President a report on its in-
6 vestigation and determination under this
7 subparagraph not later than 60 days be-
8 fore the action under subsection (a) is to
9 terminate, unless the President specifies a
10 different date.
11 (C) PERIOD OF IMPORT RELIEF.—Any im-
12 port relief provided under this section, including
13 any extensions thereof, may not, in the aggre-
14 gate, be in effect for more than 4 years.
15 (e) RATE AFTER TERMINATION OF IMPORT RE-
16 LIEF.—When import relief under this section is termi-
17 nated with respect to an article—
18 (1) the rate of duty on that article after such
19 termination and on or before December 31 of the
20 year in which such termination occurs shall be the
21 rate that, according to the Schedule of the United
22 States to Annex 2.3 of the Agreement, would have
23 been in effect 1 year after the provision of relief
24 under subsection (a); and

1 (2) the rate of duty for that article after De-
2 cember 31 of the year in which such termination oc-
3 curs shall be, at the discretion of the President,
4 either—
5 (A) the applicable rate of duty for that ar-
6 ticle set forth in the Schedule of the United
7 States to Annex 2.3 of the Agreement; or
8 (B) the rate of duty resulting from the
9 elimination of the tariff in equal annual stages
10 ending on the date set forth in the Schedule of
11 the United States to Annex 2.3 of the Agree-
12 ment for the elimination of the tariff.
13 (f) ARTICLES EXEMPT FROM RELIEF.—No import
14 relief may be provided under this section on—
15 (1) any article that is subject to import relief
16 under—
17 (A) subtitle B; or
18 (B) chapter 1 of title II of the Trade Act
19 of 1974 (19 U.S.C. 2251 et seq.); or
20 (2) any article on which an additional duty as-
21 sessed under section 202(b) is in effect.
22 **SEC. 314. TERMINATION OF RELIEF AUTHORITY.**
23 (a) GENERAL RULE.—Subject to subsection (b), no
24 import relief may be provided under this subtitle after the

1 date that is 10 years after the date on which the Agree-
2 ment enters into force.

3 (b) EXCEPTION.—If an article for which relief is pro-
4 vided under this subtitle is an article for which the period
5 for tariff elimination, set forth in the Schedule of the
6 United States to Annex 2.3 of the Agreement, is greater
7 than 10 years, no relief under this subtitle may be pro-
8 vided for that article after the date on which that period
9 ends.

10 **SEC. 315. COMPENSATION AUTHORITY.**

11 For purposes of section 123 of the Trade Act of 1974
12 (19 U.S.C. 2133), any import relief provided by the Presi-
13 dent under section 313 shall be treated as action taken
14 under chapter 1 of title II of such Act (19 U.S.C. 2251
15 et seq.).

16 **SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

17 Section 202(a)(8) of the Trade Act of 1974 (19
18 U.S.C. 2252(a)(8)) is amended in the first sentence—

19 (1) by striking "and"; and

20 (2) by inserting before the period at the end ",
21 and title III of the United States-Colombia Trade
22 Promotion Agreement Implementation Act".

1 **Subtitle B—Textile and Apparel**
2 **Safeguard Measures**

3 **SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.**

4 (a) IN GENERAL.—A request for action under this
5 subtitle for the purpose of adjusting to the obligations of
6 the United States under the Agreement may be filed with
7 the President by an interested party. Upon the filing of
8 a request, the President shall review the request to deter-
9 mine, from information presented in the request, whether
10 to commence consideration of the request.

11 (b) PUBLICATION OF REQUEST.—If the President de-
12 termines that the request under subsection (a) provides
13 the information necessary for the request to be considered,
14 the President shall publish in the Federal Register a no-
15 tice of commencement of consideration of the request, and
16 notice seeking public comments regarding the request. The
17 notice shall include a summary of the request and the
18 dates by which comments and rebuttals must be received.

19 **SEC. 322. DETERMINATION AND PROVISION OF RELIEF.**

20 (a) DETERMINATION.—

21 (1) IN GENERAL.—If a positive determination is
22 made under section 321(b), the President shall de-
23 termine whether, as a result of the elimination of a
24 duty under the Agreement, a Colombian textile or
25 apparel article is being imported into the United

1 States in such increased quantities, in absolute
2 terms or relative to the domestic market for that ar-
3 ticle, and under such conditions as to cause serious
4 damage, or actual threat thereof, to a domestic in-
5 dustry producing an article that is like, or directly
6 competitive with, the imported article.
7 (2) SERIOUS DAMAGE.—In making a deter-
8 mination under paragraph (1), the President—
9 (A) shall examine the effect of increased
10 imports on the domestic industry, as reflected
11 in changes in such relevant economic factors as
12 output, productivity, utilization of capacity, in-
13 ventories, market share, exports, wages, em-
14 ployment, domestic prices, profits and losses,
15 and investment, no one of which is necessarily
16 decisive; and
17 (B) shall not consider changes in consumer
18 preference or changes in technology in the
19 United States as factors supporting a deter-
20 mination of serious damage or actual threat
21 thereof.
22 (b) PROVISION OF RELIEF.—
23 (1) IN GENERAL.—If a determination under
24 subsection (a) is affirmative, the President may pro-
25 vide relief from imports of the article that is the

1 subject of such determination, as provided in para-
2 graph (2), to the extent that the President deter-
3 mines necessary to remedy or prevent the serious
4 damage and to facilitate adjustment by the domestic
5 industry.

6 (2) NATURE OF RELIEF.—The relief that the
7 President is authorized to provide under this sub-
8 section with respect to imports of an article is an in-
9 crease in the rate of duty imposed on the article to
10 a level that does not exceed the lesser of—

11 (A) the column 1 general rate of duty im-
12 posed under the HTS on like articles at the
13 time the import relief is provided; or

14 (B) the column 1 general rate of duty im-
15 posed under the HTS on like articles on the
16 day before the date on which the Agreement en-
17 ters into force.

18 **SEC. 323. PERIOD OF RELIEF.**

19 (a) IN GENERAL.—Subject to subsection (b), the im-
20 port relief that the President provides under section
21 322(b) may not be in effect for more than 2 years.

22 (b) EXTENSION.—

23 (1) IN GENERAL.—Subject to paragraph (2),
24 the President may extend the effective period of any
25 import relief provided under this subtitle for a pe-

1 riod of not more than 1 year, if the President deter-
2 mines that—
3 (A) the import relief continues to be nec-
4 essary to remedy or prevent serious damage
5 and to facilitate adjustment by the domestic in-
6 dustry to import competition; and
7 (B) there is evidence that the industry is
8 making a positive adjustment to import com-
9 petition.
10 (2) LIMITATION.—Any relief provided under
11 this subtitle, including any extensions thereof, may
12 not, in the aggregate, be in effect for more than 3
13 years.
14 **SEC. 324. ARTICLES EXEMPT FROM RELIEF.**
15 The President may not provide import relief under
16 this subtitle with respect to an article if—
17 (1) import relief previously has been provided
18 under this subtitle with respect to that article; or
19 (2) the article is subject to import relief
20 under—
21 (A) subtitle A; or
22 (B) chapter 1 of title II of the Trade Act
23 of 1974 (19 U.S.C. 2251 et seq.).

1 **SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.**

2 On the date on which import relief under this subtitle
3 is terminated with respect to an article, the rate of duty
4 on that article shall be the rate that would have been in
5 effect, but for the provision of such relief.

6 **SEC. 326. TERMINATION OF RELIEF AUTHORITY.**

7 No import relief may be provided under this subtitle
8 with respect to any article after the date that is 5 years
9 after the date on which the Agreement enters into force.

10 **SEC. 327. COMPENSATION AUTHORITY.**

11 For purposes of section 123 of the Trade Act of 1974
12 (19 U.S.C. 2133), any import relief provided by the Presi-
13 dent under this subtitle shall be treated as action taken
14 under chapter 1 of title II of such Act (19 U.S.C. 2251
15 et seq.).

16 **SEC. 328. CONFIDENTIAL BUSINESS INFORMATION.**

17 The President may not release information received
18 in connection with an investigation or determination under
19 this subtitle which the President considers to be confiden-
20 tial business information unless the party submitting the
21 confidential business information had notice, at the time
22 of submission, that such information would be released by
23 the President, or such party subsequently consents to the
24 release of the information. To the extent a party submits
25 confidential business information, the party shall also pro-
26 vide a nonconfidential version of the information in which

1 the confidential business information is summarized or, if
2 necessary, deleted.

3 Subtitle C—Cases Under Title II of
4 the Trade Act of 1974

5 **SEC. 331. FINDINGS AND ACTION ON GOODS OF COLOMBIA.**

6 (a) EFFECT OF IMPORTS.—If, in any investigation
7 initiated under chapter 1 of title II of the Trade Act of
8 1974 (19 U.S.C. 2251 et seq.), the Commission makes an
9 affirmative determination (or a determination which the
10 President may treat as an affirmative determination under
11 such chapter by reason of section 330(d) of the Tariff Act
12 of 1930), the Commission shall also find (and report to
13 the President at the time such injury determination is sub-
14 mitted to the President) whether imports of the article of
15 Colombia that qualify as originating goods under section
16 203(b) are a substantial cause of serious injury or threat
17 thereof.

18 (b) PRESIDENTIAL DETERMINATION REGARDING IM-
19 PORTS OF COLOMBIA.—In determining the nature and ex-
20 tent of action to be taken under chapter 1 of title II of
21 the Trade Act of 1974 (19 U.S.C. 2251 et seq.), the Presi-
22 dent may exclude from the action goods of Colombia with
23 respect to which the Commission has made a negative
24 finding under subsection (a).

TITLE IV—PROCUREMENT

SEC. 401. ELIGIBLE PRODUCTS.

Section 308(4)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)(A)) is amended—

(1) by striking "or" at the end of clause (vi);

(2) by striking the period at the end of clause (vii) and inserting "; or"; and

(3) by adding at the end the following new clause:

"(viii) a party to the United States-Colombia Trade Promotion Agreement, a product or service of that country or instrumentality which is covered under that agreement for procurement by the United States.".

TITLE V—OFFSETS

SEC. 501. CUSTOMS USER FEES.

(a) IN GENERAL.—Section 13031(j)(3)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)(A)) shall be applied by extending by 155 days the date in effect on the date of the enactment of this Act after which fees may not be charged under paragraphs (9) and (10) of subsection (a) of such section 13031.

1 (b) OTHER FEES.—Section 13031(j)(3)(B)(i) of the
2 Consolidated Omnibus Budget Reconciliation Act of 1985
3 (19 U.S.C. 58c(j)(3)(B)(i)) shall be applied by extending
4 by 155 days the date in effect on the date of the enact-
5 ment of this Act after which fees may not be charged
6 under paragraphs (1) through (8) of subsection (a) of
7 such section 13031.

8 **SEC. 502. TIME FOR PAYMENT OF CORPORATE ESTIMATED**
9 **TAXES.**

10 (a) CORPORATE ESTIMATED TAX DUE IN 2012.—The
11 percentage under subparagraph (B) of section 401(1) of
12 the Tax Increase Prevention and Reconciliation Act of
13 2005 (Public Law 109–222; 26 U.S.C. 6655 note) in ef-
14 fect on the date of the enactment of this Act is increased
15 by 1 percentage point.

16 (b) CORPORATE ESTIMATED TAX DUE IN 2013.—The
17 percentage under subparagraph (C) of section 401(1) of
18 the Tax Increase Prevention and Reconciliation Act of
19 2005 (Public Law 109–222; 26 U.S.C. 6655 note) in ef-
20 fect on the date of the enactment of this Act is increased
21 by 2 percentage points.

Tab 3: Statement of Administrative Action

THE UNITED STATES – COLOMBIA TRADE PROMOTION AGREEMENT IMPLEMENTATION ACT

STATEMENT OF ADMINISTRATIVE ACTION

This Statement of Administrative Action ("Statement") is submitted to the Congress in compliance with section 2105(a)(1)(C)(ii) of the Bipartisan Trade Promotion Authority Act of 2002 ("TPA Act") and accompanies the implementing bill for the free trade agreement that the United States has concluded with Colombia. The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the Deputy United States Trade Representative signed in Washington, D.C. on November 22, 2006, and amended through a Protocol signed by the United States Trade Representative in Washington, D.C. on June 28, 2007.

As is the case with earlier Statements of Administrative Action submitted to the Congress in connection with fast-track bills, this Statement represents an authoritative expression by the Administration concerning its views regarding the interpretation and application of the Agreement, both for purposes of U.S. international obligations and domestic law. The Administration understands that it is the expectation of the Congress that future administrations will observe and apply the interpretations and commitments set out in this Statement. In addition, since this Statement will be approved by the Congress at the time it approves the implementing bill for this Agreement, the interpretation of the Agreement included in this Statement carries particular authority.

This Statement describes significant administrative actions proposed to implement U.S. obligations under the Agreement.

In addition, incorporated into this Statement are two other statements required under section 2105(a) of the TPA Act: (1) an explanation of how the implementing bill and proposed administrative action will change or affect existing law; and (2) a statement setting forth the reasons why the implementing bill and proposed administrative action are necessary or appropriate to carry out the Agreement. The Agreement does not change the provisions of any agreement the United States has previously negotiated with Colombia.

For ease of reference, this Statement generally follows the organization of the Agreement, with the exception of grouping the general provisions of the Agreement (Chapters One and Nineteen through Twenty-Three) at the beginning of the discussion.

For each chapter of the Agreement, the Statement describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are necessary or appropriate to implement the Agreement. The Statement then describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are necessary or appropriate to implement

the Agreement.

It should be noted that this Statement does not, for the most part, discuss those many instances in which U.S. law or administrative practice will remain unchanged under the Agreement. In many cases, U.S. laws and regulations are already in conformity with the obligations assumed under the Agreement.

Finally, references in this Statement to particular sections of U.S. statutes are based on those statutes in effect as of the date this Statement was submitted to the Congress.

Chapters:
One (Initial Provisions and General Definitions)
Nineteen (Transparency)
Twenty (Administration of the Agreement and Trade Capacity Building)
Twenty-One (Dispute Settlement)
Twenty-Two (Exceptions)
Twenty-Three (Final Provisions)

1. Implementing Bill

a. Congressional Approval

Section 101(a) of the implementing bill provides Congressional approval for the Agreement and this Statement, as required by sections 2103(b)(3) and 2105(a)(1) of the TPA Act.

b. Entry into Force

Article 23.4 requires the United States and Colombia to exchange written notifications that their respective legal requirements for the entry into force of the Agreement have been fulfilled. The exchange of notifications is a necessary condition for the Agreement's entry into force. Section 101(b) of the implementing bill authorizes the President to exchange notes with Colombia to provide for the Agreement to enter into force for the United States on or after January 1, 2009. The exchange of notes is conditioned on a determination by the President that Colombia has taken measures necessary to comply with those of its obligations that are to take effect at the time the Agreement enters into force.

Certain provisions of the Agreement become effective after the Agreement enters into force. For example, the Agreement provides Colombia up to three years to comply with certain provisions relating to customs administration. In addition, certain provisions relating to intellectual property rights, apply to Colombia at prescribed times after the Agreement enters into force.

c. Relationship to Federal Law

Section 102(a) of the bill establishes the relationship between the Agreement and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the Agreement. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the Agreement and, in certain instances, by creating entirely new provisions of law.

Section 102(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law, including provisions of federal law enacted or amended by the bill. Section 102(a) will not prevent implementation of federal statutes

consistent with the Agreement, where permissible under the terms of such statutes. Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the Agreement.

The Administration has made every effort to include all laws in the implementing bill and to identify all administrative actions in this Statement that must be changed in order to conform with the new U.S. rights and obligations arising from the Agreement. Those include both regulations resulting from statutory changes in the bill itself and changes in laws, regulations, rules, and orders that can be implemented without a change in the underlying U.S. statute.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders other than those specifically indicated in the implementing bill and this Statement will be required to implement the new international obligations that the United States will assume under the Agreement. This is without prejudice to the President's continuing responsibility and authority to carry out U.S. law and agreements. As experience under the Agreement is gained over time, other or different administrative actions may be taken in accordance with applicable law to implement the Agreement. If additional action is called for, the Administration will seek legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

d. Relationship to State Law

The Agreement's rules generally cover state and local laws and regulations, as well as those at the federal level. There are a number of exceptions to, or limitations on, this general rule, however, particularly in the areas of government procurement, labor and environment, investment, and cross-border trade in services and financial services.

The Agreement does not automatically "preempt" or invalidate state laws that do not conform to the Agreement's rules, even if a dispute settlement panel were to find a state measure inconsistent with the Agreement. The United States is free under the Agreement to determine how it will conform with the Agreement's rules at the federal and non-federal level. The Administration is committed to carrying out U.S. obligations under the Agreement, as they apply to the states, through the greatest possible degree of state-federal consultation and cooperation.

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event that there is an unresolved conflict between a state law, or the application of a state law, and the Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a "last resort," in the unlikely event that efforts to achieve consistency through consultations have not succeeded.

The reference in section 102(b)(2) of the bill to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute "specifically relates to the business of insurance." Certain

provisions of the Agreement (for example, Chapter Twelve, relating to financial services) do apply to state measures regulating the insurance business, although "grandfathering" provisions in Chapter Twelve exempt existing inconsistent (*i.e.*, "non-conforming") measures.

Given the provision of the McCarran-Ferguson Act, the implementing act must make specific reference to the business of insurance in order for the Agreement's provisions covering the insurance business to be given effect with respect to state insurance law. Insurance is otherwise treated in the same manner under the Agreement and the implementing bill as other financial services under the Agreement.

e. Private Lawsuits

Section 102(c) of the implementing bill precludes any private right of action or remedy against a federal, state, or local government, or against a private party, based on the provisions of the Agreement. A private party thus could not sue (or defend a suit against) the United States, a state, or a private party on grounds of consistency (or inconsistency) with the Agreement. The provision also precludes a private right of action attempting to require, preclude, or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general "public interest" authority under other provisions of law in conformity with the Agreement.

With respect to the states, section 102(c) represents a determination by the Congress and the Administration that private lawsuits are not an appropriate means for ensuring state compliance with the Agreement. Suits of this nature may interfere with the Administration's conduct of trade and foreign relations and with suitable resolution of disagreements or disputes under the Agreement.

Section 102(c) does not preclude a private party from submitting a claim against the United States to arbitration under Chapter Ten (Investment) of the Agreement or seeking to enforce an award against the United States issued pursuant to such arbitration. The provision also would not preclude any agency of government from considering, or entertaining argument on, whether its action or proposed action is consistent with the Agreement, although any change in agency action would have to be consistent with domestic law.

f. Implementing Regulations

Section 103(a) of the bill provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the Agreement, as of the date the Agreement enters into force. Section 103(b) of the bill requires that, whenever possible, all federal regulations required or authorized under the bill and those proposed in this Statement as necessary or appropriate to implement immediately applicable U.S. obligations under the Agreement are to be developed and promulgated within one year of the Agreement's entry into force. In practice, the Administration intends, wherever possible, to amend or issue the other regulations required to implement U.S. obligations under the Agreement at the time the Agreement enters into force. The process for issuing regulations pursuant to this authority will

comply with the requirements of the Administrative Procedures Act, including requirements to provide notice of and an opportunity for public comment on such regulations. If issuance of any regulation will occur more than one year after the date provided in section 103(b), the officer responsible for issuing such regulation will notify the relevant committees of both Houses of Congress of the delay, the reasons for such delay, and the expected date for issuance of the regulation. Such notice will be provided at least 30 days prior to the end of the one-year period.

g. Dispute Settlement

Section 105(a) of the bill authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter Twenty-One of the Agreement. This provision enables the United States to implement its obligations under Article 20.3.1 of the Agreement. This office will not be an "agency" within the meaning of 5 U.S.C. 552, consistent with treatment provided under other U.S. free trade agreements, including the North American Free Trade Agreement ("NAFTA") and free trade agreements with Australia, Bahrain, Chile, Singapore, Morocco, Oman, and Peru. Thus, for example, the office will not be subject to the Freedom of Information Act or the Government in the Sunshine Act. Since they are international bodies, panels established under Chapter Twenty-One are not subject to those acts.

Section 105(b) of the bill authorizes the appropriation of funds to support the office established pursuant to section 105(a).

h. Effective Dates

Section 107(b) of the bill provides that the first three sections of the bill as well as Title I of the bill go into effect on the date of enactment of the bill.

Section 107(a) provides that the other provisions of the bill and the amendments to other statutes made by the bill take effect on the date on which the Agreement enters into force. Section 107(c) provides that the provisions of the bill (other than section 107(c) itself) and the amendments to other statutes made by the bill will cease to have effect on the date on which the Agreement terminates.

2. Administrative Action

No administrative changes will be necessary to implement Chapters One, Twenty, Twenty-Two, and Twenty-Three.

Article 19.1.1 of the Agreement requires each government to designate a contact point to facilitate communications regarding the Agreement. The Office of the United States Trade Representative ("USTR") will serve as the U.S. contact point for this purpose.

Article 21.7 of the Agreement calls for the United States and Colombia to develop a roster of independent experts willing to serve as panelists to settle disputes between the parties

that may arise under the Agreement. USTR will consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate ("Trade Committees") as it develops the roster of panelists. USTR will provide the Trade Committees with the names of the experts it is considering, and detailed background information on each, at least 30 days before submitting the names of any nominees to Colombia.

Chapter Two (National Treatment and Market Access for Goods)

1. Implementing Bill

a. Proclamation Authority

Section 201(a)(1) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter Two of the Agreement through the application or elimination of customs duties and tariff-rate quotas ("TRQs"). Section 201(a)(1) authorizes the President to:

- modify or continue any duty;
- keep in place duty-free or excise treatment; or
- impose any duty

that the President determines to be necessary or appropriate to carry out or apply Articles 2.3, 2.5, 2.6, 3.3.13, and Annex 2.3 of the Agreement.

The proclamation authority with respect to Article 2.3 authorizes the President to provide for the continuation, phase-out, and elimination, according to the Schedule of the United States to Annex 2.3 of the Agreement, of customs duties on imports from Colombia that meet the Agreement's rules of origin.

The proclamation authority with respect to Articles 2.5 and 2.6 authorizes the President to provide for the elimination of duties on particular categories of imports from Colombia. Article 2.5 pertains to the temporary admission of certain goods, such as commercial samples, goods intended for display at an exhibition, and goods necessary for carrying out the business activity of a person who qualifies for temporary entry into the United States. Article 2.6 pertains to the importation of goods: (i) returned to the United States after undergoing repair or alteration in Colombia; or (ii) sent from Colombia for repair or alteration in the United States.

Section 201(a)(2) of the bill requires the President to withdraw beneficiary country status under the Generalized System of Preferences from Colombia on the date the Agreement takes effect.

Section 201(b) of the bill authorizes the President, subject to the consultation and layover

provisions of section 104 of the bill, to:

- modify or continue any duty;
- modify the staging of any duty elimination set out in Annex 2.3, pursuant to an agreement with Colombia under Article 2.3.4;
- keep in place duty-free or excise treatment; or
- impose any duty

by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Colombia provided by the Agreement.

Section 104 of the bill sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. This would include, for example, modifications of duties under section 201(b) of the bill. Under the consultation and layover provisions, the President must obtain the advice of the appropriate private sector advisory committees (pursuant to section 135 of the Trade Act of 1974) and the ITC on the proposed action. The President must submit a report to the Trade Committees setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector and the ITC. The bill sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Trade Committees on the action. Following the expiration of the 60-day period, the President may proclaim the action.

The President may initiate the consultation and layover process under section 104 of the bill on enactment of the bill. However, under section 103(a), any modifying proclamation cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin pursuant to an agreement with Colombia under Article 4.14 of the Agreement.

Section 201(c) of the bill provides for the conversion of existing specific or compound rates of duty for various goods to *ad valorem* rates for purposes of implementing the Agreement's customs duty reductions. (A compound rate of duty for a good would be a rate of duty stated, for example, as the sum of X dollars per kilogram plus Y percent of the value of the good.)

Section 201(d) of the bill directs the President to take such action as may be necessary to ensure that imports of goods subject to TRQs do not disrupt the orderly marketing of commodities in the United States. This provision will be implemented consistent with Article 2.15 of the Agreement. Any agency action pursuant to this provision will be taken in accordance with regulations promulgated after providing notice and opportunity for public comment.

b. Agricultural Safeguard

Section 202 of the bill implements the agricultural safeguard provisions of Article 2.18 and Annex 2.18 of the Agreement. Article 2.18 permits the United States to impose an "agricultural safeguard measure," in the form of additional duties, on imports of certain goods of Colombia specified in the Schedule of the United States to Annex 2.18 of the Agreement that exceed the volume thresholds set out in that annex.

Section 202(a) of the bill provides the overall contour of the agricultural safeguard rules, including definitions of terms used in the agricultural safeguard provisions. Section 202(a)(1) defines the applicable normal trade relations (most-favored-nation) ("NTR (MFN)") rate of duty for purposes of the agricultural safeguard. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the Schedule of the United States to Annex 2.3 of the Agreement may not exceed the general NTR (MFN) rate of duty.

Section 202(a)(2) of the bill defines the "schedule rate of duty" for purposes of the agricultural safeguard as the rate of duty for a good set out in the Schedule of the United States to Annex 2.3 of the Agreement.

Section 202(a)(3) of the bill specifies the products that may be subject to an agricultural safeguard measure. These goods must qualify as originating goods under section 203, except that operations performed in or material obtained from the United States will be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement.

Section 202(b) of the bill provides for the Secretary of the Treasury (the "Secretary") to impose agricultural safeguard duties and explains how the additional duties are to be calculated. The additional duties are triggered in any year when the volume of imports of the good from Colombia exceeds 140 percent of the in-quota quantity allocated to Colombia for the good in that calendar year in the Schedule of the United States to Annex 2.3 of the Agreement. (The in-quota quantities for goods are set out in the Schedule of the United States to Annex 2.3 of the Agreement on a calendar-year basis beginning with "year one." Year one refers to the calendar year in which the Agreement enters into force.) The additional duties remain in effect only until the end of the calendar year in which they are imposed.

Section 202(b)(3) of the bill implements Article 2.18.6 of the Agreement by directing the Secretary within 60 days of the date on which the Secretary first assesses an agricultural safeguard duty on a good to notify Colombia and provide it with supporting data.

Section 202(c) of the bill implements Article 2.18.4 of the Agreement by establishing that no additional duty may be applied on a good if, at the time of entry, the good is subject to a safeguard measure under the procedures set out in Subtitle A of Title III of the bill or under the safeguard procedures set out in chapter 1 of Title II of the Trade Act of 1974.

Section 202(d) of the bill provides that the agricultural safeguard provision ceases to apply with respect to a good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 2.3 of the Agreement.

c. Customs User Fees

Section 204 of the bill implements U.S. commitments under Article 2.10.4 of the Agreement, regarding customs user fees on originating goods, by amending section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)). The amendment provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under Article 3.3, Annex 3-A or Chapter Four of the Agreement. Customs processing of goods qualifying as originating goods under the Agreement will be financed by money from the General Fund of the Treasury. This is necessary to ensure that the United States complies with obligations under the General Agreement on Tariffs and Trade 1994 by limiting fees charged for the processing of non-originating imports to amounts commensurate with the processing services provided. That is, fees charged on such non-originating imports will not be used to finance the processing of originating imports.

2. Administrative Action

a. Temporary Admission of Goods and Goods Entered After Repair or Alteration

As discussed above, section 201(a)(1) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 2.5 (temporary admission of certain goods) and Article 2.6 (repair or alteration of certain goods) of the Agreement. The Secretary will issue regulations to carry out this portion of the proclamation.

b. Agricultural Safeguard

The Secretary will issue regulations implementing the agricultural safeguard provisions of section 202. It is the Administration's intent that agricultural safeguard measures will be applied whenever the volume thresholds specified in the Agreement have been met.

Chapter Three (Textiles and Apparel)

1. Implementing Bill

a. Handloomed, Handmade, or Folklore Articles

The proclamation authority granted to the President under section 201(a)(1) includes authority to implement Article 3.3.13 of the Agreement by providing duty-free treatment for Colombian textile or apparel articles that the United States and Colombia agree are handloomed, handmade, or folklore articles, and are certified as such by Colombia's competent authority.

b. Textile or Apparel Safeguard

Article 3.1 of the Agreement makes remedies available to domestic textile and apparel industries that have sustained or are threatened by serious damage from imports of textile or apparel goods for which duties have been reduced or eliminated under the Agreement. It also sets forth procedures for obtaining such remedies. The Administration does not anticipate that the Agreement will result in injurious increases in textile or apparel imports from Colombia. Nevertheless, the Agreement's textile or apparel safeguard procedure will ensure that relief is available if needed.

The safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, textile or apparel goods of Colombia are being imported into the United States in such increased quantities, in absolute or relative terms, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing like or directly competitive goods. In these circumstances, Article 3.1 permits the United States to increase duties on the imported goods to a level that does not exceed the lesser of the prevailing U.S. NTR (MFN) duty rate for the good or the U.S. NTR (MFN) duty rate in effect at the time the Agreement entered into force.

Subtitle B of Title III of the bill (sections 321 through 328) implements the Agreement's textile and apparel safeguard.

Section 321(a) establishes that an interested party may file a request for a textile or apparel safeguard measure with the President, who must review the request to determine whether to commence consideration of the request on its merits. Under section 321(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice in the *Federal Register* stating that the request will be considered and seeking public comments on the request. The notice will contain a summary of the request itself and the dates by which comments and rebuttals must be received. Subject to protection of confidential business information, if any, the full text of the request will be made available on the Department of Commerce, International Trade Administration's website.

Section 322 sets out the procedures to be followed in considering the request. Section 322(a)(1) of the bill provides for the President to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a "Colombian textile or apparel article" is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 301(2) of the bill defines "Colombian textile or apparel article" to mean an article listed in the Annex to the World Trade Organization ("WTO") Agreement on Textiles and Clothing (other than a good listed in Annex 3-C of the Agreement) that qualifies as an originating good under section 203(b) of the bill. The President's determination corresponds to the determination required under Article 3.1 of the

Agreement. Section 322(a)(2) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 3.1.2 of the Agreement.

Section 322(b) of the bill identifies the relief that the President may provide to a U.S. industry that the President determines is facing serious damage or actual threat thereof. Such relief may consist of an increase in tariffs to the lesser of: (i) the NTR (MFN) duty rate in place for the textile or apparel article at the time the relief is granted; or (ii) the NTR (MFN) duty rate for that article on the day before the Agreement entered into force.

Section 323 of the bill provides that the maximum period of relief under the textile or apparel safeguard shall be three years in the aggregate. The initial period of import relief may be up to two years. The President may extend the relief for up to one year, however, if he determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment, and that the domestic industry is, in fact, adjusting to import competition.

Section 324 of the bill provides that relief may not be granted to an article under the textile and apparel safeguard if: (i) relief previously has been granted to that article under the textile and apparel safeguard; or (ii) the article is subject, or becomes subject, to a safeguard measure under (a) Chapter Eight of the Agreement (corresponding to Subtitle A of Title III of the bill), or (b) chapter 1 of Title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date import relief terminates, imports of the textile or apparel article that was subject to the safeguard action will be subject to the rate of duty that would have been in effect on that date in the absence of the relief.

Section 326 of the bill provides that authority to provide relief under the textile and apparel safeguard will expire five years after the date on which the Agreement enters into force.

Under Article 3.1.7 of the Agreement, if the United States provides relief to a domestic industry under the textile and apparel safeguard, it must provide Colombia "mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the [safeguard]." If the United States and Colombia are unable to agree on trade liberalizing compensation, Colombia may increase tariffs equivalently on U.S. goods. The obligation to provide compensation (and the right to increase tariffs absent agreement on compensation) terminates when the safeguard relief ends.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, authorizes the President to provide trade compensation for global safeguard measures taken pursuant to chapter 1 of title II of the Trade Act of 1974. Section 327 of the implementing bill extends that authority to measures taken pursuant to the Agreement's textile or apparel safeguard provisions.

Finally, section 328 of the bill provides that confidential business information submitted in the course of consideration of a request for a textile or apparel safeguard may not be released absent the consent of the party providing the information. It also provides that a party submitting

confidential business information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

c. Enforcement of Textile and Apparel Rules of Origin

In addition to lowering barriers to trade in textile and apparel goods, the Agreement includes anti-circumvention provisions designed to ensure the accuracy of claims of origin and to prevent circumvention of laws, regulations, and procedures affecting such trade. Article 3.2 of the Agreement provides for verifications to determine the accuracy of claims of origin for textile or apparel goods, and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods.

Under Articles 3.2.3 and 3.2.4 of the Agreement, at the request of the United States, the government of Colombia must conduct a verification. The object of a verification under Article 3.2.3(a)(i) is to determine whether a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 3.2.3(a)(ii) is to determine whether an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including those implementing international agreements. The United States may assist in the verification or, at the request of the government of Colombia, conduct the verification itself. A verification may entail visits by officials of Colombia and the United States to the premises of a textile or apparel exporter or producer in Colombia.

Pursuant to Article 3.2.7 of the Agreement, the United States may take appropriate action during and after a verification, including, depending on the nature of the verification, by suspending or denying preferential tariff treatment for textile or apparel goods exported or produced by the person subject to the verification, detaining the goods, or denying them entry into the United States.

Section 208 of the bill implements Article 3.2 of the Agreement. Under section 208(a), the President may direct the Secretary to take "appropriate action" while a verification that the Secretary has requested is being conducted. Section 208(b) provides that, depending on the nature of the verification, the action may include: (i) suspending preferential tariff treatment for textile or apparel goods that the person subject to the verification has produced or exported if the Secretary believes there is insufficient information to sustain a claim for such treatment; (ii) denying preferential tariff treatment to such goods if the Secretary decides that a person has provided incorrect information to support a claim for such treatment; (iii) detaining such goods if the Secretary considers there is not enough information to determine their country of origin; and (iv) denying entry to such goods if the Secretary determines that a person has provided incorrect information on their origin.

Under section 208(c), the President may also direct the Secretary to take "appropriate action" after a verification has been completed. Under section 208(d), depending on the nature of the verification, the action may include: (i) denying preferential tariff treatment under the Agreement to textile or apparel goods that the person subject to the verification has exported or produced if the Secretary considers there is insufficient information to support a claim for such

treatment or determines that a person has provided incorrect information to support a claim for such treatment; and (ii) denying entry to such goods if the Secretary decides that a person has provided incorrect information regarding their origin or that there is insufficient information to determine their origin. Unless the President sets an earlier date, any such action may remain in place until the Secretary obtains enough information to decide whether the exporter or producer that was subject to the verification is complying with applicable customs rules or whether a claim that the goods qualify for preferential tariff treatment or originate in Colombia is accurate.

Under section 208(e), the Secretary may publish the name of a person that the Secretary has determined: (i) is engaged in circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

Section 208(f) provides that at the request of a government of a country such as Colombia that is a party to a free trade agreement with the United States, as provided for in the agreement, the Secretary may request to verify production of any textile or apparel good in order to assist that government in determining whether a claim of origin under the agreement for a textile or apparel good is accurate or whether an exporter, producer, or other enterprise located in the United States involved in the movement of textile or apparel goods is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods.

d. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities

Under the specific rules of origin for textile and apparel goods set out in Annex 3-A of the Agreement, fabrics, yarns, or fibers that are not available in commercial quantities in a timely manner in the United States and Colombia are treated as if they originate in the United States or Colombia, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Annex 3-B lists certain fabrics, yarns, and fibers that the governments of the United States and Colombia have agreed are unavailable in the region.

In addition, Article 3.3.5 of the Agreement provides that the United States may add fabrics, yarns, or fibers to the list in certain circumstances. First, Article 3.3.5(e) of the Agreement provides that the United States may, after consultations with Colombia, add any fabrics or yarns that it has determined under its regional trade preference programs before the Agreement enters into force to be unavailable in the United States in commercial quantities in a timely manner. These regional trade preference program provisions are set out in: section 112(b)(5)(B) of the African Growth and Opportunity Act (19 U.S.C. § 3721(b)), section 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. § 3203(b)(3)(B)(ii)), and section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (19 U.S.C. § 2703(b)(2)(A)(v)(II)).

Second, if the United States determines, at the request of an "interested entity" (a potential or actual purchaser or seller, or the government of Colombia), that a fabric, yarn, or fiber is unavailable in commercial quantities in a timely manner in Colombia and the United States, or if it determines that no interested entity objects to the request, the United States will

add the material to the list – in a restricted or unrestricted quantity. In addition, within six months of adding a material to the list in Annex 3-B, the United States may remove any restriction it has imposed on the product.

Article 3.3.6 authorizes the United States, in response to a request from an interested entity, either to remove a material from the list or impose a restriction on any material it has added to the list in an unrestricted quantity. The United States may take this action beginning six months after it determines, in response to a request, that the material has become commercially available in Colombia or the United States.

Section 203(o)(2) of the bill provides authority for the President to carry out the provision in Article 3.3.5(e) of the Agreement pursuant to which the United States may, after consultations with Colombia, add materials to the list that it has determined are unavailable in commercial quantities in a timely manner in the United States under its regional trade preference programs (the African Growth and Opportunity Act, the Andean Trade Preference Act, and the Caribbean Basin Economic Recovery Act) before the Agreement enters into force.

Section 203(o)(4) of the bill implements those provisions of Article 3.3 that provide for the United States to modify the list of materials in Annex 3-B after the Agreement enters into force.

Specifically, subparagraph (C)(i) provides that an interested entity may request the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in Colombia and the United States and to proclaim that the material is included in the list in Annex 3-B.

Subparagraph (C)(ii) authorizes the President to determine whether the material is commercially available in a timely manner in Colombia or the United States. Subparagraph (C)(iii) provides that if the President determines that the material is not commercially available in a timely manner in Colombia and the United States, or if no interested entity has objected, he may issue a proclamation adding the fabric, yarn, or fiber to the Annex 3-B list in a restricted or unrestricted quantity. The President normally must issue the proclamation within 30 business days of receiving a request. However, subparagraph (C)(iv)(II) provides that the President may take up to 44 business days if the President decides he lacks sufficient information to make the determination within 30 business days. Subparagraph (C)(v) provides for proclamations to take effect when published in the *Federal Register*.

Subparagraph (C)(vi) provides that within six months after adding a fabric, yarn, or fiber to the list in Annex 3-B in a restricted quantity, the President may eliminate the restriction if he determines that the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in Colombia and the United States.

Subparagraph (D) implements Article 3.3.5(c) of the Agreement. It provides that in the unlikely event that the President takes no action in response to a request to add a material to the list, the material is automatically added in an unrestricted quantity beginning 45 business days

after the request was submitted, or 60 days after the request was submitted if the President has determined under subparagraph (C)(iv) that he lacks sufficient information to make the determination within 30 business days.

Under subparagraph (E)(i), an interested entity may request the President to limit the amount of any fabric, yarn, or fiber that the United States has included on the list in Annex 3-B in an unrestricted quantity, or to remove such a material from the list entirely. Under subparagraph (E)(ii), an interested entity may submit such a request beginning six months after the product was placed on the list in an unrestricted amount. Subparagraph (E)(iii) provides for the President to issue a proclamation carrying out a request if he determines within 30 business days after the request is submitted that the material is available in commercial quantities in a timely manner in Colombia or the United States. Subparagraph (E)(iv) provides that this type of proclamation may take effect no earlier than six months after it is published in the *Federal Register*.

Subparagraph (F) calls for the President to establish procedures for interested entities to submit requests for changes in the Annex 3-B list and to submit comments and supporting evidence before the President determines whether to change the list.

2. Administrative Action

a. Handloomed, Handmade, or Folklore Articles

The President will authorize the Committee for the Implementation of Textile Agreements ("CITA") to consult with Colombia to determine which, if any, textile or apparel goods from Colombia will be treated as handloomed, handmade, or folklore articles. CITA is an interagency entity created by Executive Order 11651 that carries out U.S. textile trade policies, as directed by the President. The President will delegate to CITA his authority under the bill to provide duty-free treatment for these articles.

b. Textile and Apparel Safeguard

CITA will perform the function of receiving requests for textile or apparel safeguard measures under section 321 of the bill, making determinations of serious damage or actual threat thereof under section 322(a), and providing relief under section 322(b). CITA will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b). CITA will perform these functions pursuant to a delegation of the President's authority under the bill.

c. Enforcement of Textile and Apparel Rules of Origin

Section 208 of the bill provides that the Secretary may request Colombia to initiate verifications in order to determine whether claims of origin for textile or apparel goods are accurate or whether exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods. The President will delegate to CITA

his authority under the bill to direct appropriate U.S. officials to take an action described in section 208(b) of the bill while such a verification is being conducted. The President will also authorize CITA to direct pertinent U.S. officials to take an action described in section 208(d) after a verification is completed. If CITA decides that it is appropriate to deny preferential tariff treatment or deny entry to particular goods, CITA will issue an appropriate directive to U.S. Customs and Border Protection (CBP).

Section 208 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 3.2 of the Agreement.

d. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities

The President will delegate to CITA his authority under section 203(o)(4) of the bill, which establishes procedures for changing the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in Agreement countries set out in Annex 3-B of the Agreement.

CITA will publish procedures under which interested entities may request that CITA: (i) add a fabric, yarn, or fiber to the list in Annex 3-B; (ii) eliminate a restriction on a fabric, yarn, or fiber within six months after the item was added to the list in a restricted quantity; (iii) remove a fabric, yarn, or fiber from the list; or (iv) restrict the quantity of a fabric, yarn, or fiber that was added to the list in an unrestricted quantity or with respect to which CITA previously eliminated a restriction. These procedures will set out the information required to be submitted with a request. CITA will publish notice of requests that meet these requirements. CITA will provide an opportunity for interested entities to submit comments and evidence regarding a request, and to rebut evidence that other interested entities have submitted, before CITA makes a determination.

CITA will make determinations under section 203(o)(4) on a case-by-case basis taking into account factors relevant to the request. Such factors ordinarily would include the physical and technical specifications of the fabric, yarn, or fiber that is the subject of the request, as well as evidence demonstrating the extent to which manufacturers in Colombia or the United States are able to supply the item in commercial quantities in a timely manner. CITA will provide public notice of its determinations.

Chapter Four (Rules of Origin)

1. Implementing Bill

a. General

Section 203 of the implementing bill codifies the general rules of origin set forth in Chapter Four of the Agreement. These rules apply only for the purposes of this bill and for the purposes of implementing the customs duty treatment provided under the Agreement. An

originating good for the purposes of this bill would not necessarily be a good of or import from Colombia for the purposes of other U.S. laws or regulations.

Under the general rules, there are three basic ways for a good of Colombia to qualify as an "originating" good, and therefore be eligible for preferential treatment when it is imported into the United States. First, a good is originating if it is "wholly obtained or produced entirely in the territory of Colombia, the United States, or both." The term "good wholly obtained or produced entirely in the territory of Colombia, the United States, or both" is defined in section 203(n)(5) of the bill and includes, for example, minerals extracted from the territory of Colombia, the United States, or both, animals born and raised in the territory of Colombia, the United States, or both, and waste and scrap derived from production of goods that takes place in the territory of Colombia, the United States, or both.

The term "good wholly obtained or produced entirely in the territory of Colombia, the United States, or both" includes "recovered goods." These are parts resulting from the disassembly of used goods that are brought into good working condition in order to be combined with other recovered goods and other materials to form a "remanufactured good." The term "remanufactured good" is separately defined in section 203(n)(20) to mean an industrial good assembled in the territory of Colombia or the United States, or both, and falling within Chapter 84, 85, 87 or 90 of the HTS or heading 9402 (with the exception of goods under heading 8418 or 8516) that: (i) is entirely or partially comprised of recovered goods; and (ii) has a similar life expectancy and enjoys a factory warranty similar to such a good that is new.

Second, the general rules of origin provide that a good is "originating" if the good is produced in the territory of Colombia, the United States, or both, and the materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change and to meet other requirements, as specified in Annex 3-A or Annex 4.1 of the Agreement. Such additional requirements include, for example, performing certain processes or operations related to textile or apparel goods in the territory of Colombia, the United States, or both, or meeting regional value content requirements, sometimes in conjunction with changes in tariff classification.

Third, the general rules of origin provide that a good is "originating" if the good is produced entirely in the territory of Colombia, the United States, or both, exclusively from materials that themselves qualify as originating goods.

The remainder of section 203 of the implementing bill sets forth specific rules related to determining whether a good meets the Agreement's specific requirements to qualify as an originating good. For example, section 203(c) implements provisions in Annex 4.1 of the Agreement that require certain goods to have at least a specified percentage of "regional value content" to qualify as originating goods. It prescribes alternative methods for calculating regional value content, as well as a specific method that must be used in the case of certain automotive goods. Section 203(f) provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo a change in tariff classification. Other provisions in section 203 address how materials are to be valued, how

to determine whether fungible goods and materials qualify as originating or non-originating, as well as a variety of other matters.

Section 203(l) allows a good to be shipped through a third country without losing its status as an originating good, provided certain conditions are met. While in a third country, the good may not be further produced, except that it may be unloaded, reloaded, or preserved, if necessary. Whether the good is unloaded, reloaded, or preserved in a third country, or is simply shipped through the third country, the good must, while in that country, remain under customs control.

Section 203(l) recognizes that, in modern commerce, a good may not be directly shipped from Colombia to the United States, or vice versa; for example, shipments may be consolidated at an interim port. At the same time, in order to ensure that the preferential tariff treatment under the Agreement inures to producers in Colombia and the United States, rather than producers in third countries, an originating good may not be further produced in a country that is not a party to the Agreement. Requiring the good to remain under customs control provides greater traceability of the good to ensure that no further production occurred.

b. Proclamation Authority

Section 203(o)(1) of the bill authorizes the President to proclaim the specific rules of origin in Annex 3-A and Annex 4.1 of the Agreement, as well as any additional subordinate rules necessary to carry out the customs duty provisions of the bill consistent with the Agreement. In addition, section 203(o)(3) gives authority to the President to modify certain of the Agreement's specific origin rules by proclamation, subject to the consultation and layover provisions of section 104 of the bill. (See item 1.a of Chapter Two, above.)

Various provisions of the Agreement expressly contemplate that Colombia and the United States may agree to modify the Agreement's rules of origin. Article 4.14 calls for the two governments to consult regularly after the Agreement's entry into force to discuss proposed modifications to Annex 4.1. Article 20.1.3(b) of the Agreement authorizes the Free Trade Commission to approve proposed modifications to any of the Agreement's origin rules. Such modifications are to be implemented in accordance with each country's applicable legal procedures. In addition, Article 3.3.2 of the Agreement calls for the Parties to consult at either Party's request to consider whether rules of origin for particular textile or apparel goods should be modified.

Section 203(o)(3) of the bill expressly limits the President's authority to modify by proclamation specific rules of origin pertaining to textile or apparel goods (listed in Chapters 50 through 63 of the HTS and identified in Annex 3-A of the Agreement). Those rules of origin may be modified by proclamation within one year of enactment of the implementing bill, to correct typographical, clerical, or other non-substantive technical errors. However, Section 203(o)(4), discussed above, provides the President with authority to proclaim modifications to the rules of origin for textile or apparel articles that are not available in commercial quantities in the United States and Colombia.

c. Disclosure of Incorrect Information and Denial of Preferential Treatment

Article 4.19.3 of the Agreement provides that a Party may not impose a penalty on an importer who makes an invalid claim for preferential tariff treatment under the Agreement if the importer did not engage in negligence, gross negligence, or fraud in making the claim or, after discovering that the claim is invalid, promptly and voluntarily corrects the claim and pays any customs duty owing. Article 4.18.5 of the Agreement provides if an importing country determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported certifications or other representations that a good qualifies as originating, it may suspend preferential tariff treatment under the Agreement for identical goods covered by any subsequent certifications or other representations that that person may make. The suspension may continue until the importing country determines that the importer, exporter, or producer is in compliance with applicable laws and regulations governing claims for preferential tariff treatment under the Agreement.

Section 205(a) of the bill implements Article 4.19.3 for the United States by amending section 592(c) of the Tariff Act of 1930 (19 U.S.C. 1592(c)). Section 205(b) of the bill implements Article 4.18.5 for the United States by amending section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

d. Claims for Preferential Tariff Treatment

Article 4.19.5 of the Agreement provides that an importer may claim preferential tariff treatment for an originating good within one year of importation, even if no such claim was made at the time of importation. In seeking a refund for excess duties paid, the importer must provide to the customs authorities information substantiating that the good was in fact an originating good at the time of importation.

Section 206 of the bill implements U.S. obligations under Article 4.19.5 of the Agreement by amending section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

e. Exporter and Producer Certifications

Article 4.15 of the Agreement provides that an importer may base a claim for preferential tariff treatment on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge that the good is an originating good, including through reasonable reliance on information in the importer's possession that the good is an originating good. (The Agreement allows certain exceptions, for example, for goods with a customs value less than or equal to $1,500.) If an exporter issues a certification, it must either be based on the person's knowledge that the good is originating or supported by a separate certification issued by the producer.

Article 4.20 of the Agreement sets out rules governing incorrect certifications of origin issued by exporters or producers. Where an exporter or producer becomes aware that a certification of origin contains or is based on incorrect information, it must promptly and voluntarily notify in writing every person to whom the exporter or producer issued the certification of any change that could affect the accuracy or validity of the certification. If it does so, the United States may not impose a penalty.

Section 205(a) of the bill implements U.S. obligations under Article 4.20 by amending section 592 of the Tariff Act of 1930 (19 U.S.C. 1592). New subsection (j) of section 592, as added by section 205(a), imposes penalties on exporters and producers that issue false CTPA certifications of origin through fraud, gross negligence, or negligence. These penalties do not apply where an exporter or producer corrects an error in the manner described above.

f. Recordkeeping Requirements

Article 4.17 of the Agreement sets forth record keeping requirements that each government must apply to its importers. U.S. obligations under Article 4.17 regarding importers are satisfied by current law, including the record keeping provisions in section 508 of the Tariff Act of 1930 (19 U.S.C. 1508).

Article 4.17 also sets forth record keeping requirements that each government must apply to exporters and producers issuing certifications of origin for goods exported under the Agreement. Section 207 of the bill implements Article 4.17 for the United States by amending the customs record keeping statute (section 508 of the Tariff Act of 1930).

As added by section 207 of the bill, subsection (i) of section 508 of the Tariff Act of 1930 defines the terms "CTPA certification of origin" and "records and supporting documents." It then provides that a U.S. exporter or producer that issues a CTPA certification of origin must make, keep, and, if requested pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection a copy of the certification and such records and supporting documents. The exporter or producer must keep these records and supporting documents for five years from the date it issues the certification. New subsection (j) of section 508 of the Tariff Act of 1930 sets forth penalties for violations of this record keeping requirement.

2. Administrative Action

The rules of origin in Chapter Four of the Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in Colombia and the United States. For this reason, the rules ensure that, in general, a good is eligible for benefits under the Agreement only if it is: (i) wholly produced or obtained in the territory of Colombia, the United States, or both; or (ii) undergoes substantial processing in the territory of Colombia, the United States, or both.

a. Claims for Preferential Treatment

Section 209 of the bill authorizes the Secretary to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rules of origin and customs user fee provisions. The Secretary will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential treatment. Under Article 4.15 of the Agreement, an importer may claim preferential treatment for a good based on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge, including through reasonable reliance on information in the importer's possession, that the good is originating. A certification need not be in a prescribed format, but must include the elements set out in Article 4.15.2 of the Agreement. Under Article 4.19 of the Agreement, an importing Party must grant a claim for preferential tariff treatment made in accordance with Chapter Four of the Agreement, unless its customs officials issue a written determination that the claim is invalid as a matter of law or fact.

b. Verification

Under Article 4.18 of the Agreement, customs officials may use a variety of methods to verify claims that goods imported from the other Party satisfy the Agreement's rules of origin. Article 3.2 sets out special procedures for verifying claims that textile or apparel goods imported from the other Party meet the Agreement's origin rules. (See item 1.c of Chapter Three, above.) U.S. officials will carry out verifications under Articles 4.18 and 3.2 of the Agreement pursuant to authorities under current law. For example, section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides authority to examine records and issue summonses to determine liability for duty and ensure compliance with U.S. customs laws.

Chapter Five (Customs Administration and Trade Facilitation)

1. Implementing Bill

No statutory changes will be required to implement Chapter Five.

2. Administrative Action

a. Inquiry Point

Article 5.1.2 of the Agreement requires each government to designate an inquiry point for inquiries from interested persons on customs matters. CBP will serve as the U.S. inquiry point for this purpose. Consistent with Article 5.1.2, CBP will post information on the Internet at "www.cbp.gov" on how interested persons can make customs-related inquiries.

b. Advance Rulings

Treasury regulations for advance rulings under Article 5.10 of the Agreement (including

on classification, valuation, origin, and qualification as an originating good) will parallel in most respects existing regulations in Part 177 of the Customs Regulations for obtaining advance rulings. For example, a ruling may be relied on provided that the facts and circumstances represented in the ruling are complete and do not change. The regulations will make provision for modifications and revocations as well as for delaying the effective date of a modification where the firm in question has relied on an existing ruling. Advance rulings under the Agreement will be issued within 150 days of receipt of all information reasonably required to process the application for the ruling.

Chapter Six (Sanitary and Phytosanitary Measures)

No statutory or administrative changes will be required to implement Chapter Six.

Chapter Seven (Technical Barriers to Trade)

1. Implementing Bill

No statutory changes will be required to implement Chapter Seven.

2. Administrative Action

Article 7.7 of the Agreement establishes an inter-governmental Committee on Technical Barriers to Trade ("TBT"). A USTR official responsible for TBT matters or trade relations with Colombia will serve as the U.S. coordinator for the committee.

Chapter Eight (Trade Remedies)

1. Implementing Bill

Subtitle A of Title III of the bill implements in U.S. law the safeguard provisions set out in Chapter Eight of the Agreement. Subtitle C of Title III of the bill implements the global safeguard provisions set out in Chapter Eight of the Agreement. (As discussed under Chapter Three, above, Subtitle B of Title III of the bill implements the textile or apparel safeguard provisions of the Agreement.)

a. Safeguard Measures

Subtitle A of Title III of the bill, sections 311 through 316, authorizes the President, after an investigation and affirmative determination by the ITC (or a determination that the President may consider to be an affirmative determination), to suspend duty reductions or impose duties temporarily up to NTR (MFN) rates on a "Colombian article" when, as a result of the reduction or elimination of a duty under the Agreement, the article is being imported into the United States

in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to a domestic industry that produces a like or directly competitive good. The standards and procedures set out in these provisions closely parallel the procedures set forth in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. 2251 – 2254).

Section 301(1) defines the term "Colombian article" to mean a good that qualifies as an originating good under section 203(b) of the bill.

Section 311 of the bill provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations initiated under Subtitle A. Section 311(a) provides that a petition requesting a safeguard action may be filed with the ITC by an entity that is "representative of an industry." As under section 202(a)(1) of the Trade Act of 1974, the term "entity" is defined to include a trade association, firm, certified or recognized union, or a group of workers.

Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in Subtitle A safeguard proceedings.

Section 311(c) makes applicable by reference several provisions of the Trade Act of 1974. These are the definition of "substantial cause" in section 202(b)(1)(B), the factors listed in section 202(c) applied in making determinations, the hearing requirement of section 202(b)(3), and the provisions of section 202(i) permitting confidential business information to be made available under protective order to authorized representatives of parties to a safeguard investigation.

Section 311(d) exempts from investigation under this section Colombian articles that have previously been the basis for according relief under Subtitle A to a domestic industry.

Section 312(a) establishes deadlines for ITC determinations following an investigation under section 311(b). The ITC must make its injury determination within 120 days of the date on which it initiates an investigation.

Section 312(b) makes applicable the provisions of section 330(d) of the Tariff Act of 1930, which will apply when the ITC Commissioners are equally divided on the question of injury or remedy.

Under section 312(c), if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, under section 312(a), it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The relief that the ITC may recommend is limited to that authorized in section 313(c). Similar to procedures under the global safeguards provisions in current law, section 312(c) of the bill provides that only those members of the ITC who agreed to

the affirmative determination under section 312(a) may vote on the recommendation of relief under section 312(c).

Under section 312(d), the ITC is required to transmit a report to the President not later than 30 days after making its injury determination. The ITC's report must include: (i) the ITC's determination(s) under section 312(a) and the reasons supporting the determination(s); (ii) if the determination under section 312(a) is affirmative or may be considered to be affirmative by the President, any findings and recommendations for import relief and an explanation of the basis for each recommendation; and (iii) any dissenting or separate views of ITC Commissioners. Section 312(e) requires the ITC to publish its report promptly and to publish a summary of the report in the *Federal Register*.

Section 313(a) of the bill directs the President, subject to section 313(b), to take action not later than 30 days after receiving a report from the ITC containing an affirmative determination or a determination that the President may consider to be an affirmative determination. The President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury the ITC has found and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic and social benefits than costs.

Section 313(c)(1) sets forth the nature of the relief that the President may provide. In general, the President may take action in the form of:

- a suspension of further reductions in the rate of duty to be applied to the articles in question; or

- an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty imposed on the day before the Agreement entered into force.

Under section 313(c)(2), if the relief the President provides has a duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) provides that the period for import relief under a Subtitle A safeguard may not exceed four years in the aggregate. The initial period of import relief may be of up to two years. The President may extend the period of import relief provided by up to two years, however, if he determines that continuation of relief is necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the industry is making a positive adjustment to import competition. That determination must follow an affirmative determination (or a determination that the President may consider to be an affirmative determination) by the ITC to the same effect.

Section 313(e) specifies the duty rate to be applied to Colombian articles after termination of a safeguard action. On the termination of relief, the rate of duty for the remainder of the calendar year is to be the rate that was scheduled to have been in effect one year after the initial provision of import relief. For the rest of the duty phase-out period, the President may set the duty:

- at the rate called for under the Schedule of the United States to Annex 2.3 of the Agreement; or
- in a manner that eliminates the duty in equal annual stages ending on the date set out in that Schedule.

Section 313(f) exempts from relief any article that is: (i) subject to import relief under the global safeguard provisions in U.S. law (chapter 1 of Title II of the Trade Act of 1974); (ii) subject to import relief under subtitle B; or (iii) subject to an assessment of additional duty under subsection (b) of section 202.

Section 314 provides that the President's authority to take action under Subtitle A expires ten years after the date on which the Agreement enters into force, unless the period for elimination of duties on a good exceeds ten years. In such case, relief may be provided until the expiration of the period for elimination of duties.

Section 315 allows the President to provide trade compensation to Colombia, as required under Article 8.5 of the Agreement, when the United States imposes relief through a Subtitle A safeguard action. Section 315 provides that for purposes of section 123 of the Trade Act of 1974, which allows the President to provide compensation for global safeguards, any relief provided under section 313 will be treated as an action taken under the global safeguard provisions of U.S. law (sections 201 through 204 of the Trade Act of 1974).

Section 316 amends section 202(a) of the Trade Act of 1974 to provide that the procedures in section 332(g) of the Tariff Act of 1930 with respect to the release of confidential business information are to apply to Subtitle A safeguard investigations.

The Administration has not provided classified information to the ITC in past safeguard proceedings and does not expect to provide such information in future proceedings. In the unlikely event that the Administration provides classified information to the ITC in such proceedings, that information would be protected from publication in accordance with Executive Order 12958.

b. Global Safeguard Measures

Section 331 of the bill implements the global safeguard provisions of Article 8.6.2 of the Agreement. It authorizes the President, in granting global import relief under sections 201 through 204 of the Trade Act of 1974, to exclude imports of originating articles from the relief when certain conditions are present.

Specifically, section 331(a) provides that if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, in a global safeguard investigation under section 202(b) of the Trade Act of 1974, the ITC must find and report to the President whether imports of the article from Colombia considered individually that qualify as originating goods under section 203(b) are a substantial cause of serious injury or threat thereof. Under section 331(b), if the ITC makes a negative finding under section 331(a) the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

2. Administrative Action

No administrative changes will be required to implement Chapter Eight.

Chapter Nine (Government Procurement)

1. Implementing Bill

Chapter Nine of the Agreement establishes rules that certain government entities, listed in Annex 9.1 of the Agreement, must follow in procuring goods and services. The Chapter's rules will apply whenever these entities undertake procurements valued above thresholds specified in Annex 9.1.

In order to comply with its obligations under Chapter Nine, the United States must waive the application of certain federal laws, regulations, procedures and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers. Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) authorizes the President to waive the application of such laws, regulations, procedures, and practices with respect to "eligible products" of a foreign country designated under section 301(b) of that Act. By virtue of taking on the procurement-related obligations in Chapter Nine, Colombia is eligible to be designated under section 301(b) of the Trade Agreements Act and will be so designated.

The term "eligible product" in section 301(a) of the Trade Agreements Act is defined in section 308(4)(A) of that Act for goods and services of countries and instrumentalities that are parties to the WTO Agreement on Government Procurement and countries that are parties to the NAFTA and other recent free trade agreements. Section 401 of the bill amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that, for Colombia, an "eligible product" means a product or service of Colombia that is covered under the Agreement for procurement by the United States. This amended definition, coupled with the President's exercise of his authority under section 301(a) of the Trade Agreements Act, will allow U.S. government entities covered by the Agreement to purchase products and services from Colombia.

2. **Administrative Action**

As noted above, Annex 9.1 of the Agreement provides that U.S. government entities subject to Chapter Nine must apply the Chapter's rules to goods and services from Colombia when they make purchases valued above certain dollar thresholds. USTR will notify the Federal Acquisition Regulatory Council ("FAR Council") of the thresholds that pertain to Colombia under the Agreement. The FAR Council will then incorporate those thresholds into the Federal Acquisition Regulation in accordance with applicable procedures under the Office of Federal Procurement Policy Act.

Article 9.6.7 clarifies that a procuring entity is not precluded from preparing, adopting, or applying "technical specifications" to promote the conservation of natural resources and the environment, or to require a supplier to comply with generally applicable laws regarding fundamental principles and rights at work and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, in the territory in which the good is produced or the service is performed. Thus, for example, a procuring entity is permitted to require a foreign producer to comply with laws guaranteeing freedom of association and protecting collective bargaining rights that generally apply in the territory in which the good is produced, even if that law does not apply to that foreign producer based on its location in an export processing zone.

Finally, neither this provision nor any other provision of Chapter Nine will affect application of the Davis-Bacon Act and related Acts (40 U.S.C. 3141 - 48 and 29 C.F.R. 5.1).

Chapter Ten (Investment)

1. **Implementing Bill**

Section 106 of the bill authorizes the United States to use binding arbitration to resolve claims by investors of Colombia under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C) of the Agreement. Those articles concern disputes over certain types of government contracts, and section 106 of the bill clarifies that the United States consents to the arbitration of such disputes. No statutory authorization is required for the United States to engage in binding arbitration for other claims covered by Article 10.16. Provisions allowing arbitration of certain contract claims have regularly been included in U.S. bilateral investment treaties over recent decades, and were included in the free trade agreements with Chile, Singapore, Morocco, Central America and the Dominican Republic, Oman, and Peru.

2. **Administrative Action**

No administrative changes will be required to implement Chapter Ten.

Chapter Eleven (Cross-Border Trade in Services)

No statutory or administrative changes will be required to implement Chapter Eleven.

Chapter Twelve (Financial Services)

No statutory or administrative changes will be required to implement Chapter Twelve.

Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises)

No statutory or administrative changes will be required to implement Chapter Thirteen.

Chapter Fourteen (Telecommunications)

No statutory or administrative changes will be required to implement Chapter Fourteen.

Chapter Fifteen (Electronic Commerce)

No statutory or administrative changes will be required to implement Chapter Fifteen.

Chapter Sixteen (Intellectual Property Rights)

No statutory or administrative changes will be required to implement Chapter Sixteen.

For pharmaceutical products, Article 16.10.2(e)(i) provides an exception to the data exclusivity obligations for measures to protect public health in accordance with the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) (the "Doha Declaration"). Thus, where a Party issues a compulsory license in accordance with Article 31 of the TRIPS Agreement and the Doha Declaration, the data exclusivity obligations in Chapter Sixteen will not prevent the adoption or implementation of such a public health measure. In addition, in a case in which there is no patent on the pharmaceutical product, and, therefore, no need to issue a compulsory license, the data exclusivity obligations in Chapter Sixteen will not prevent the adoption or implementation of such a measure.

Chapter Seventeen (Labor)

1. Implementing Bill

No statutory changes will be required to implement Chapter Seventeen.

2. Administrative Action

Article 17.5.1 of the Agreement establishes a Labor Affairs Council comprising cabinet-level officials from each Party. Article 17.5.5 of the Agreement calls for each government to designate an office to serve as a contact point with the other country and the public and to assist the Council in carrying out the Agreement's Labor Cooperation and Capacity Building Mechanism. The Department of Labor's Bureau of International Labor Affairs (ILAB) will serve as the U.S. contact point for this purpose.

Chapter Eighteen (Environment)

1. Implementing Bill

No statutory changes will be required to implement Chapter Eighteen.

2. Administrative Action

Article 18.6.1 of the Agreement establishes an Environmental Affairs Council, comprising senior-level officials with environmental responsibilities from each Party, and provides that each government will designate a contact point for carrying out the Council's work. The Department of State (Bureau of Oceans and International Environmental and Scientific Affairs), in consultation with USTR, will serve as the U.S. contact point.

TAB 4: STATEMENT OF HOW THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT MAKES PROGRESS IN ACHIEVING U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES

STATEMENT ON HOW
THE UNITED STATES – COLOMBIA TRADE PROMOTION AGREEMENT
MAKES PROGRESS IN ACHIEVING
U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES

A. INTRODUCTION

The United States – Colombia Trade Promotion Agreement ("Agreement") makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act of 2002 ("TPA Act"). In addition, the Agreement reflects the bipartisan consensus on trade achieved in May 2007. This Statement describes how and to what extent the Agreement makes progress in achieving the applicable purposes, policies, objectives, and priorities.

The Agreement marks the beginning of a new chapter in our commercial partnership with Colombia. Since 1991, the U.S. commercial relationship with Colombia has been driven by the unilateral preferences the United States has provided under the Andean Trade Preference Act. Colombia has benefited significantly from this program, which was designed to promote broad-based economic development and provide sustainable economic alternatives to drug-crop production in the Andean region. The Agreement will make preferential access to the U.S. market for Colombian goods permanent. At the same time, however, it will make trade between the two countries a two-way street.

The Agreement will create significant new opportunities for American workers, farmers, businesses, and consumers by eliminating barriers to trade with Colombia. As detailed below, over 80 percent of U.S. exports of consumer and industrial goods will become duty-free immediately when the Agreement enters into force. An additional seven percent will be duty-free within five years. All remaining tariffs on consumer and industrial goods will be eliminated within ten years. In particular, trade in all textile and apparel goods meeting the Agreement's origin requirements will become duty-free immediately, providing new opportunities for U.S. fiber, yarn, fabric, and apparel exporters. Other key sectors that will benefit from duty elimination under the Agreement are information technology products, agricultural and construction equipment, auto parts, fertilizers and agro-chemicals, wood, and medical and scientific equipment.

By value, more than 52 percent of current U.S. farm exports to Colombia will become duty-free immediately when the Agreement takes effect. Tariffs on more than 90 percent of the remaining trade in U.S. farm products will be phased out over 12 years or less, with all agricultural tariffs eliminated within 19 years. U.S. farm products that will benefit from improved market access include beef, pork, and poultry; wheat, corn, and rice; fruits and vegetables; and dairy and processed products. The Agreement addresses duty treatment for imports of sensitive products into the United States, including through transition periods and the use of tariff-rate quotas (TRQs).

Colombia will substantially reduce barriers to bilateral trade in services and investment. The Agreement also includes high-standard provisions in such key chapters as intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The Agreement forms an integral part of the Administration's larger strategy of opening markets around the world through negotiating and concluding global, regional, and bilateral trade agreements. The Agreement provides the opportunity to strengthen our economic and political ties with the region, and underpins U.S. support for democracy and fundamental values, such as respect for internationally recognized worker rights and the elimination of the worst forms of child labor.

The Agreement makes progress in achieving the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA Act. Accordingly, the President strongly believes that the Congress should approve the Agreement and enact the legislation needed to implement the Agreement.

B. OVERALL TRADE NEGOTIATING OBJECTIVES

The TPA Act sets out a variety of "overall trade negotiating objectives" that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses; (2) further strengthen international trading disciplines; (3) foster economic growth in the United States and globally; and (4) promote environmental and worker rights policies in the context of trade. The Agreement builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives and, in addition, reflects the bipartisan consensus on trade reached in May 2007.

1. Market Opening

The Agreement is comprehensive in scope. Each Party has agreed to liberalize trade in all goods, and to make significant market openings in services and government procurement.

Consumer/Industrial Goods. More than 80 percent of U.S. exports of consumer and industrial goods will enter Colombia duty-free when the Agreement enters into force. An additional seven percent will be duty-free within five years. All remaining tariffs on consumer and industrial goods will be eliminated within ten years. Average tariffs on these items in Colombia currently range from five percent to 15 percent, and tariffs on some products of export interest to U.S. firms are as high as 35 percent.

Textiles and Apparel. All trade in textile and apparel goods that satisfy the Agreement's rules of origin will be duty-free immediately.

Agriculture. Colombia's bound tariffs on agricultural products under their World Trade Organization ("WTO") commitments range from 15 percent to 388 percent. In contrast, the U.S. market is already largely open (through our unilateral preference programs) to agricultural imports from Colombia, with close to 100 percent of the value of Colombian exports entering the United States duty-free. Under the Agreement, over 52 percent by value of our current agricultural exports to Colombia will be duty-free when the Agreement enters into force, including important export priorities such as high quality beef, cotton, wheat, soybeans, soybean meal, almonds, apples, peaches, pears, cherries, and many processed food products including frozen french fries and cookies. Tariffs on most other U.S. agricultural goods will be phased out within 12 years or less. For the most sensitive agricultural goods, tariffs will be eliminated within 19 years. For these goods, liberalization will be achieved through TRQs with zero-duty in-quota quantities that will increase over time, while over-quota tariffs are reduced to zero.

Services/Financial Services/Telecommunications. The Agreement will provide additional market opening in a broad range of service sectors, including express mail delivery, construction and engineering, computer and related services, advertising, professional services, distribution services, insurance, banking, and other financial services, and telecommunications.

Government Procurement. The Agreement will open Colombia's government procurement market to U.S. suppliers for the first time, on transparent and non-discriminatory terms. Since Colombia is not a signatory to the WTO Agreement on Government Procurement, this will constitute a major benefit of the Agreement.

2. Stronger International Trade Disciplines

The Agreement includes high-standard commitments to promote trade in digital products such as software, music, images, videos, and text. It draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The Parties will not impose tariffs on digital products that are delivered over the Internet, and will determine the customs value of an imported carrier medium bearing a digital product based on the value of the carrier medium alone, regardless of the value of the digital product stored in the carrier medium.

The Parties recognize that workers and firms can fully realize the Agreement's market-opening potential only if the Agreement builds on the disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights ("IPR") that clarify and build on those in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and provide for implementation of more recent World Intellectual Property Organization ("WIPO") treaties on protection of copyright and rights of performers and producers to strengthen enforcement and enhance IPR rules.

The Agreement also includes detailed rules governing telecommunications services, under which the Parties will apply market-opening disciplines that extend beyond those in effect

under the WTO. In addition, the Agreement contains innovative procedures for settling disputes that may arise under the Agreement, including provisions for monetary assessments to back up dispute panel decisions.

3. Foster Economic Growth

According to the U.S. International Trade Commission (ITC), the agreement will boost U.S. GDP by more than $2.5 billion. The ITC estimated that U.S. exports to Colombia would increase by $1.1 billion and to the world by $645 million. Formal models, such as the ITC model, however, tend to underestimate the benefits of free trade agreements because their scope is limited (*e.g.*, they fail to assess the impact of rules changes such as improved IPR protection and group many industries and products into a limited number of categories for analysis) and because not all the expected effects of the Agreement are necessarily measured (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). The ITC model, specifically, also did not reflect the removal of barriers to trade in services. It is clear, therefore, that the Agreement will produce economic gains beyond those accounted for by the ITC

4. Labor Rights and Environmental Protection

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the Agreement includes meaningful commitments by each country on labor and environmental protection.

The Parties will reaffirm their obligations as members of the International Labor Organization ("ILO"). The Agreement is one of the first U.S. free trade agreements to include a provision requiring each Party to adopt and maintain in its statutes and regulations, and practice thereunder, fundamental labor rights, as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work,* including for purposes of the Agreement's Labor Chapter a prohibition on the worst forms of child labor. To establish a violation of this obligation a Party must demonstrate that the other Party has failed to comply with its terms in a manner affecting bilateral trade or investment. The Agreement also provides that neither Party will waive or derogate from the statutes and regulations that implement this obligation in a manner affecting trade or investment between the Parties.

Each Party also agrees that it will not to fail to effectively enforce its domestic labor laws embodying the fundamental labor rights, providing labor protections for children, and establishing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. All obligations set out in the Labor Chapter will be subject to enforcement through the same dispute settlement procedures and remedies as the Agreement's commercial obligations. The Parties will also create a labor cooperation and capacity building mechanism through which they will work together to enhance opportunities to improve labor standards and to further advance common commitments regarding labor matters.

Under the Agreement's Environment Chapter each Party will commit to strive to ensure that its laws and policies provide for and encourage high levels of environmental protection and to continue to improve those laws and policies. The Agreement is also one of the first U.S. free trade agreements to require each Party to adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under listed multilateral environmental agreements ("covered agreements") to which both governments are parties. To establish a violation of this obligation a Party must demonstrate that the other Party has failed to comply in a manner affecting bilateral trade or investment.

The Environment Chapter will also require each Party not to fail to effectively enforce its domestic environmental laws and measures to fulfill its obligations under the covered agreements. The Environment Chapter also includes language stating that a Party will not waive or derogate from its environmental laws in a manner affecting trade or investment between the Parties other than pursuant to the waiver provisions of its environmental laws. Further, the Chapter contains provisions to enhance the mutual supportiveness of trade and environmental policies. As is the case for the Agreement's Labor Chapter, all obligations under the Environment Chapter will be subject to enforcement through the same dispute settlement procedures and remedies as those available to enforce the Agreement's commercial obligations. The Parties have also signed a related Environmental Cooperation Agreement to facilitate bilateral cooperation on environmental matters.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA Act establishes a variety of "principal trade negotiating objectives." The Agreement makes substantial progress toward each of the applicable goals set out in the Act.

1. Opening Markets for U.S. Goods

Under the Agreement, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for access to markets in Colombia. For example, in addition to cutting tariffs on agricultural goods, the United States and Colombia will work together on sanitary and phytosanitary ("SPS") matters, with a view to facilitating bilateral trade, while appropriately protecting human, animal, and plant life and health. To that end, the Parties will create an SPS Standing Committee to address SPS issues. The Parties will also enhance cooperation on technical regulations, standards, and conformity assessment procedures, which will help to prevent unnecessary technical barriers to trade ("TBT") that hinder U.S. companies from taking advantage of the Colombian market.

2. Opening Markets for U.S. Services

The Agreement will create new market opportunities in Colombia for a range of key U.S. services suppliers and will lock in access in sectors where Colombia's services markets are already open. The Agreement includes a market-opening services framework based in substantial part on a trade-liberalizing "negative list" approach. This means that all services

sectors are subject to the Agreement's rules unless a country has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to Colombia's services markets in such priority U.S. services export sectors as financial services, telecommunications, computer and related services, distribution services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The Agreement's market-opening provisions are complemented by high-standard rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

Under the Agreement, Colombia will lock in existing levels of access for U.S. suppliers in another key services market – express delivery. The Agreement includes a comprehensive definition of express delivery services that requires Colombia to provide national treatment, normal trade relations (most-favored-nation) ("NTR (MFN)") treatment, and additional market access benefits to express delivery services of the United States. The Agreement also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

3. Opening Markets for U.S. Investment

Under the Agreement, Colombia will commit to provide a strong and predictable legal framework for U.S. investors. Investments covered by the Agreement will include companies, real estate, intellectual property rights, concessions, permits, and debt instruments in Colombia. Except for certain specified exceptions, the Agreement will give U.S. investors the opportunity to establish, acquire, and operate investments in Colombia on the same basis as Colombia's own investors or other foreign investors. The United States will commit to continue to provide Colombian investors a high level of protection and due process, but, consistent with TPA requirements, it will give Colombian investors no greater substantive rights than U.S. companies already enjoy in the United States.

Under the Agreement, Colombia will provide U.S. investors substantive protections and due process rights that are consistent with U.S. legal principles and practice. For example, the Agreement includes protection against denials of justice in accordance with the principle of due process embodied in the principal legal systems of the world. The expropriation provisions of the Agreement draw heavily from principles developed in U.S. takings law under the Fifth Amendment of the U.S. Constitution. Colombia may expropriate an investment only for a public purpose and only if it acts in a non-discriminatory manner, affords an affected investor due process, and pays prompt, adequate, and effective compensation. The Agreement also clarifies that expropriations are limited to property rights and property interests, not other types of interests, and incorporates tests used by the U.S. Supreme Court to determine whether a regulatory taking has occurred. The expropriation provisions also recognize that, as has been the case in U.S. practice, nondiscriminatory regulatory actions designed and applied to protect legitimate public welfare objectives only rarely constitute an expropriation.

Colombia also will commit not to burden investors with protectionist "performance requirements" – such as rules requiring investors to buy local products – and ensures that Colombia will allow U.S. investors to transfer funds related to their investments into and out of Colombia.

The Agreement will provide a dispute settlement mechanism for an investor of a Party to pursue a damages claim against the other Party. The investor may assert that the Party has breached a substantive obligation of the Investment Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Key provisions afford public access to information on investor-State dispute settlement proceedings. For example, the Agreement will require the Parties to make key documents available to the public and to conduct hearings open to the public, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The Agreement also includes provisions, based on those used in U.S. courts, to quickly dispose of frivolous claims.

Finally, the Agreement calls on the Parties, within three years after the Agreement enters into force, to consider whether to establish an appellate body or similar mechanism to review arbitral awards rendered by tribunals under the Investment Chapter.

4. Intellectual Property Rights

The Agreement will clarify and build on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The Agreement ensures that Colombia will provide a high level of IPR protection, similar to that provided under U.S. law. Key provisions of the Agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The Agreement includes state-of-the-art protection for trademarks and copyrights as well as expanded protection for patents and undisclosed information.

The Agreement will require Colombia to accede to certain international Internet treaties and to extend its term of protection for copyrighted works. Under the Agreement, Colombia will ensure that copyright owners maintain rights to temporary copies of their works, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. Each Party must require that its government agencies use only legitimate computer software, thus setting a positive example for private users. To prevent piracy of satellite television broadcasts, the Agreement will also require Colombia to protect encrypted satellite signals as well as the programming those signals carry.

Under the Agreement, Colombia will commit to make patent rights available, with certain exceptions, for inventions. Colombia also will commit to make best efforts to process

patent applications and marketing approval applications expeditiously. With respect to most products, Colombia must provide adjustments to the patent term to compensate for unreasonable delays that occur while granting a patent; Colombia may also make such adjustments available with respect to pharmaceutical products that are subject to unreasonable delays in the issuance of a patent or in the granting of marketing approval. In addition, Colombia will commit to protect test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory approval for their patented products. Colombia will normally protect information generated in connection with pharmaceutical and agricultural chemical product approvals for five and ten years, respectively. Under some circumstances, the period of protection for test data that Colombia relies on to approve a pharmaceutical product will be counted from the date of approval of that product in the United States.

These standards are made more meaningful through requirements for tough enforcement measures and remedies to combat piracy and counterfeiting, including procedures in civil cases for seizure and destruction of pirated and counterfeit products, and the equipment used to produce these products. Colombia also will commit to ensure that its criminal law enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to cases of willful piracy, the equipment used to produce pirated goods. Colombia must also authorize its enforcement officials to act on their own against counterfeit and pirated goods, either by stopping them at the border or initiating criminal cases, without receiving a formal complaint, thus providing more effective enforcement against these products.

The text of the Agreement includes an understanding regarding public health and reaffirms the commitment of the Parties to the Doha Declaration on the TRIPS Agreement and Public Health.

5. Transparency

The Parties recognize that without a high standard of regulatory transparency, the benefits of market-opening trade commitments can be lost through arbitrary or unfair government regulations. Accordingly, the Agreement includes provisions that will ensure that Colombia observes fundamental transparency principles. Those provisions are set out in a specific Chapter of the Agreement dealing with regulatory transparency as well as in provisions of the Agreement addressing customs administration, TBT, government procurement, investment, cross-border trade in services, financial services, telecommunications, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is an effective tool in addressing government corruption in international trade. The Agreement contains innovative provisions on combating bribery and corruption. Under the Agreement, Colombia must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, Colombia must strive to adopt

appropriate measures to protect those who, in good faith, report acts of bribery. Furthermore, under the Agreement the United States and Colombia will affirm their commitment to prevent and combat corruption in international trade and agree to work jointly to support appropriate initiatives in international fora.

6. Regulatory Practices

The Agreement addresses regulatory issues directly linked to the Agreement's market-opening provisions. This includes specific provisions in almost all Chapters, including those on customs administration, SPS, TBT, government procurement, cross-border trade in services, and telecommunications. In addition, the Agreement includes commitments on transparency, rights of appeal of administrative decisions, and access to information.

7. Electronic Commerce

Under the Agreement, the Parties must apply the principles of national treatment and NTR (MFN) treatment to trade in electronically transmitted digital products (*e.g.*, computer programs, video, images, and sound recordings). The Agreement includes rules prohibiting duties on electronically transmitted digital products and limiting duties on digital products stored on a carrier medium to a duty based on the value of the carrier medium alone. In so doing, the Agreement will create a strong foundation for wider efforts to bar duties and discriminatory treatment of digital products. The Agreement also includes provisions relating to the authentication of electronic transactions, online consumer protection, and paperless trade administration.

8. Trade in Agricultural Products

The Agreement includes several provisions designed to eliminate barriers to trade in agricultural products, while providing reasonable adjustment periods, TRQs, and other mechanisms for producers of import-sensitive agricultural goods. In addition, the Agreement will commit the United States and Colombia to work together toward a multilateral agreement in the WTO to eliminate agricultural export subsidies and prevent their reintroduction in any form.

Under the Agreement, each Party will eliminate export subsidies on agricultural goods destined for the other Party. If a third country subsidizes exports to a Party, the other Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

The Agreement also includes a safeguard procedure for certain agricultural goods to aid domestic industries that face imports above a specified quantitative threshold for such goods.

9. Labor Rights and Environmental Protection

As described earlier, the Agreement is one of the first to include a commitment by each Party to implement in its law and practice the fundamental labor rights as stated in the ILO Declaration, reflecting a key element of the May 2007 bipartisan trade consensus. Moreover, a key element of the Agreement's Labor Chapter is a commitment by each country not to fail to effectively enforce its labor laws, including its laws embodying fundamental labor rights as stated in the ILO Declaration, through a sustained or recurring course of action or inaction in a manner affecting bilateral trade or investment. In addition, all of the Agreement's labor obligations will be enforceable through the same dispute settlement procedures and remedies that apply to the Agreement's commercial obligations. The United States and Colombia also will commit to cooperate on labor issues, in part through the Labor Cooperation and Capacity Building Mechanism described in an annex to the Labor Chapter.

The Agreement is also one of the first U.S. free trade agreements to call for each Party to adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under specified multilateral environmental agreements (MEAs) to which both governments are parties. Similar to a provision in the Agreement's labor chapter, a key component of the Agreement's environmental provisions is a commitment by each Party that it will not fail to effectively enforce its domestic environmental laws and its measures to fulfill its obligations under the specified MEAs through a sustained or recurring course of action or inaction in a manner affecting bilateral trade or investment. The Agreement also will prohibit each Party from waiving or otherwise derogating from its domestic environmental laws in a manner affecting bilateral trade or investment other than pursuant to the waiver provisions of the Party's environmental laws. Each of the obligations set out in the Agreement's Environment Chapter will be enforceable through the same dispute settlement procedures and remedies as those available to enforce the Agreement's commercial obligations.

In addition, the Agreement includes a public submissions mechanism that will allow persons of a Party to raise concerns about a Party's enforcement of its environmental laws. The Parties will designate an independent secretariat to receive and consider such concerns and, in appropriate cases, the secretariat will develop a factual record related to the submission for consideration by the Agreement's Environmental Affairs Council. The Agreement also recognizes that the Parties negotiated an Environmental Cooperation Agreement under which they will engage in priority cooperation activities.

10. Dispute Settlement

The Agreement includes detailed procedures for settling disputes that may arise between the Parties over its implementation. The same dispute settlement remedies and procedures will be available for all of the Agreement's enforceable obligations, with no distinction between the Agreement's commercial, environmental, and labor provisions.

The Agreement's dispute settlement procedures will rely principally on consultations and compliance rather than on imposition of trade sanctions or penalties. The procedures will set high standards of openness and transparency. The Agreement will require dispute settlement proceedings to be open to the public, the disputing Parties to release their legal briefs and other filings to the public (except for confidential information), and dispute settlement panels to have the authority to receive submissions from interested non-governmental groups.

Where a Party is found to be in violation of an obligation under the Agreement, the Parties must seek to agree on a resolution to the dispute. If the Parties cannot agree on a resolution, they must try to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The Parties must seek to agree on the amount of the assessment. If they cannot, the assessment will be set at 50 percent of the level of trade concessions the complaining Party is authorized to suspend. This mechanism meets the objectives of encouraging the provision of trade-expanding compensation as well as the imposition of penalties to encourage compliance.

11. Trade Remedies

The Agreement includes a safeguard procedure, similar to the procedures in other U.S. free trade agreements, which will be available to aid domestic industries, in the unlikely event that an industry sustains or is threatened with serious injury due to increased imports resulting from the reduction or elimination of U.S. import duties under the Agreement. The Agreement also includes a special safeguard mechanism to address the possibility that duty reduction or elimination under the Agreement could result in damaging levels of textile or apparel imports.

The Agreement will not affect U.S. rights to take safeguard actions under section 201 of the Trade Act of 1974, which implements the WTO Safeguards Agreement and the General Agreement on Tariffs and Trade ("GATT") 1994. Under the Agreement, the President may, but will not be required to, exempt imports of goods from Colombia from a WTO safeguard measure, if the goods are not a substantial cause of serious injury or threat thereof.

The Agreement provides that each country will retain its rights and obligations under the WTO agreements relating to antidumping and countervailing duties. Thus, the Agreement will

not affect U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO. In addition, the Agreement provides that nothing in it shall be construed to impose any rights or obligations on the Parties with respect to antidumping and countervailing duty measures.

D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS

The TPA Act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The Agreement makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Colombia are members of the ILO and have a longstanding cooperative relationship on labor issues. During the negotiations, government labor experts from the two countries consulted on their labor laws and how their respective systems operate. The Agreement includes a labor cooperation and capacity building mechanism to enhance opportunities to improve labor standards, including the principles embodied in the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up* and ILO *Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*. The Agreement will establish a framework for the labor cooperation and capacity building mechanism, including a range of possible labor cooperation activities. Officials of the U.S. Department of Labor and Colombia's labor ministry and other appropriate agencies will serve as contact points under the Agreement and participate in this mechanism.

2. Domestic Policy Objectives

The Agreement fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The Agreement will include a broad set of general policy exceptions for measures governing trade in both goods and services to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The Agreement also avoids disturbing existing state and local governmental measures by including "grandfather" clauses that will exempt those measures from challenge under the Agreement.

3. Relationship between Covered MEAs and the Agreement

As noted in the Administration's environmental review of the Agreement, the environment and sustainable development are important concerns for both the United States and Colombia. The Agreement's Environment Chapter will obligate each Party to adopt and maintain laws, regulations, and all other measures to fulfill its obligations under specified MEAs

to which the United States and Colombia are both parties. In addition, the Parties expressly recognize that MEAs to which they are both party play an important role in protecting the environment and that the Environment Chapter and the parallel Environmental Cooperation Agreement can contribute to realizing the objectives of those MEAs. The Agreement, therefore, will commit the Parties to continue to seek means to enhance the mutual supportiveness of MEAs and trade agreements to which they are both party. In the event of any inconsistency between a Party's obligations under the Agreement and one of the MEAs listed in the Environment Chapter to which both governments are parties, the Agreement provides that the Party shall seek to balance its obligations under both agreements, but this will not preclude the Party from taking a measure to comply with the MEA as long as the measure's primary purpose is not to impose a disguised restriction on trade. In addition, the Chapter provides that when an issue relating to a Party's obligations under a covered MEA arises in a dispute settlement proceeding, the panel hearing the matter must consult with any entity authorized under the MEA to address the issue and defer to the extent appropriate in light of its nature and status to any interpretive guidance under the MEA regarding the issue.

4. Currency and Exchange Rate Manipulation

Section 2102(c)(12) of the TPA Act states that "[i]n order to address and maintain United States competitiveness in the global economy, the President shall ... seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade."

The Investment, Cross-Border Trade in Services, and Financial Services chapters of the Agreement will promote and protect the freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions and market developments which will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury, under the Omnibus Trade and Competitiveness Act of 1988, analyzes on a semi-annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund ("IMF"), and considers whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the IMF is obligated, under Article IV of the

IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes.

In its analysis of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies, the Department of the Treasury will ensure that currency movements mentioned in section 2102(c)(12) are examined. The Department of the Treasury will seek to resolve problems of currencies that are considered to be manipulated in the sense of 2102(c)(12) through discussions with the foreign authorities responsible for foreign exchange rate policies.

5. Reporting Requirements

As required under the TPA Act, the Administration has provided a report to the Congress describing Colombia's laws governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA Act on: (1) the Administration's environmental review of the Agreement; and (2) its review of the Agreement's impact on U.S. employment. The Administration has also provided a labor rights report on Colombia, which will be made available to the public. Finally, the Administration has reported, as specified in the TPA Act, on U.S. efforts to establish consultative mechanisms to strengthen Colombia's capacity to promote respect for core labor standards and to develop and implement standards for the protection of the environment and human health based on sound science.

TAB 5: STATEMENT OF WHY THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT IS IN THE INTERESTS OF U.S. COMMERCE

STATEMENT OF WHY THE UNITED STATES - COLOMBIA TRADE PROMOTION AGREEMENT IS IN THE INTERESTS OF U.S. COMMERCE

INTRODUCTION

The United States - Colombia Trade Promotion Agreement (U.S. - Colombia TPA or Agreement) provides for reciprocal trade liberalization between the United States and Colombia. The U.S. - Colombia TPA is a comprehensive, trade opening agreement that will eliminate tariffs and other barriers to trade and open Colombia's market for goods and services produced and supplied by American workers. By promoting economic growth in Colombia, the U.S. - Colombia TPA will expand U.S. opportunities in an important regional market and further U.S. commercial interests.

In May 2004, the United States initiated free trade negotiations with Colombia, Ecuador and Peru. The U.S. - Peru TPA was signed on April 12, 2006. Negotiations with Colombia were completed February 27, 2006, and the U.S. - Colombia TPA was signed on November 22, 2006.

WHY A COLOMBIA TRADE PROMOTION AGREEMENT?

Colombia is one of many developing countries that already enjoys duty-free access to the U.S. market for the majority of its exports through trade preference programs. Developing countries often have high tariff and non-tariff barriers to U.S. exports and impose restrictions on U.S. businesses. Free trade agreements like the U.S. - Colombia TPA not only reduce barriers to U.S. trade, but also require important reforms to the domestic legal and business environments that are key factors toward encouraging business development and investment. Such reforms include providing greater transparency for government actions such as rule making, anti-corruption measures and other steps to strengthen the rule of law, improving the protection and enforcement of intellectual property rights, and providing clear guidance on customs matters.

> ***Moving from One-Way Preferences to Reciprocity***
>
> Today, 91 percent of imports from Colombia into the United States benefit from duty-free treatment as a result of U.S. unilateral preference programs such as the Andean Trade Preferences Act (ATPA) and the Generalized System of Preferences (GSP), or zero normal trade relations (NTR) tariffs. Colombia's tariffs on most imports from the United States range from 5 to 15 percent with some as high as 35 percent.
>
> The U.S. - Colombia TPA moves beyond one-way preferences to full partnership and reciprocal commitments under which U.S. exports also benefit from duty-free treatment.

Expanding Economic Opportunities for U.S. Manufacturers, Workers, and Farmers

Colombia is a free market economy with growing commercial and investment ties to the United States. Between 2003 and 2007, U.S. exports to Colombia grew 128 percent from $3.7 billion in 2003 to $8.5 billion in 2007, outperforming overall U.S. export growth, which was 60 percent for the same period. The market access and trade disciplines provided by the Agreement offer an opportunity to further expand U.S. exports to a region that is already seeing high export growth

rates. In 2007, U.S. - Colombia total trade amounted to $18 billion and Colombia was our 26th largest export market. In Latin America, Colombia is the United States' fourth largest trading partner, behind Mexico, Brazil, and Venezuela. After Canada and Mexico, Colombia is already the largest export market for U.S. farm products in the hemisphere. A U.S. International Trade Commission study estimates that U.S. exports to Colombia will be $1.1 billion higher once the U.S. - Colombia TPA is fully implemented.

The United States is already the leading source of Colombia's imports with a 25 percent market share. Despite Colombia's close proximity to other competitive Latin American economies such as Brazil, Argentina and the rest of the Andean group, the high quality and wide selection of competitively priced U.S. products will provide U.S. exporters with a distinctive edge, one which will be enhanced under the tariff elimination provisions of the Agreement.

Just as bilateral trade is poised to grow under the U.S. - Colombia TPA, so is U.S. investment in the Colombian market. At least 250 U.S. companies today operate in nearly every sector of the Colombian economy. The stock of U.S. foreign direct investment (FDI) in Colombia in 2006 was approximately $4.9 billion, mainly in the natural gas, coal mining, chemical, and manufacturing industries. According to preliminary figures, foreign investment in Colombia in 2007 reached $7.6 billion - Colombia's second highest total ever and almost 20 percent higher than in 2006.

Colombia's economic growth has averaged 5.4 percent annually between 2002 and 2007. The economy continues to improve thanks to austere government budgets, focused efforts to reduce public debt levels, an export-oriented growth strategy, and an improved security situation in the country. Several international financial institutions have praised the economic reforms introduced by President Uribe, which have succeeded in reducing the public-sector deficit below 1.5 percent of GDP. The Uribe Administration's economic policy and democratic security strategy have engendered a growing sense of confidence in the economy, particularly within the business sector.

In a region that suffers from frequent political and economic instability, the Government of Colombia has demonstrated a commitment to steady economic growth, democratic principles and close cooperation with the United States on counter-narcotics enforcement. With the U.S. - Colombia TPA, Colombia will offer a more stable investment climate, more reliable access to international arbitration if disputes do arise and a vibrant market for U.S. exports for years to come.

Leveling the Playing Field

The U.S. - Colombia TPA will level the playing field for U.S. businesses that sell to Colombia. In 2007, 91 percent of U.S. imports from Colombia entered duty-free under unilateral U.S. trade preference programs, such as the Andean Trade Preferences Act (ATPA) and the Generalized System of Preferences (GSP), or under zero normal trade relations (NTR) tariffs. The ATPA has been effective in expanding and enhancing the U.S. - Colombia commercial relationship, providing the U.S. government a vehicle through which to address problems, as well as

encouraging economic growth in Colombia and discouraging illicit drug production. However, the ATPA does not offer U.S. exporters equivalent access to the Colombian market. The U.S. - Colombia TPA will level the playing field and enhance competition because it moves the U.S.-Colombia commercial relationship beyond one-way preferences to full partnership and reciprocal commitments.

In addition, U.S. products currently face a competitive disadvantage because Colombia has been actively negotiating free trade agreements with other countries. Colombia grants preferences to Bolivia, Ecuador and Peru under the Andean Community (CAN), and has negotiated free trade agreements with Chile and Mexico. The Colombian Government also plans to pursue free trade talks with Venezuela, in the wake of Venezuela's withdrawal from the CAN in 2006. From 2005, a CAN-Mercosur trade agreement lowered Colombia's tariffs on imports from Brazil, Argentina, Paraguay, and Uruguay. Colombia is also negotiating a free trade pact with Guatemala, El Salvador, and Nicaragua. The Colombian Government initiated free trade agreement negotiations with Canada during 2007.

Advancing the U.S. Trade Agenda

The U.S. - Colombia TPA is a key part of the Administration's regional and global efforts to open markets and enable U.S. businesses to sell goods and services around the world. It signals that Colombia is ready to join the United States, Mexico, Canada, Chile, Central America, the Dominican Republic and Peru as free trade leaders in the hemisphere. The United States and Colombia will look for new opportunities to work together in other multilateral fora such as the World Trade Organization (WTO). The common disciplines and trade objectives developed through the U.S. - Colombia TPA will enhance our ability to forge consensus on the global trading level.

Supporting Democracy, Economic Reform and Regional Integration

Like the ATPA, the U.S. - Colombia TPA will promote close cooperation between the United States and Colombia on a number of important regional issues such as counter-narcotics, economic development and support for democracy. In the early 1990s, Colombia unilaterally initiated economic liberalization or "apertura" which included tariff reductions, financial deregulation, privatization of state-owned enterprises and the adoption of a more liberal foreign exchange regime. The United States has supported this transition to democratic institutions and enhanced economic growth through a number of programs including the ATPA.

The U.S. - Colombia TPA will commit Colombia to adopt more open and transparent procedures that should deepen the roots of civil society and the rule of law in the region, as well as reinforce market reforms. These reforms, coupled with increased trade and investment flows, should promote expanded growth and openness in the region, as well as support common efforts to achieve stronger labor and environmental protection.

U.S. SMALL AND MEDIUM-SIZED ENTERPRISES: KEY EXPORTERS TO COLOMBIA

The U.S. - Colombia TPA will be of particular benefit to U.S. small and medium-sized businesses (SMEs), those enterprises with fewer than 500 employees. In 2005, U.S. SMEs exported $1.7 billion in merchandise to Colombia. This represented 35 percent of total U.S. exports to Colombia -- well above the 29 percent SME share of U.S. exports to the world.

U.S. SMEs particularly benefit from the tariff eliminating provisions of free trade agreements, and should benefit from the significant tariff cuts under the U.S. - Colombia TPA.

The transparency obligations, particularly those contained in the customs chapter, are also very important to U.S. SMEs, which may not have the resources to navigate customs and regulatory red tape.

Eighty-five percent of U.S. businesses exporting to Colombia in 2005 were small and medium-sized businesses.

Free Trade is important to U.S. SMEs

- U.S. SMEs are already taking advantage of U.S. efforts to open markets throughout the world. In 2005, more than ninety percent of all U.S. companies that exported to our NAFTA partner Canada were SMEs.
- SMEs represented a majority of U.S. exporting companies to our other free trade partners in 2005 including Mexico (ninety-three percent), Australia (ninety percent), Singapore (eighty-nine percent), Chile (eighty-four percent), and Morocco (seventy-one percent).
- U.S. SMEs also represented at least seventy-five percent of all U.S. exporters to the individual Central America - Dominican Republic Free Trade Agreement partner countries (Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) in 2005.

ENHANCED MARKET ACCESS TO COLOMBIA

Over 80 percent of U.S. exports of consumer and industrial products to Colombia will be duty-free immediately upon entry into force of the Agreement, with remaining tariffs phased out over ten years. Within each of the following key industrial sectors, almost all products will gain immediate duty-free access to the Colombian market: agriculture and construction equipment, aircraft and parts, fertilizers and agro-chemicals, information technology equipment, and medical and scientific equipment. Key U.S. agriculture

Average Colombian Tariffs on Imports of Goods from the United States

Information Technology Equipment	8.2%
Chemicals	7.8%
Metals and Ores	9.2%
Infrastructure and Machinery	11.1%
Transportation Equipment	12.7%
Autos and Auto parts	7.4%
Building Products	13.2%
Paper and Paper Products	12.5%
Consumer Goods	14.6%

exports such as cotton, wheat, soybeans, high quality beef, apples, pears, peaches, cherries and almonds, will receive immediate duty-free treatment. —

Best Prospects for Increased Market Growth for Non-Textile Industrial Goods

Information Technology Products

Virtually all information technology products will be duty-free upon entry into force of the Agreement. Despite tariffs that average over eight percent and range up to 15 percent, U.S. exports of information technology products were $1 billion in 2007, accounting for 16 percent of total U.S. industrial exports to Colombia. With the immediate removal of most tariffs, U.S. exports will become much more competitive and affordable to Colombians.

Colombia agreed to join the multilateral Information Technology Agreement (ITA). U.S. exporters of information technology products will all benefit from this provision.

Agriculture and Construction Equipment, Infrastructure and Machinery

Over 92 percent of U.S. exports of agricultural equipment and 88 percent of U.S. exports of construction equipment to Colombia will be duty-free immediately upon entry into force of the Agreement. Together, U.S. exports of these capital goods to Colombia totaled $672 million in 2007.

Seventy percent of U.S. infrastructure and machinery exports to Colombia will be duty-free upon entry into force of the U.S. - Colombia TPA. U.S. exporters of agricultural and construction equipment, food processing, storage and packing equipment and heating and cooling equipment will benefit significantly from the Agreement. With the immediate elimination of most industrial machinery tariffs, and phase-out of all remaining tariffs, U.S. exports will be much more competitive compared to goods from other countries.

Colombia's national strategy to boost public infrastructure spending by 78 percent over the next four years, combined with rapidly growing investment in the energy and construction sectors, will continue to fuel demand for specialized machinery. Upcoming opportunities include a $1 billion expansion of the Cartagena Refinery and investments in ethanol-producing plants to comply with Colombian law, which now requires a ten percent ethanol blend with gasoline to improve air pollution conditions in the country. Colombia's recent efforts to increase oil and gas exploration and extraction include very attractive contractual terms and incentives for new entrants in the market, creating additional demand for equipment. The Agreement's provisions will give U.S. exporters a strong competitive advantage over European and Asian suppliers.

Chemicals

Chemicals accounted for 34 percent of U.S. industrial exports to Colombia in 2007, totaling $2.1 billion. Current tariffs of up to twenty percent will fall to zero on 82 percent of chemical exports immediately upon implementation of the Agreement. The remaining tariffs will phase out over ten years. Best prospects in this sector include polyethylene, lubricating oil additives and acrylic

polymers. Tariffs on 100 percent of fertilizers and agrochemical exports will fall to zero immediately upon entry into force of the Agreement.

Remanufactured Equipment

For the first time, U.S. exporters will be able to sell high-quality remanufactured equipment in Colombia. Upon implementation of the Agreement, U.S. remanufacturers of many products, such as engines, radiators, and alternators for construction equipment and transportation machinery, will be able to export their products to Colombia without non-tariff barriers. Remanufacturing is a labor-intensive activity that allows the recycling of discarded or used "cores," which are normally the heaviest basic parts, such as an engine or radiator. The industry employs tens of thousands of U.S. workers. Under the U.S. - Colombia TPA, tariffs on most remanufactured products will be eliminated immediately and tariffs on a small number of products will be phased out over ten years. This will be an excellent opportunity for U.S. exporters of remanufactured equipment, including computers, cellular telephones, construction and medical equipment, and auto parts.

Medical Equipment

Ninety-six percent of U.S. medical equipment exports to Colombia will receive duty-free access immediately upon entry into force of the Agreement, with the remaining duties phased out over five and ten years. Medical equipment accounted for over three percent of total U.S. industrial exports to Colombia in 2007, totaling $184 million. The top U.S. exports in this sector include medical needles, surgical and orthopedic equipment, and diagnostic apparatus. A Colombian Government initiative recently announced by the Ministry of Social Protection will encourage the upgrading of radiology equipment, providing additional opportunity for U.S. suppliers.

Electrical Power Generation and Distribution Equipment

Tariffs on 65 percent of U.S. energy equipment exports will be eliminated immediately upon entry into force of the Agreement with the remaining tariffs phased out over ten years. The outlook for the Colombian electricity sector is promising, as the government plans to develop several new generation projects to accommodate increased demand. Additionally, Colombia intends to become a major exporter of electricity to its Andean neighbors and Central America.

Aircraft and Related Parts

One hundred percent of U.S. aircraft and related parts exports to Colombia will receive duty-free access immediately upon entry into force of the Agreement. In 2007, U.S. companies exported nearly $229 million in such goods to Colombia, including airplanes, helicopters, and aircraft engines.

TEXTILES

Under the ATPA, Colombia has developed as an important export market for U.S. yarn and fabric manufacturers. The U.S. - Colombia TPA represents the Administration's continued efforts to create opportunities for U.S. yarn and fabric exports.

The textile and apparel trade with Colombia has increased since the renewal and expansion of the ATPA in 2002. The foundation of the apparel trade is based upon U.S. manufacturers supplying yarns and fabrics to Colombia for the assembly of apparel, which enters the United States duty free. With the increased apparel manufacturing in Colombia, U.S. exports of textile and apparel products to Colombia jumped from $90 million in 2002 to $141 million in 2007. Under the U.S. - Colombia TPA, Colombian tariffs on qualifying U.S. yarns and fabrics will be eliminated, further improving market access for U.S. exporters. Similarly, due to the favorable conditions created by the Agreement, investment in the apparel sector in Colombia is expected to grow, promoting increased sales of U.S. yarns and fabrics to the Colombian market.

Key benefits to U.S. yarn and textile manufacturers include:

- ***Yarn forward rule of origin*** – The U.S. - Colombia TPA will adhere to a yarn-forward rule of origin, meaning that in order to enter the U.S. market duty-free, textile and apparel products must be made using U.S. and Colombian yarns and fabrics. Goods that meet the rule of origin will qualify for immediate duty-free market access upon entry into force.

- ***Regional Elastomeric Requirement*** – Consistent with other U.S. free trade agreements, elastomeric yarns must be sourced from the United States or Colombia for textile and apparel products to qualify for duty-free entry.

- ***Improved Customs Procedures*** – Specific textile customs cooperation language will help prevent transshipment and circumvention of the rules of origin of the Agreement.

- ***Streamlined Short Supply Processes*** – Streamlined commercial availability (short supply) determination processes will help yarns or fabrics that are deemed not commercially available in the United States or Colombia to be used in the production of apparel.

- ***Improved Safeguards*** - A special textile safeguard mechanism will provide for temporary application of NTR tariffs, if a surge in imports under the U.S. - Colombia TPA is shown to be causing or threatening to cause serious damage to domestic industry.

AGRICULTURE

The U.S. - Colombia TPA will achieve two key trade objectives for the United States: it will make agricultural trade a two-way street, and it will level the playing field with respect to third country competitors in the Colombian market.

From 2005 through 2007, with tariffs and other barriers in place, U.S. agricultural exports to Colombia averaged $846 million per year. In many cases, Colombia's tariffs impede entry of U.S. agricultural products. Its applied tariffs range from five percent to 20 percent for agricultural goods, or higher, particularly in the case of products subject to Colombia's price band system, under which tariffs on more than 150 products vary with international commodity prices. Moreover, there is no assurance that Colombia will not raise tariffs to its permitted WTO limits (or tariff bindings) on products subject to the price band system or others. These tariff bindings range from 15 percent to 388 percent. Currently, no U.S. agricultural export enjoys duty-free access to Colombia. In contrast, over 99.9 percent of Colombia's current exports already receive duty-free treatment under the ATPA.

Upon implementation of the Agreement, U.S. exporters will receive duty-free treatment on agricultural products accounting for over 52 percent of current trade. In addition, Colombia will immediately eliminate its price band system on trade with the United States, which affects products such as corn, rice, oilseeds and products, dairy, pork, poultry, and sugar.

Beef

From 2001 through 2003, U.S. annual exports of beef and beef products to Colombia averaged $546,000, and of beef offals, $1.3 million, per year. Following the Bovine Spongiform Encephalopathy (mad cow disease) ban beginning in 2004, U.S. beef meat and offal exports dropped off, falling to almost zero by 2006. As a result of an agreement achieved parallel to the negotiations of the U.S. - Colombia TPA, Colombia opened its market in October 2006 to all U.S. beef products for human consumption, other than specified risk materials, from animals of any age, consistent with international standards. From 2005 through 2007, U.S. annual exports of beef and beef products to Colombia averaged $170,000.

U.S. beef producers stand to benefit immediately on products most important to them. Currently, U.S beef exporters are required to pay as much as 80 percent tariffs under Colombia's price band system. Under the Agreement, USDA prime and choice beef cuts will receive immediate duty free treatment. For all other beef and beef products, U.S. exporters will receive immediate duty free access through tariff-only treatment or on certain amounts under tariff-rate quotas (TRQS). All beef tariffs will be eliminated within 10 years.

Under the Agreement, standard quality beef and beef variety meats (offals) will receive immediate duty-free access through a 2,100 metric ton (MT) TRQ for standard quality beef and a 4,642 MT TRQ for offals. The standard quality beef TRQs will grow by 5 percent annually, and the beef variety meats TRQ by 5.5 percent each year. These products have an over-quota duty of 70 or 80 percent, which will be phased out over 10 years, with a 37.5 percent cut immediately upon implementation of the Agreement. If imports enter above a certain quantity threshold, Colombia will have the right to use a special agricultural safeguard mechanism during the ten year phase-out period.

The United States will establish a 5,250 MT TRQ for certain beef products from Colombia with annual growth of five percent. The U.S. 26.4 percent over-quota tariff on beef will be phased out over ten years. Additionally, if imports of beef surge during this ten year period, the United States will have the right to use the special agricultural safeguard mechanism. Other U.S. beef

imports from Colombia are duty free under the ATPA. The Agreement will continue this treatment.

Pork
From 2005 through 2007, the U.S. pork industry shipped an average of $5.9 million worth of pork to Colombia per year. Currently, Colombia's applied tariff rates on pork and pork products range from 20 to 30 percent and their WTO bound tariff rates range from 70 to 108 percent. Pork products exported to Colombia are subject to Colombia's price band system.

Upon implementation of the Agreement, Colombia will eliminate the price band system on trade with the United States. Duties on most pork and pork products, will be phased out over five years, starting from duties of 20 or 30 percent. Pork skin and bacon fat will benefit from duty-free access immediately upon implementation of the Agreement.

Under the ATPA, U.S. tariffs on imports of pork from Colombia are zero. The Agreement will continue this duty free treatment.

Poultry
From 2005 through 2007, U.S. exports of poultry meat to Colombia averaged $10.2 million per year. Colombia's applied tariff rates on poultry and poultry products range from five to 20 percent and their WTO bound tariff rates range from 70 to 209 percent. Poultry products also are subject to Colombia's price band system.

Under the Agreement, Colombia will eliminate its price band system immediately and will establish TRQs on poultry products that will be phased out over 18 years. Upon implementation, the United States will have access to a 27,040MT, chicken leg-quarter TRQ at zero duty with four percent annual growth. Colombia will phase out the 164.4 percent over-quota tariff for fresh, chilled and frozen chicken leg-quarters and 70 percent over-quota tariff for processed chicken leg-quarters over 18 years. During the tariff phase-out period, Colombia may use the special agricultural safeguard with respect to chicken leg-quarters, provided quantities enter in excess of specified thresholds.

Colombia also will establish a zero-duty, 412 MT TRQ with three percent annual growth for "spent fowl." The 45 percent over-quota tariff on spent fowl will be phased out over 18 years. Colombia also will be able to use the special agricultural safeguard with respect to spent fowl during this phase-out period if imports enter above specified quantity thresholds.

The Agreement will immediately eliminate Colombian tariffs on most other poultry products, and on the remainder, within five or ten years.

Under the ATPA, U.S. tariffs on imports of poultry from Colombia are zero. The Agreement will continue this duty-free treatment.

Dairy
From 2005 through 2007, U.S. exports of dairy products to Colombia averaged $5.9 million per year. The U.S. share of the Colombian import market during this period was 13 percent. The U.S. dairy industry's competitive position in the Colombian market will improve under the

U.S. – Colombia TPA with the implementation of TRQs providing for duty-free entry of certain dairy products in specified quantities (which expand over time), and the immediate elimination of duties on other U.S. dairy products with no quantity limitations.

Under present conditions, Colombia's WTO tariff bindings on dairy products range from 70 to 159 percent. Imports of dairy products into Colombia are subject to price bands, with duties ranging from zero to the maximum WTO bound rates.

Under the Agreement, Colombia will eliminate its price band system immediately on trade with the United States. In addition, Colombia will establish TRQs for six groups of dairy products, eliminate some duties immediately (most whey products), and phase out remaining dairy tariffs over a five-year period. The TRQs are as follows:

Milk Powder: A TRQ of 5,500 MT with ten percent annual growth, and over-quota tariffs that will be phased out by January 1 of year 15 of the Agreement.

Yogurt: A TRQ of 110 MT with ten percent annual growth, and an over-quota tariff that will be phased out by January 1 of year 15 of the Agreement.

Butter: A TRQ of 550 MT with ten percent annual growth, and over-quota tariffs that will be phased out by January 1 of year 11 of the Agreement.

Cheese: A TRQ of 2,310 MT with ten percent annual growth, and over-quota tariffs that will be phased out by January 1 of year 15 of the Agreement.

Processed Dairy Products: A TRQ of 1,100 MT with ten percent annual growth, and over-quota tariffs that will be phased out by January 1 of year 15 of the Agreement.

Ice Cream: A TRQ of 330 MT with ten percent annual growth, and an over-quota tariff that will be phased out by January 1 of year 11 of the Agreement.

Whey: Duties on two tariff lines for whey will be eliminated immediately while duties on a third will be phased out by January 1 of year three of the Agreement.

Under the Agreement, the United States will continue to provide duty-free treatment to dairy products receiving such treatment under the ATPA. The United States also will establish the following preferential TRQs:

Fluid Milk and Cream: A TRQ of 110 MT with ten percent annual growth, and over-quota tariffs that will be phased out by January 1 of year 11 of the Agreement.

Butter: A TRQ of 2,200 MT with ten percent annual growth, and over-quota tariffs that will be phased out by January 1 of year 11 of the Agreement.

Cheese: A TRQ of 5,060 MT with ten percent annual growth, and over-quota tariffs that will be phased out by January 1 of year 15 of the Agreement.

Processed Dairy Products: A TRQ of 2,200 MT with ten percent annual growth, and over-quota tariffs that will be phased out by January 1 of year 15 of the Agreement.

Ice Cream: A TRQ of 330 MT with ten percent annual growth, and an over-quota tariff that will be phased out by January 1 of year 11 of the Agreement.

Dried Peas, Beans and Lentils
From 2005 through 2007, U.S. exports of dried peas, beans and lentils to Colombia averaged $2.2 million per year.

Colombia's WTO tariff bindings on dried peas, beans and lentils range from 15 to 178 percent, with applied tariff rates ranging from five to 60 percent. Colombia will immediately eliminate tariffs on dried peas and dried lentils. It also will provide immediate duty-free access for dried beans through a 15,750 MT TRQ with five percent annual growth. Colombia will phase out its 60 percent over-quota tariffs in ten years, starting with a 33 percent reduction in these duties upon entry into force of the Agreement. Colombia will be permitted to use a special agricultural safeguard mechanism on dried beans in the event of import surges during the 10-year phase-out period, provided that imports from the United States exceed the specified quantity triggers.

Under the ATPA, U.S. tariffs on imports of dried peas, beans, and lentils from Colombia are zero. The Agreement will continue this duty-free treatment.

Corn
From 2005 through 2007, U.S. exports of yellow corn to Colombia averaged $355.5 million per year and U.S. exports of white corn averaged $14.6 million per year. This makes corn one of the United States' largest exports to Colombia by value. Colombia's WTO bound tariff rate on yellow and white corn is 194 percent. Its applied rates for corn are subject to a price band system, and can increase to levels as high as 194 percent, depending on world prices. Colombia restricts imports of corn through its price band system, and in addition, by conditioning access to duty-free quotas on purchase of local production under its "Quota Administration Mechanism." Colombia provides preferential access to corn from Argentina and other South American countries under a negotiated agreement with these countries, whose corn exporters compete with U.S. exporters for access to Colombia's market.

Under the Agreement, Colombia will eliminate its price band system for trade with the United States. In addition, the Agreement will preclude Colombia from conditioning access to TRQs established under the Agreement on domestic purchases. The United States will have access to a 2,100,000 MT TRQ for yellow corn and a 136,500 MT TRQ for white corn. Each TRQ will grow by five percent annually. Over-quota duties for yellow corn of 25 percent and for white corn of 20 percent will be phased out over 12 years. The Agreement will position U.S. corn exporters favorably vis-à-vis their South American competitors.

In addition to yellow and white corn, the U.S. feed grain industry will benefit from immediate duty-free access to the Colombian market for distillers dried grains and corn gluten feed/meal.

Enhanced market access for these products is becoming increasingly important as expansion of the U.S. ethanol industry continues to boost production of these feed products.

Under the ATPA, U.S. tariffs on imports of all feed grains, including corn, from Colombia are zero. The Agreement will continue this duty-free treatment.

Sorghum
From 2005 through 2007, U.S. exports of sorghum to Colombia averaged $161,000 per year. Colombia's WTO bound tariff rate on sorghum is 132 percent and its applied rates for sorghum are subject to a price band system, under which duties can fluctuate up to rates as high as 132 percent, depending on world prices. Like corn, sorghum is subject to Colombia's Quota Administration Mechanism.

Under the Agreement, the United States will benefit from a 21,000 MT TRQ with five percent annual growth. The 25 percent over-quota duty will be phased out over 12 years. In addition, Colombia will eliminate the price band system on trade with the United States, along with domestic purchase requirements.

Under the ATPA, U.S. tariffs on imports of all feed grains, including sorghum, from Colombia are zero. The Agreement will continue this duty-free treatment.

Animal Feed
From 2005 through 2007, U.S. exports of animal feed to Colombia averaged $42.3 million per year.

Colombia's WTO bound tariff rate on animal feeds is 97 percent. Its applied tariff rates range from five to 20 percent on some products, while others are subject to Colombia's price bands, with tariffs ranging from zero percent up to the WTO bound rate, depending on world prices.

Under the Agreement, the United States will benefit from a 194,250 MT TRQ with five percent annual growth. The over-quota tariffs for animal feeds will be either 10 or 25 percent, and will be phased out over 12 years.

Under the ATPA, U.S. tariffs on imports of all feed grains from Colombia are zero. The Agreement will continue this duty free-treatment.

Pet Food
From 2005 through 2007, U.S. exports of pet food to Colombia averaged $2.6 million per year.

Under the Agreement, Colombia will provide immediate duty-free access for pet food through an 8,640 MT TRQ with eight percent annual growth. The 28 percent over-quota pet food tariff will be phased out over eight years.

Under the ATPA, U.S. tariffs on imports from Colombia are zero. The Agreement will continue the duty-free treatment.

Rice
From 2005 through 2007, U.S. annual exports of rice to Colombia averaged $1.1 million per year.

Colombia's WTO tariff bindings on rice and rice products range from 131 to 189 percent. Under current conditions, Colombia's applied tariff rates range from five to 80 percent. Additionally, Colombia's price band system has applied to rice (but not all rice products) with tariffs ranging from zero to the WTO bound rate, depending on world prices.

Under the Agreement, the United States will benefit from a 79,000 MT TRQ with 4.5 percent annual growth. The 80 percent over-quota duty will be reduced over time, reaching zero in year 19. Colombia will have access to the special agricultural safeguard mechanism in the event of import surges on rice during the tariff phase-out period.

Under the ATPA, U.S. tariffs on imports from Colombia are zero. The Agreement will continue the duty-free treatment.

Soybeans and Soybean Products
From 2005 through 2007, U.S. exports of soybeans, soybean meal, and soybean oil to Colombia averaged $140.1 million per year.

Colombia is a significant importer of soybeans and soybean products, with soybean meal imports increasing rapidly. The Agreement will enhance the competitive position of U.S. exporters of soybeans and soybean products in the Colombian market by eliminating Colombia's price band system and opening new duty-free TRQs, which expand over time as over quota tariffs are reduced to zero.

Under current conditions, Colombia's WTO binding rates for soybeans and soybean products range from 75 to 159 percent, and its current applied tariff rates range from five to 20 percent. Additionally, certain products are covered by Colombia's price band system and have tariffs ranging from zero up to WTO bound rates, depending on world prices.

The United States will benefit from the following:

Soybeans, Soy Meal, Soy Flour: All duties will be immediately eliminated upon entry into force of the Agreement.

Crude Soybean Oil: A 31,200 MT TRQ with four percent annual growth, and over-quota duties that will be reduced to zero by January 1 of year ten of the Agreement.

Refined Soybean Oil: Refined oil will have a base duty of 24 percent that will be eliminated over five years.

Under the ATPA, U.S. tariffs on imports from Colombia are zero. The Agreement will continue this duty-free treatment.

Wheat and Barley
From 2005 through 2007, U.S. annual exports of wheat and barley to Colombia averaged $142.9 million per year. The U.S. wheat industry is already a major supplier to Colombia, and will benefit from the elimination of duties under the Agreement. The U.S. share of Colombia's growing market for malting barley is currently small, but is expected to increase when duties are removed.

Colombia's WTO tariff bindings on wheat and barley range from 90 to 248 percent, while its applied tariff rates range from five to 20 percent. In addition, some grain types are subject to Colombia's price band system, under which tariffs can fluctuate up to the WTO bound rate, depending on world prices.

Duties on wheat, wheat products, barley for brewing, and barley products will be eliminated immediately upon entry into force of the Agreement. Tariffs on feed barley will be eliminated on January 1, 2009.

Under the ATPA, U.S. tariffs on wheat and barley imports from Colombia are zero. The Agreement will continue this duty-free treatment.

Fruit, Vegetables and Tree Nuts (Horticultural Products)
From 2005 through 2007, U.S. suppliers shipped to Colombia an average $13.5 million of fruit and fruit preparations per year, $1.3 million of vegetables and vegetable preparations (including pulses) per year, and approximately $888,000 of tree nuts per year. The U.S. horticulture industry will benefit from the Agreement, as its exports will become more competitive with Andean and Mercosur exports that enjoy duty-free entry into Colombia.

Colombia's WTO tariff bindings on vegetables and vegetable products range from 70 to 102 percent, with applied tariff rates ranging from five to 20 percent. WTO tariff bindings on fruits and tree nuts range from 20 to 140 percent, with applied tariff rates of 15 percent. Additionally, Colombia's WTO tariff bindings on potatoes and potato products range from 70 to 102 percent, with applied tariff rates ranging from five to 20 percent.

Under the Agreement, nearly all of Colombia's duties on fruits, vegetables, and tree nuts will be phased out over five years. All fresh potato tariff lines and almost all processed potato lines, including frozen fries, potato flakes, and potato chips will receive immediate duty-free access to Colombia.

U.S. tariffs on almost all horticultural product imports from Colombia are zero under the ATPA. The Agreement will continue this duty-free treatment. A few items will be subject to 10-year tariff phase-out periods.

Cotton
From 2005 through 2007, U.S. annual average exports of cotton to Colombia (for domestic use and for further processing) were valued at $60 million. The U.S. share of the Colombian import market averaged 88 percent. Currently, Colombia's WTO tariff bindings on cotton range from 70 to 99 percent, with applied tariff rates at ten percent.

Under the Agreement, Colombia will immediately eliminate cotton tariffs.

Sugars, Sweeteners and Glucose
From 2005 through 2007, U.S. exports of sugars and sweeteners to Colombia averaged $6.9 million per year.

Colombia's WTO tariff bindings on sugar and sweeteners range from 100 to 130 percent. Colombia's applied tariff rates range from five to 20 percent on some products, while others are subject to Colombia's price band system, under which tariffs fluctuate with world prices and can rise to levels as high as Colombia's WTO bound rates. Under the Agreement, Colombia will provide immediate duty-free access for U.S. glucose through a 10,500 MT TRQ with five percent annual growth. Colombia will phase out the 28 percent over-quota tariff for glucose in 10 years. In addition, Colombia will phase out all other tariffs on sugar and sweeteners within 15 years and in many cases within shorter time periods, including nine years for high fructose corn syrup.

Under the Agreement, the United States will provide Colombia with preferential access through a zero-duty TRQ covering sugar and certain high-sugar-content products. The in-quota quantity of this TRQ will be the lesser of: 50,000 MT in year one (growing by 750 MT each year, or 1.5 percent simple annual growth), or the quantity equal to Colombia's sugar trade surplus. Colombia must be a net exporter to qualify to export to the United States under this TRQ. The Agreement also contains a compensation mechanism, which will allow the United States to provide compensation to Colombia's exporters of sugar goods in lieu of accepting duty free imports. The over-quota duty of the U.S. sugar TRQ remains at NTR rates.

Peanuts and Peanut Products
From 2005 through 2007, U.S. exports of peanuts and peanut products to Colombia averaged $161,000 per year. This constitutes a five percent share of the Colombian import market for these products.

Colombia's WTO tariff bindings on peanuts and peanut products range from 70 to 155 percent. Colombia's applied tariff rates range from five to 20 percent on some products, while tariffs on others are subject to Colombia's price band system, under which rates can increase up to WTO bound levels, depending on world prices. Under the Agreement, Colombia will immediately eliminate tariffs on peanuts, peanut oil and peanut products.

The United States has agreed to phase out tariffs on peanut and most peanut product imports from Colombia over 15 years. Under the ATPA, U.S. tariffs on Colombian peanut oil imports are zero. The Agreement will continue this duty-free treatment.

SERVICES

With the implementation of the U.S. - Colombia TPA, U.S. service providers will gain improved access to the Colombian market. Colombia has made very substantial commitments to liberalize services trade, including telecommunications and financial services. These

commitments significantly improve upon Colombia's WTO commitments in terms of sectors covered and elimination of restrictions. The U.S. - Colombia TPA will establish a solid framework for trade in services by providing for the elimination of obstacles in most service sectors and for improved regulatory transparency.

Why do services commitments matter?

The services sector accounts for the majority of jobs in the United States. Private services industries in the United States accounted for over 95 million U.S. jobs in 2006, or roughly 80 percent of private non-farm employment. U.S. services exports are a vital part of this picture and they continue to grow. In 2007, services exports of $472 billion accounted for 29 percent of total U.S. exports, generating a services trade surplus of $104 billion, which helped to offset nearly thirteen percent of the U.S. merchandise trade deficit.

U.S. service providers, already operating in a highly competitive market, are well positioned to take advantage of free trade agreements. Consumers in Colombia value services that help boost their own productivity and enhance their lives. Colombian service providers look to the United States as a model in terms of providing high-quality and cutting-edge services and technologies.

U.S. - Colombia TPA Allows Service Providers to Choose Mode of Delivery – a Key Provision for SMEs

Colombia's commitments in services will cover both the supply of services across the border (such as supplying a service from one country to another through electronic means, or through the travel of nationals), as well as the supply of services through investment or a local presence. The Colombian government will be prohibited, with a few exceptions, from requiring a U.S. company to incorporate or to make any form of local investment in order to supply services on a cross-border basis. In other words, a U.S. company wishing to provide its service in Colombia will not be required to have any formal presence there (with very few exceptions). This will be a benefit to all U.S. service providers, especially SMEs, who may not have the resources to maintain a presence in Colombia or to conduct enough business in Colombia to warrant that kind of presence.

The freedom for service providers to choose their mode of delivery becomes increasingly important as technology makes distance less of a services barrier. Colombia is one of the Andean region's leaders in Internet use and an innovator in technology applications. Major new investments in telecommunications and information systems that are likely to result from the U.S. - Colombia TPA will dramatically improve access to IT, benefiting all "e-service" providers.

Barriers to Foreign Service Suppliers Lifted

Colombia has a number of barriers to foreign service suppliers that the U.S. - Colombia TPA will address. Removal of these barriers will allow increased access and streamlining of operations for U.S. companies. For example, Colombia accepted a unilateral commitment to eliminate a requirement that prevented U.S.-owned companies in Colombia from hiring the managers,

professionals, and specialists of their choice for their operations in Colombia. Additionally, upon implementation of the Agreement, U.S. companies providing a service under concession to the Colombian government will be free to purchase on the basis of price and quality, not on the basis of nationality of the goods in these sectors. Currently, such companies, which typically operate in the transportation, energy and mining sectors, are required to buy locally.

Sector-Specific Benefits for the Service Sector

Colombia's sectoral coverage in the U.S. - Colombia TPA will be significantly broader than the commitments it undertook in the WTO General Agreement on Trade in Services (GATS). One reason is that the Agreement uses a more inclusive method of sectoral coverage - the "negative list" approach. This means that every sector will be completely covered unless an exception is listed, and that trade disciplines are automatically extended to services that have yet to be created or brought to market. Such automatic coverage of new services is especially important to industries where market development, technological advances and innovation continuously result in new service offerings and means of delivery, including sectors such as communications, express delivery, financial and computer related services. The GATS uses a "positive list," which means that only those sectors that a country expressly lists are covered by the GATS national treatment and market access obligations. Colombia's GATS commitments are fairly limited with relatively few of the possible 150 different sectors and sub-sectors listed.

U.S. service providers should immediately benefit from U.S. - Colombia TPA commitments in a number of key areas. Some examples are provided below.

Financial Services

Colombia will open its financial service sector and allow U.S. financial services providers to establish as a subsidiary or a branch, enabling them to provide credit to underserved areas, breaking the monopoly of retailers and banks that charge very high interest rates and making credit more readily available to Colombian consumers.

U.S.-based firms will be able to supply insurance on a cross-border basis, including through electronic means for key markets including reinsurance and reinsurance brokerage upon entry into force, and marine, aviation and transport (MAT) insurance and brokerage no later than four years after entry into force of the Agreement. U.S.-based banking and other non-insurance firms will be able to offer services cross-border in areas such as provision, transfer, and processing of financial data and information; related software; and the provision of advisory and other auxiliary financial services, excluding intermediation.

U.S.-based asset managers, including insurance companies, will be able to provide investment advice and other portfolio management services to mutual funds and pension funds, including the funds that manage the portfolios of collective investment schemes established in Colombia.

Advertising

Colombia made full commitments in this important sector. That is, Colombia agreed to treat U.S. providers the same way it treats its own providers (*i.e.* national treatment) or providers from

other countries (*i.e.* most-favored-nation treatment), and not to impose market access restrictions on them. This is an improvement over the GATS, where Colombia has no commitments in advertising.

Construction and Engineering Services

The U.S. - Colombia TPA will provide full market access for construction services in Colombia. In addition, improved regulatory regimes and strong investment environments will stimulate growth opportunities for construction consultants and engineers. This is an improvement over the GATS, where Colombia has only partial commitments for engineering and construction services.

Distribution Services, including Retail and Wholesale Services, Direct Marketing, and Direct Selling

Retailers will benefit from the removal of barriers that inhibit the movement of products among manufacturers, wholesalers, retailers, and consumers. Intellectual property rights provisions will ensure the concept brands of the franchise companies are protected. Retailers working with transportation, telecommunications, financial, computer and other service providers may be able to improve and streamline the supply chain to better serve consumers in the United States and throughout the hemisphere. Direct marketers should benefit from improved wireless telecommunication services and Internet service that are likely to result from the U.S. - Colombia TPA, and from Colombia's commitments to open specific services sectors that are important to direct marketers, such as travel and tourism. Colombia has no GATS commitments for distribution.

Franchising

The U.S. - Colombia TPA will provide full market access for franchising in Colombia, a commitment that Colombia has not made in the GATS. Furthermore, commitments in other areas of the U.S. - Colombia TPA will benefit U.S. franchisers. Trademark provisions will protect the franchiser name, and tariff liberalization will allow the lower-cost import of key equipment needed to supply the franchisee.

Entertainment, including Audiovisual and Broadcasting

The U.S. - Colombia TPA will provide significant market access for U.S. films and television programs over a variety of media including cable, satellite, and the Internet. This market opening is in stark contrast with the GATS, where Colombia has no commitments in this area. Additionally, the Agreement will provide state-of-the-art intellectual property protection and will require that each Party criminalize the willful unauthorized receipt or distribution of encrypted satellite signals, thus preventing piracy of satellite television programming. The Agreement also will require non-discriminatory treatment for digital products, such as U.S. software, music, text, and videos.

Express Delivery Services

The Chapter on Services, with an expansive definition of express delivery services, will lock in existing competitive opportunities in Colombia and prevent cross-subsidization from a postal monopoly. This is in contrast with the GATS, where Colombia has no commitments in either postal/courier services or in express delivery. The U.S. - Colombia TPA provisions on customs trade facilitation will help express delivery service companies provide better services to customers who are seeking to enhance their competitiveness in the hemisphere and global market place. Express delivery services are in demand from a wide range of companies – from high-tech to agriculture, and auto manufacturing to retail services. Speed-to-market, just-in-time inventory processes and total quality management are critical to success in today's economy. Commitments in this sector will facilitate U.S. commercial interests in Colombia.

Energy Services

The Agreement's extensive obligations on regulatory transparency and investment will provide a framework that can yield opportunities for U.S. energy services firms and facilitate the provision of energy services between the United States and Colombia. Energy demand in Colombia is increasing and its coal and oil reserves are the second and fifth largest in South America. As the Andean countries pursue their goal of a common electricity market, there will be opportunities for U.S. energy services providers. The U.S. - Colombia TPA will better positions U.S. companies to take advantage of these opportunities.

Information Services, including Computer Related Services

The U.S. - Colombia TPA will provide full access to the Colombia market in the information services sector. The U.S. - Colombia TPA will cover all modes of delivery of information services, including electronic delivery, such as via the Internet, which is not covered by Colombia's GATS commitments. The "negative" list approach also ensures that rapidly evolving computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without such an approach, computer and related services definitions and commitments could quickly become obsolete as new services are introduced. U.S. - Colombia TPA obligations cover "digital products" and other e-commerce products, which will also benefit U.S. technology service providers. In addition, as technology users increasingly purchase information technology solutions as a combination of goods and services (including specialized equipment with customized software), Colombia's commitment to eliminate tariffs on U.S. IT goods and to join the WTO Information Technology Agreement will benefit service providers as well. New market access for U.S. service providers in sectors such as banking, financial services, and telecommunications as a result of the U.S. - Colombia TPA will increase demand for strong software development, data processing, and other information services.

Professional Services, including Accounting, Legal Services, and Management Consulting

The U.S. - Colombia TPA will secure market access in professional services to a greater extent than the GATS. Liberalization in such sectors as banking, investment, and financial services will

offer increased opportunities for professional service providers. The Cross-Border Trade in Services chapter of the U.S. - Colombia TPA includes obligations intended to ensure that administrative decisions related to licensing are prompt and fair. This chapter also calls for Colombia and the United States to work together to seek mutually acceptable standards and criteria for licensing, certification and mutual recognition of professional service suppliers.

INVESTMENT

The U.S. - Colombia TPA will establish a secure, predictable legal framework for U.S. investors in Colombia. Implementation of the Agreement's obligations will improve transparency, reduce barriers to investment, and improve the dispute settlement process, addressing key concerns about the investment climate in Colombia. Foreign direct investment can contribute significantly to the economic development and stability of Colombia. Increased foreign direct investment in Colombia will greatly improve the development of efficient, reliable systems for power generation, water, sewage, transportation, and telecommunications. The Uribe administration has stepped up the economic liberalization begun in the early 1990's and is committed to an open investment regime. Liberalization has progressed furthest in telecommunications, accounting/auditing, energy, and tourism.

Key Investment Provisions

- Requires establishment of a secure, predictable legal framework for U.S. investors operating in Colombia.
- Covers all forms of investment, including enterprises, debt, concessions, contracts, and intellectual property.
- Gives U.S. investors, with limited exceptions, the right to establish, acquire, and operate investments in Colombia on an equal footing with local investors, and with investors of other countries.
- Provides U.S. investors in Colombia the same substantive protections foreign investors enjoy in the United States.
- Affords U.S. investors due process protections (consistent with those found in U.S. law) and the right to promptly receive the fair market value of their investment in the event of an expropriation.
- Backs investor rights by effective, binding, and impartial dispute settlement procedures.

Colombia is actively seeking foreign investment in nearly all sectors of the economy, notably in the hydrocarbon sector. In 2003 the Colombian government shifted regulatory responsibilities from Ecopetrol, the state-owned oil company, to a government entity called the National Hydrocarbons Agency (ANH). The ANH administers Colombia's concession process, allowing Ecopetrol to compete side-by-side with foreign firms (with no equity limitations) for hydrocarbon contracts.

Colombia's National Development Plan calls for $5 billion in public infrastructure investment over the next four years to ensure the nation's roads, ports, and other infrastructure will be able to handle growing foreign trade. Because Colombia's infrastructure needs cannot be financed solely through the national budget, the government's plan assumes strong private sector

participation. With the U.S. - Colombia TPA in effect, U.S. companies will be well positioned to pursue these investment opportunities.

The U.S. - Colombia TPA includes an impartial and transparent investor-state dispute settlement procedure, which will enable investors to pursue damages claims outside of Colombian courts, through binding international arbitration. Additionally, the U.S. - Colombia TPA will afford U.S. investors protection for investments undertaken pursuant to written agreements with the Colombian government that cover activities such as the exploration and extraction of natural resources; the supply of power generation services to the public; and infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines.

INTELLECTUAL PROPERTY RIGHTS

The U.S. - Colombia TPA will require high levels of intellectual property protection, consistent with U.S. standards of protection, and will support the growth of trade in valuable digital and other intellectual property-based products.

Although Colombia has made great strides modernizing intellectual property laws, shortcomings remain in its laws, and effective enforcement continues to be a challenge. Implementation of the commitments made under the U.S. - Colombia TPA will reinforce Colombia's efforts to strengthen intellectual property law enforcement. Like our other free trade agreements, this Agreement takes into account significant legal and technological developments that have taken place since WTO, TRIPS and NAFTA were implemented.

Trademarks

U.S. trademark holders will see much stronger protections in Colombia. The U.S. - Colombia TPA expands the definition of trademark to include protection for non-visually perceptible marks such as sounds and scents. It also recognizes the principles of priority and exclusivity in the relationship between trademarks and geographical indications.

Colombia will streamline its registration procedures, to implement an electronic application system and to develop a public on-line database of trademark applications and registrations. This will save U.S. companies time and money and make it

Key Intellectual Property Facts

Protection for copyrighted works

- Copyright-based industries are among the fastest growing and most productive of any sector of the U.S. economy. They employ new workers in higher-paying jobs at over three times the rate of the rest of the economy; create new revenue at over two times that rate; and contribute close to $90 billion to the U.S. economy each year through foreign sales and exports. The industries' principal barrier to trade is the lack of effective protection and enforcement of intellectual property rights.

Stronger protections for patents & trade secrets

- Innovation has historically been a driving force in U.S. industry. Competitive advantage based on innovation needs to be protected and defended. U.S. companies need access to legal tools in all markets across the globe.

Tough penalties for piracy and counterfeiting

- The high level of enforcement required by the U.S. - Colombia TPA will benefit industry and increase the standard throughout the region.

easier for them to take the necessary steps to protect their trademarks. Improved transparency provisions will give interested parties the opportunity to oppose and cancel registrations and to know the reason for decisions with respect to registration.

Copyright

The U.S. - Colombia TPA includes many important provisions for stemming copyright piracy losses and otherwise benefiting U.S. copyright industries. One of the most important provisions is the prohibition on the circumvention of technological protection measures (TPMs) that authors, performers, and producers of phonograms use in the exercise of their rights to prohibit or restrict unauthorized acts (e.g., unauthorized access to a work or illegal copying). Defined and limited exceptions to the circumvention of TPMs will provide further certainty by bolstering its effective implementation. This prohibition on circumvention of TPMs is also an effective tool for addressing the challenges presented in the digital environment.

The protection of encrypted program-carrying satellite signals directly was included as a direct response to the concerns of U.S. broadcasters and content providers. Colombia also will mandate that government agencies use computer software only as authorized by the right holder and actively regulate the acquisition and management of the software, a high priority for the U.S. software industry. In addition to the needs addressed by the industry-specific challenges, a 20-year increase in the term of protection for copyrighted works (a forty percent increase) will allow a broad range of right holders to increase the value of their intellectual property.

Patent and Data Protection

Colombia will limit the grounds on which patents may be revoked and to extending patent protection to new plant varieties. Colombia has also agreed to restore patent rights for the term of protection lost due to unreasonable delays in issuing patents with respect to most products, ensuring that patent rights are not diminished by bureaucratic delays. While this patent term restoration obligation is more flexible with respect to pharmaceutical products, Colombia will make best efforts to expeditiously processing patent and marking approval applications for drugs. Recognizing the significant investments made by pharmaceutical and agro-chemical companies in compiling test data submitted in connection with marketing approval, Colombia will protect such data from use by third parties. Agricultural chemical test data will be protected for a period of 10 years; for pharmaceuticals, the period of protection will normally be five years, though this period may be shorter if Colombia relies on the U.S. Food and Drug Administration's approval of a given drug and certain other conditions are met. Additionally, Colombia will put in place procedures and remedies intended to prevent the marketing of patent-infringing pharmaceuticals.

Improved Transparency and Reduced Corruption

As in other recent free trade agreements, the U.S. - Colombia TPA contains an obligation to publicize information on efforts to provide effective enforcement of intellectual property rights. Final judicial decisions or administrative rulings of general applicability pertaining to the

enforcement of intellectual property rights must be in writing and must state any relevant findings of fact and the reasoning or the legal basis on which the decisions or rulings are based.

Enforcement

The U.S. - Colombia TPA includes measures that should facilitate enforcement of these enhanced intellectual property protections, thereby improving the enforcement environment in Colombia. The Agreement will establish a framework for determining damages and establishes a system of statutory or "pre-established" damages, offering the right-holder the option to elect between statutory damages and the often-difficult task of proving actual damages. The Agreement also will mandate that courts must have the authority to order the infringing party to identify accomplices, suppliers and others involved in the infringement at the risk of sanctions for failure to do so.

Key U.S.-Colombia TPA Procurement Provisions

- The U.S. - Colombia TPA imposes strong disciplines on government procurement procedures, such as requiring advance public notice of purchases and provision of information to all interested suppliers regarding covered procurement opportunities, as well as timely and effective domestic review procedures.
- Colombia's central and regional governments and certain state-owned enterprises cannot apply "buy local" provisions that discriminate against U.S. suppliers.
- Low-value contracts are excluded and set-asides on behalf of U.S. small and minority-owned businesses are not affected by the Agreement.
- The Agreement contains strong provisions to ensure integrity in government procurement. The Colombian government must maintain a debarment system to declare ineligible suppliers that engage in fraudulent or illegal actions related to procurement.

GOVERNMENT PROCUREMENT

The government procurement provisions of the U.S. - Colombia TPA will guarantee non-discriminatory access to the procurements of the largest purchasing entities in Colombia. These procurements include areas where U.S. goods and services companies are very competitive, such as aerospace, energy, health care (including pharmaceuticals), construction, environmental technology, and information communication technology (ICT).

The Agreement will cover purchases of most Colombian central government entities, including all key ministries and significant state-owned enterprises. Colombia also will include all of its regional governments. Governments are typically the single largest purchasing entity in any market. Government procurement is generally 10 percent to 15 percent of a country's GDP. Colombia's total GDP in 2007 was over $171 billion, thus total procurement is estimated to be between $17.1 billion and $125.6 billion. U.S. companies will immediately benefit as the Colombian government brings its laws and practices into compliance with the procurement obligations set forth in the U.S. - Colombia TPA. Even in those public procurements for which U.S. firms are already granted national treatment, some still complain of mismanagement and lack of transparency in the bid process. The U.S. - Colombia TPA will require the use of fair and transparent procurement procedures, and the availability of timely and effective domestic review

procedures to address complaints about the award of tenders.

The U.S. - Colombia TPA also will cover important state-owned enterprises such as ECOPETROL (national oil company), ISS (healthcare provider) and ADPOSTAL (postal service). The U.S. - Colombia TPA also will require transparency and non-discrimination for U.S. companies seeking to bid on procurements conducted by three significant Colombian entities: ISA (electricity transmission), ISAGEN (electricity generation) and Colombia Telecomunicaciones (telecom).

The U.S. - Colombia TPA will clarify that build-operate-transfer contracts (BOTs) are within the scope of the government procurement obligations in the Agreement. BOTs act as financing vehicles for large-scale construction projects and the building or rehabilitation of public work facilities. The U.S. - Chile Free Trade Agreement was the first free trade agreement to include this clarification and it is significant that the U.S. - Colombia TPA also will contain the guarantee that U.S. suppliers will receive non-discriminatory and transparent treatment when competing for BOT contracts.

CUSTOMS ADMINISTRATION AND TRADE FACILITATION

The U.S. - Colombia TPA includes specific and cutting-edge customs obligations that will be critical to maximizing the gains that U.S. and Colombian exporters will realize once the customs administration and trade facilitation provisions are fully implemented.

Businesses operating in Colombia frequently complain that unclear rules, inconsistent interpretation of customs regulations and directives, and arbitrary clearance procedures often result in lengthy delays for the importation of goods into Colombia. The commitments established in the chapter on Customs Administration and Trade Facilitation will respond to these concerns. The chapter will require that all customs rules and regulations be published, including on the Internet, and that Colombia notify the United States of any changes to its customs laws and regulations that affect the operation of the Agreement. Colombia must adopt streamlined, expedited and transparent procedures for the release of goods, generally within 48 hours after the goods arrive. In addition, Colombia must allow the release of goods pending the final determination of duties, taxes, and fees.

Improved Customs Procedures and Rules of Origin

- *Comprehensive Rules of Origin* - Rules of origin will ensure that only U.S. and Colombian goods receive preferential tariff treatment under the U.S. - Colombia TPA. Rules are designed to be as easy as possible to administer.

- *Enhanced Transparency* – The U.S. - Colombia TPA will require transparency and efficiency in administering customs procedures, including rules of origin. Colombia will commit to publish laws and

> Each day saved in shipping time is worth an estimated 0.8 percent ad-valorem for manufactured goods.* U.S. - Colombia TPA customs and trade facilitation measures will provide significant savings to U.S. exporters in terms of time and money.
>
> **Time as a Trade Barrier* by Hummels, David, July 2001

regulations on the Internet, and will be required to take other steps that will promote certainty and fairness in customs administration. This will make it easier for U.S. exporters to understand the Colombian customs process.

- *Heightened Predictability* - The Agreement will allow exporters to obtain binding advance rulings on tariff classification, origin of goods and other customs matters. This important provision will provide increased predictability to exporters and minimize delays at the port of entry. This obligation will address the very real problem of customs officials issuing inconsistent rulings on the same products and will minimize opportunities for abuse of discretion at the border.

- *Greater Accountability* - Under the Agreement, companies will have the right to a review of customs decisions both through an independent determination at the administrative level and through the judiciary.

- *Improved Procedures for Express Delivery Shipments* - The demand for express-delivery services is increasing rapidly as a result of the growth of electronic commerce, the globalization of business, explosive demand for "just-in-time" delivery of goods to reduce warehousing and inventory storage costs, and rising demand by manufacturers for outsourced logistic services. The U.S. – Colombia TPA will respond to that demand by requiring that, within two years after the date of entry into force of the Agreement, Colombia must provide a separate, expedited customs procedure for express shipments. It must also change its regulations to allow for the processing of customs information related to the express shipment prior to the arrival of the shipment itself. Most importantly, the Agreement will require Colombia under normal circumstances to clear express shipments from the port within six hours of submission of all necessary documents and with no maximum weight or value limitations.

- *Greater Customs Efficiency through Information Technology* - Responding to U.S. exporters' requests, the Agreement will promote the use of information technology, including the electronic submission of information. This will help expedite procedures for the release of goods, thereby saving companies time and money.

- *Information Sharing* - Both the United States and Colombia agree to share information to combat illegal trans-shipment of goods.

CONCLUSION

Approving and implementing the United States - Colombia Trade Promotion Agreement is in the best interest of United States commerce and a "win-win" for both countries. The comprehensive Agreement will not only eliminate tariffs, but also reduce barriers for services, provide for leading-edge protection and enforcement of intellectual property, keep pace with new technologies, ensure regulatory transparency and require enforcement of domestic labor and environmental laws. Once the U.S. - Colombia TPA is in effect, doing business with Colombia will be easier, faster, more transparent and more profitable. The Agreement also will promote

economic development for a vital U.S. ally, fostering new opportunities for the people of Colombia as they continue to make admirable strides toward peace and economic prosperity.

Tab 6: Summary of the Agreement

THE UNITED STATES – COLOMBIA TRADE PROMOTION AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States - Colombia Trade Promotion Agreement ("Agreement") that the United States has concluded with Colombia and represents an authoritative expression of Administration views regarding the interpretation of the Agreement both for purposes of U.S. international obligations and domestic law.

Preamble

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the Agreement and provides context for the provisions that follow. It includes the following statement:

"AGREE that foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement".

This statement would clarify that, as stated in the Bipartisan Trade Promotion Authority Act of 2002, foreign investors in the United States are not to be accorded greater substantive rights with respect to investment protections than United States investors in the United States.

Chapter One: Initial Provisions and General Definitions

Section A of Chapter One sets out provisions establishing a free trade area and affirming the Parties' existing rights and obligations with respect to each other under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which they are party.

Section B defines certain terms that recur in various chapters of the Agreement.

Chapter Two: National Treatment and Market Access for Goods

Chapter Two and its relevant annexes and appendices set out the Agreement's principal rules governing trade in goods. Each Party must treat products from the other Party in a non-discriminatory manner, provides for the phase-out and elimination of tariffs on "originating" goods (as defined in Chapter Four) traded between the Parties, and eliminate a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Two provides for the elimination of customs duties on originating goods traded between the Parties. Duties on most tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other goods will be phased out over periods of up to 10 years. Some agricultural goods will have longer periods

for elimination of duties or be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). The General Notes to the U.S. and Colombia Schedules to Annex 2.3 include detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. The Chapter provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Waiver of Customs Duties. The Parties may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement. Chapter Two defines the term "performance requirements" so as not to restrict a Party's ability to provide duty drawback on goods imported from the other Party.

Temporary Admission. The Parties will provide duty-free temporary admission for certain products. Such items include professional equipment, goods for display or demonstration, and commercial samples. The Chapter also includes specific provisions on transit of vehicles and containers used in international traffic.

Import/Export Restrictions, Fees, and Formalities. The Agreement clarifies that restrictions prohibited under the General Agreement on Tariffs and Trade (GATT) 1994 and this Agreement include export and import price requirements (except under antidumping and countervailing duty orders and undertakings) and import licensing conditioned on the fulfillment of a performance requirement. In addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered. The United States will not apply its merchandise processing fee on imports of originating goods. Colombia will not require a person of the United States to have or maintain a relationship with a "distributor" as a condition for allowing the importation of a good.

Distinctive Products. Colombia agreed to recognize Bourbon Whiskey and Tennessee Whiskey as "distinctive products" of the United States, meaning Colombia will not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey unless it was manufactured in the United States in accordance with applicable laws and regulations.

Committee on Trade in Goods. The Parties establish a Committee on Trade in Goods to consider matters arising under Chapters Two, Four, and Five. The functions of the Committee are to promote and address barriers to trade in goods and to provide advice and recommendations on trade capacity building with respect to matters those chapters cover.

Agriculture

TRQs. Under Chapter Two, each government must administer TRQs in a manner that is transparent, non-discriminatory, responsive to market conditions, and minimally burdensome on trade. In addition, the Parties will make every effort to administer TRQs in a manner that allows importers to fully utilize import quotas. In addition, the Chapter provides that Parties may not condition application for, or utilization of, import licenses or quota allocations on the re-export of an agricultural good.

Export Subsidies. Each Party will eliminate export subsidies on agricultural goods destined for the other Party. Under Article 2.16, no Party may introduce or maintain an export subsidy on agricultural goods destined for the other Party unless the exporting Party believes that a third country is subsidizing its exports to that other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

Safeguards. Chapter Two sets out a transitional agricultural safeguard mechanism that allows a Party to impose a temporary additional duty on specified agricultural products if imports exceed an established volume "trigger." The safeguard measure will remain in force until the end of the calendar year in which the measure applies. A Party may not apply an agricultural safeguard on a good after the date that the good is subject to duty-free treatment under the Party's Schedule to Annex 2.3 of the Agreement.

A Party may not apply a safeguard measure to a good that is already the subject of a safeguard measure under either Chapter Eight (Trade Remedies) of the Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. All agricultural safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must, on request, consult with the other Party concerning the application of the measure.

Neither Party may impose safeguard duties pursuant to the WTO Agreement on Agriculture on originating goods.

Sugar. The Agreement contains several unique features applicable to imports of sugar into the United States. First, imports under the TRQs provided for in the Agreement will be limited to the lesser of (i) the quantity established in the TRQ, or (ii) Colombia's trade surplus in specific sugar goods. ("Colombia's trade surplus" is the amount by which Colombia's exports to all destinations exceed its imports from all sources in specified sugar and sweetener goods, except that Colombia's exports of sugar to the United States and its imports of high fructose corn syrup from the United States are not included in the calculation of its trade surplus.) The aggregate quantities established for the TRQ start at 50,000 metric tons in the first year and go up to 60,500 metric tons by year 15 of the Agreement. After year 15, the quantities increase by 750 metric tons per year. Second, in contrast to how it will treat other commodities subject to TRQs, the United States will not eliminate its over-quota duty on sugar imports under the Agreement. Lastly, the Agreement includes a mechanism that allows the United States, at its option, to provide some form of alternative compensation to Colombian exporters in place of imports of sugar in any given year.

Additional Provisions. Chapter Two provides for the creation of a Committee on Agricultural Trade. The Committee will be established within 180 days after the date the Agreement enters into force and will provide a forum for promoting cooperation in the implementation and administration of the Agreement, as well as for consultations on matters related to the agricultural provisions of the Agreement. In addition, the Chapter provides that the Parties will

consult on and review the operation of the Agreement as it relates to trade in chicken nine years after the Agreement enters into force.

Chapter Three: Textiles and Apparel

Tariff Elimination. Chapter Three provides for duties on all originating textile or apparel goods to be eliminated on the date the Agreement enters into force.

Safeguards. The Chapter also establishes a transitional safeguard procedure for textile and apparel goods, under which an importing Party may temporarily impose additional duties up to the level of the normal trade relations (most-favored-nation) (NTR(MFN)) duty rates on imports of textile or apparel goods that cause, or threaten to cause, serious damage to a domestic industry as a result of the elimination or reduction of duties under the Agreement. An importing Party may impose a textile safeguard measure only once on the same textile or apparel good. The measure may not be in place for more than two years, or three years if the measure is extended. The ability to impose or maintain textile safeguards lapses five years after the Agreement enters into force. A Party may not apply a textile safeguard measure to a good while the good is subject to a safeguard measure under (i) Chapter Eight (Trade Remedies), or (ii) Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

A Party imposing a safeguard measure under Chapter Three must provide the exporting Party with mutually agreed compensation in the form of trade concessions for textile or apparel goods that have a value substantially equivalent to the increased duties resulting from application of the safeguard measure. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has a value substantially equivalent to the increased duties resulting from application of the safeguard measure.

Rules of Origin and Related Matters. A textile or apparel good will generally qualify as an "originating good" eligible to receive trade preferences under the Agreement only if all processing from the yarn stage to the final product (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the United States, Colombia, or both, or if there is an applicable change in tariff classification under the specific rules of origin contained in Annex 3-A of the Agreement.

Chapter Three sets out special rules for determining whether a textile or apparel good is an "originating good," including a *de minimis* exception for non-originating yarns or fibers, a process for designating inputs not available in commercial quantities, a rule for treatment of sets, an exception for use of certain nylon filament yarn, and consultation provisions.

The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be "originating" if those fibers or yarns constitute ten percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to goods containing elastomeric yarns.

Annex 3-B of the Agreement sets out a list of fabrics, yarns, and fibers that the Parties have determined are not available in commercial quantities in a timely manner from producers in the United States and Colombia. A textile or apparel good that includes the fabrics, yarns, or fibers included in this list will be treated as if it is "originating" for purposes of the specific rules of origin in Annex 3-A of the Agreement, regardless of the actual origin of those inputs. Chapter Three establishes procedures under which the United States will determine whether additional fabrics, yarns, or fibers are not available in commercial quantities in the United States and Colombia. The United States may also remove a fabric, yarn, or fiber from the list if it determines that the fabric, yarn, or fiber has become available in commercial quantities.

Customs Cooperation. In Chapter Three, the Parties commit to cooperate in enforcing their laws related to trade in textile and apparel goods, to ensure the accuracy of claims of origin, and to prevent circumvention of the Parties' laws or agreements relating to trade in textile and apparel goods. The Chapter also provides that, under certain circumstances, the exporting Party must conduct a verification to determine that a claim of origin is accurate, or to determine compliance with relevant laws. A verification may include visits to the premises of the exporter or producer of the goods in question. If there is insufficient information to make the relevant determination, or if an enterprise provides incorrect information, the importing Party may take appropriate action, which may include denying application of preferential tariff treatment or denying entry to the goods in question. Further, either Party may convene consultations to resolve technical or interpretive issues arising with respect to customs cooperation or may request technical assistance from the other Party in implementing the Chapter's customs cooperation provisions.

Duty Free Treatment for Certain Goods. The United States and Colombia will provide duty-free treatment for goods that both Parties may agree qualify as handmade, hand-loomed, or traditional folklore goods.

Chapter Four: Rules of Origin and Origin Procedures

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating good" under the rules of origin set out in Chapter Four and Annex 4.1. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties' territories.

Key Concepts. Chapter Four provides general criteria under which a good may qualify as an "originating good:"

- When the good is wholly obtained or produced in Colombia, the United States, or both (*e.g.*, crops grown or minerals extracted in the United States); or

- When the good: (1) is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in Colombia, the United States, or both; or (2) meets any applicable "regional value content" requirement (see below); and (3) satisfies all other requirements of Chapter Four, including Annex 4.1; or

- When the good is produced in Colombia, the United States, or both, entirely from "originating" materials.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials that do not undergo the required tariff shift does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Chapter. This *de minimis* exception does not apply to certain agricultural and textile goods.

Regional Value Content. Some origin rules under the Agreement require that certain goods meet a regional value content test in order to qualify as "originating," meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calculating that percentage: (1) the "build-down method" (based on the value of non-originating materials used); and (2) the "build-up method" (based on the value of originating materials used). The regional value content of certain automotive goods, however, must be calculated on the basis of the net cost of the good. Finally, accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

Claims for Preferential Treatment. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must be prepared to submit, on the request of the importing Party's customs authority, a statement explaining why the good qualifies as an originating good. A Party may only deny preferential treatment in writing, and must provide legal and factual findings. The Chapter establishes a procedure for filing claims for preferential treatment for up to one year after a good is imported and for seeking a refund of any excess duties paid. Chapter Four also provides that a Party will not penalize an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed.

Verification. Each Party must ensure that its customs authority is empowered to conduct verifications for purposes of determining whether a good is an originating good. Where an importing Party determines through a verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good is an originating good, the Party may suspend preferential tariff treatment to identical goods from that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with the rules set out in the Chapter.

Additional Rules. Chapter Four provides specific rules with respect to the treatment of (1) packing materials and containers; (2) indirect materials; (3) fungible goods; and (4) sets of goods for purposes of determining origin. The Chapter provides that a Party may not treat a good as originating if the good undergoes production outside the territories of the Parties or if, while being unloaded, reloaded, or preserved in or simply being shipped through a third country, the good does not remain under the control of customs authorities in the territory of that third country. Chapter Four also calls for the Parties to publish guidelines for interpreting, applying, and administering Chapter Four and the relevant provisions of Chapter Two.

Chapter Five: Customs Administration and Trade Facilitation

Chapter Five establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

General Principles. In Chapter Five, each Party commits to observe certain transparency obligations. Each Party must promptly publish its customs measures, including on the Internet, and, where possible, solicit public comments before amending its customs regulations. Each Party must also provide written advance rulings, on request, to its importers and to exporters and producers of the other Party, regarding whether a product qualifies as an "originating" good under the Agreement, as well as on other customs matters. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties must release goods from customs promptly and expeditiously clear express shipments. After the Agreement enters into force Colombia will have one year to comply with the Chapter's rules on release of goods; two years to comply with the Chapter's express shipments obligations and certain of its transparency obligations; and three years to comply with the Chapter's requirement to provide advance rulings.

Cooperation. Chapter Five also is designed to enhance customs cooperation. The Parties are encouraged to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the implementation and operation of the provisions of the Agreement governing importations and exportations. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity relating to its laws and regulations governing importations.

Chapter Six: Sanitary and Phytosanitary Measures

Chapter Six defines the Parties' obligations to each other regarding sanitary and phytosanitary (SPS) measures. It reflects the Parties' understanding that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is a shared objective. Nothing in the Agreement imposes new limitations on the United States in terms of maintaining high safety and inspection standards.

Key Concepts. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Cooperation. Under Chapter Six, the Parties will establish an SPS Committee consisting of relevant trade and regulatory officials. The objectives of the Committee are to (i) enhance the implementation by each Party of the WTO SPS Agreement; (ii) assist each Party to protect human, animal, or plant life or health; (iii) enhance consultation and cooperation between the Parties on SPS matters; and (iv) address SPS measures affecting trade between the Parties. The Committee will also provide a forum for enhancing mutual understanding of each Party's SPS

measures and the regulatory processes that relate to those measures; consulting on SPS matters that may affect trade between the Parties; and consulting on issues, agendas, and positions for meetings of certain international organizations that address SPS matters.

Dispute Settlement. No Party may invoke the Agreement's dispute settlement procedures for a matter arising under Chapter Six. Instead, any dispute between the Parties involving an SPS measure must be resolved through the WTO.

Chapter Seven: Technical Barriers to Trade

Chapter Seven builds on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards ("technical regulations"), and procedures used to determine whether a particular good meets such standards, *i.e.*, "conformity assessment" procedures.

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Under Chapter Seven, the Parties will apply these principles and consult on pertinent matters under consideration by relevant international or regional bodies.

Cooperation. In Chapter Seven, the Parties establish a Committee on Technical Barriers to Trade through which the Parties will cooperate to reduce technical barriers and improve market access. The Committee's specific functions will include: (i) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; (ii) facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies; (iii) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures; and (iv) consulting, at a Party's request, on any matter arising under the Chapter.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Each Party will recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than it accords conformity assessment bodies in its own territory.

Transparency. Chapter Seven contains various transparency obligations, such as requiring each Party to: (i) allow persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (ii) transmit regulatory proposals notified under the WTO TBT Agreement directly to the other Party; (iii) describe in writing the objectives of and reasons for the proposed technical regulations or conformity assessment procedure; and (iv) consider comments on such proposals and respond in writing to significant comments it receives. Each Party must implement the

Chapter's transparency provisions as soon as practicable, and no later than three years after the Agreement enters into force.

Chapter Eight: Trade Remedies

Safeguards. Chapter Eight establishes a safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reduction or elimination under the Agreement. The Chapter does not affect the Parties' rights or obligations under the WTO's safeguard provisions (global safeguards) or under other WTO trade remedy rules.

In Chapter Eight, each Party is authorized to impose temporary duties on an imported originating good if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good.

A safeguard measure may be applied on a good only during the Agreement's "transition period" for phasing out duties on the good. A safeguard measure may take one of two forms – a temporary increase in duties to NTR (MFN) levels or a temporary suspension of duty reductions called for under the Agreement. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. A safeguard measure may be in place for an initial period of up to two years. A Party may extend a measure for up to an additional two years, if it determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals.

If a Party imposes a safeguard measure, that Party must provide offsetting trade compensation to the other Party whose goods are subject to the measure. If the Parties cannot agree on the amount or nature of the compensation, a Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the importing Party.

Global Safeguards. Each Party maintains its right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A Party may exclude imports of an originating good from the other Party from a global safeguard measure if those imports are not a substantial cause of serious injury or do not create a threat of serious injury. A Party may not apply a safeguard measure under Chapter Eight at the same time that it applies a safeguard measure on the same good under the WTO Agreement on Safeguards.

Antidumping and Countervailing Duties. The Parties confirm that each retains its rights and obligations under the WTO agreements relating to the application of antidumping and countervailing duties. Antidumping and countervailing duty measures may not be challenged under the Agreement's dispute settlement procedures.

Chapter Nine: Government Procurement

Under Chapter Nine each Party must apply fair and transparent procurement procedures and rules and each government and its procuring entities are prohibited from discriminating in purchasing practices against goods, services, and suppliers from the other Party. The rules of Chapter Nine are broadly based on the rules of the WTO Agreement on Government Procurement.

General Principles. Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Party in a manner that is "no less favorable" than their domestic counterparts. Parties are also barred from discriminating against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain dollar thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. Specifically, the Chapter applies to procurements by listed agencies of the "central government," which for the United States is the federal government, of goods and services valued at $64,786 or more and construction services valued at $7,407,000 or more. The equivalent thresholds for purchases by listed "sub-central" government entities (*i.e.*, "Gobernaciones" for Colombia and U.S. state government agencies) are $526,000 and $7,407,000, for goods and services and construction services, respectively. The Chapter's thresholds for other covered entities are either $250,000 or $593,000 for goods and services, and $7,407,000 for construction services. All thresholds are subject to adjustment every two years for inflation. With respect to construction services, during the three-year period following the date of entry into force of the Agreement, Colombia may apply a threshold of $8,000,000 with respect to all three types of entities. The Agreement also provides that certain Colombian telecommunications and electric utilities that would not otherwise be covered by the Agreement must comply with the national treatment obligations in making purchases.

Transparency. Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

Tendering Rules. Chapter Nine provides rules for setting deadlines on "tendering" (bidding on government contracts). Procuring entities must give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications with the purpose or effect of creating an unnecessary obstacle to trade between the Parties while clarifying that an entity may adopt technical specifications to promote environmental conservation. The Chapter also clarifies that an entity may adopt technical

specifications that require suppliers to comply with generally applicable laws regarding fundamental principles and rights at work and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health in the territory where they make the product or perform the service that the entity will purchase. It also sets out the circumstances under which procuring entities are allowed to use limited tendering, *i.e.*, award a contract to a supplier without opening the procurement to all interested suppliers.

Award Rules. Chapter Nine provides that to be considered for an award, a tender must be submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

Additional Provisions. The provisions in Chapter Nine build on the anti-corruption provisions of Chapter Nineteen, including by requiring each Party to maintain procedures to declare suppliers that have engaged in fraudulent or other illegal actions in relation to procurement ineligible for participation in the Party's procurement. It establishes procedures under which a Party may modify its coverage under the Chapter, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health, including environmental measures necessary to protect human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor.

Chapter Ten: Investment

Chapter Ten establishes rules to protect investors from one Party against unfair or discriminatory government actions when they invest or attempt to invest in the other Party's territory. The Chapter's provisions reflect traditional standards incorporated in earlier U.S. bilateral investment treaties, previous free trade agreements, and customary international law.

Key Concepts. Under Chapter Ten, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, licenses, and contracts. It includes both investments existing when the Agreement enters into force and future investments. The term "investor of a Party" encompasses U.S. and Colombian nationals as well as firms (including branches) established in one of the Parties.

General Principles. Investors enjoy six basic protections: (1) right to non-discriminatory treatment relative both to domestic investors and investors of non-Parties; (2) limits on imposition by the host Party of "performance requirements;" (3) right to free transfer of funds related to an investment; (4) protection from expropriation in conformity with customary international law; (5) right to the minimum standard of treatment of aliens required by customary international law; and (6) the right to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority of the board of

directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in Annexes I and II particular sectors or measures for which it negotiated an exemption from the Chapter's obligations relating to national treatment, NTR (MFN), performance requirements, or senior management and boards of directors ("non-conforming measures"). Annex I contains each Party's list of existing non-conforming measures at the central and regional levels of government. The United States has scheduled an exemption from all aforementioned obligations for all existing state measures. All existing local measures are exempted for both Parties without the need to be listed. If a Party liberalizes any of these non-conforming Annex I measures, it must thereafter maintain the measure at least at that level of openness. In Annex II, each Party has listed sectors or activities in which it reserves the right to adopt or maintain future non-conforming measures. (Annexes I and II also include exemptions from Chapter Eleven. See below).

Investor-State Disputes. Chapter Ten provides a mechanism for an investor of a Party to submit to binding international arbitration a claim for damages against the other Party. The investor may assert that the Party has breached a substantive obligation under the Chapter or that the Party has breached an "investment agreement" with, or an "investment authorization" granted to, the investor or a covered investment that the investor owns or controls. "Investment agreements" and "investment authorizations" are arrangements between an investor and a host government based on contracts and authorizations, respectively. These terms are defined in Chapter Ten.

Chapter Ten affords public access to information on investor-State arbitrations conducted pursuant to the Agreement. For example, under Chapter Ten hearings will generally be open to the public and key documents will be publicly available, with exceptions for confidential business information. The Parties also authorize tribunals to accept *amicus* submissions from the public. In addition, the Chapter includes provisions similar to those used in U.S. courts to dispose quickly of claims a tribunal finds to be frivolous. Finally, within three years after the Agreement enters into force the Parties will consider whether to establish an appellate body, or similar mechanism, to review arbitral awards rendered by tribunals under the Chapter.

Chapter Ten provides that, "except in rare circumstances," nondiscriminatory regulatory actions designed and applied to meet legitimate public welfare objectives, such as public health, safety, and the environment, are not indirect expropriations.

Chapter Eleven: Cross-Border Trade in Services

Chapter Eleven governs measures affecting cross-border trade in services between the Parties. Certain provisions also apply to measures affecting investments to supply services.

Key Concepts. Under the Agreement, cross-border trade in services covers supply of a service:

- from the territory of one Party into the territory of the other Party (*e.g.*, electronic delivery of services from the United States to Colombia);

- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, a Colombian company provides services to U.S. visitors in Colombia); and

- by a national of a Party in the territory of the other Party (*e.g.*, a U.S. lawyer provides legal services in Colombia).

Chapter Eleven should be read together with Chapter Ten (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter Eleven applies where, for example, a service supplier is temporarily present in a territory of a Party and does not operate through a local investment.

General Principles. Among Chapter Eleven's core obligations are requirements to provide national treatment and NTR (MFN) treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. The Chapter's provisions apply to existing service suppliers as well as those who seek to supply services. The Parties are prohibited from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions on the supply of services (*e.g.*, that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The Chapter excludes financial services (which are addressed in Chapter Twelve), except that certain provisions of Chapter Eleven apply to investments in financial services that are not regulated as financial institutions and are covered by Chapter Ten (Investment). In addition, Chapter Eleven does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in Annexes I and II measures or sectors for which it negotiated exemptions from Chapter Eleven's core obligations (national treatment, NTR (MFN), local presence, and market access). Annex I contains the list of existing non-conforming measures at the central and regional level of government. The United States has scheduled an exemption from all aforementioned obligations for all existing state measures. All existing local measures are exempted for both Parties without the need to be listed. However, once a Party liberalizes any of these non-conforming Annex I measures, it must thereafter maintain the measure at least at that level of openness. Each Party has listed in Annex II sectors or activities in which it reserves the right to adopt or maintain future non-conforming measures.

Specific Commitments. Chapter Eleven includes a comprehensive definition of express delivery services under which each Party must provide national treatment, NTR (MFN) treatment, and additional benefits to express delivery services of the other Party. The Chapter provides that the Parties will try to maintain the level of market openness for express delivery services they provided on the date the Agreement was signed, and a Party may request consultations with the other if it believes the other Party is not maintaining that level of access. The Chapter also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services. In addition, Colombia has committed to eliminate a requirement that has prevented U.S.-owned companies in Colombia from hiring the managers, professionals, and specialists of their choice for their operations in Colombia.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Eleven. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

Exclusions. Chapter Eleven does not apply to any service supplied "in the exercise of governmental authority" – that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not apply to government subsidies. In addition, the Chapter makes clear that the Agreement does not impose any obligation on a Party with respect to its immigration measures, including admission or conditions of admission for temporary entry.

Chapter Twelve: Financial Services

Chapter Twelve provides rules governing each Party's treatment of: (1) financial institutions of the other Party; (2) investors of the other Party, and their investments, in financial institutions; and (3) cross-border trade in financial services.

Key Concepts. The Chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Twelve's core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Specifically, Chapter Twelve imposes rules requiring national treatment and NTR (MFN) treatment, prohibits certain quantitative restrictions on market access of financial institutions, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis. The rules do not apply to measures adopted or maintained by a Party relating to certain specified services and activities – for example, activities or services forming part of a

public retirement plan or statutory system of social security – unless a Party allows its financial institutions to compete with a public entity or a financial institution to supply such services and activities.

Non-Conforming Measures. Similar to Chapters Ten and Eleven, each Party has listed in an annex (Annex III) particular measures for which it negotiated exemptions from the Chapter's core obligations. Existing non-conforming U.S. state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes one of these non-conforming measures, however, it must, in most cases, maintain the measure at least at that new level of openness.

Other Provisions. Chapter Twelve also includes provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to Other Chapters. Measures that a Party applies to financial services suppliers of the other Party, other than regulated financial institutions, that make or operate investments in the Party's territory are covered principally by Chapter Ten (Investment) and certain provisions of Chapter Eleven (Cross-Border Trade in Services). In particular, the core obligations of Chapter Ten apply to such measures, as do the market access, transparency, and domestic regulation provisions of Chapter Eleven. Chapter Twelve incorporates by reference certain provisions of Chapter Ten, such as those relating to transfers and expropriation.

Chapter Thirteen: Competition Policy, Designated Monopolies, and State Enterprises

Recognizing that anticompetitive business conduct has the potential to restrict bilateral trade and investment, Chapter Thirteen calls for each government to proscribe such conduct. The Chapter also sets out basic procedural safeguards and rules ensuring against harmful conduct by government-designated monopolies and state enterprises.

Competition Laws. Each Party must adopt or maintain laws prohibiting anticompetitive business conduct and to take appropriate action with respect to such conduct. Each Party must also maintain authorities responsible for enforcing its national competition laws. The Parties affirm that the enforcement policy of each Party's national competition authority is not to discriminate on the basis of nationality. It also obligates each Party to provide certain procedural protections for persons facing enforcement actions. Each Party will ensure that persons subject to sanctions or remedies for competition law violations will be provided a right to be heard and to present evidence, and to seek review by a court or independent tribunal.

Designated Monopolies. There are specific rules governing instances in which a Party gives a private or national government-owned entity a monopoly to provide or purchase a good or service. In particular, the Party must ensure that the entity: (1) abides by the Party's obligations under the Agreement wherever it exercises authority delegated to it by the government in connection with the monopoly good or service; (2) purchases or sells the monopoly product in a manner consistent with commercial considerations; (3) does not discriminate against the other Party's investments, goods, or service suppliers in the purchase or sale of the monopoly product;

and (4) does not engage in anticompetitive practices in markets outside its monopoly mandate that harm the other Party's investments.

State Enterprises. Chapter Thirteen sets forth obligations regarding the Parties' responsibilities for "state enterprises," *i.e.*, enterprises owned or controlled by a Party. Each Party must ensure that its state enterprises accord non-discriminatory treatment in the sale of their products to the other Party's investments.

Cooperation and Working Group. Chapter Thirteen provides for bilateral cooperation in relation to the enforcement of competition laws. In addition, the Parties will establish a working group to promote greater understanding and cooperation between the Parties with respect to the matters covered under the Chapter.

Dispute Settlement. Many of the Chapter's provisions are not subject to the Agreement's dispute settlement procedures, including the provisions requiring a Party to adopt and enforce laws prohibiting anticompetitive business conduct and the provisions governing cooperation and consultations. The Chapter's rules addressing designated monopolies and state enterprises, however, may be enforced through the Agreement's State-to-State dispute settlement mechanism.

Chapter Fourteen: Telecommunications

Chapter Fourteen includes disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications trade and investment between the Parties. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the territory of the other Party. In addition, each Party must regulate its major telecommunications suppliers in ways that will ensure a level playing field for new entrants. The Parties also seek to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Fourteen, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "information services" (*e.g.*, services that enable users to create, store, or process information over a network). A "major supplier" is a company that, by virtue of its market position or control over certain facilities, can materially affect the terms of participation in the market.

Competition. Chapter Fourteen establishes rules promoting effective competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-

discriminatory terms (*e.g.*, Colombia must ensure that its public phone companies do not provide preferential access to Colombian banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;
- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and
- impose disciplines on the behavior of "major suppliers."

Regulation. The Chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;
- will require their telecommunications regulators to resolve disputes between suppliers and provide foreign suppliers the right to seek judicial review of those decisions;
- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and
- will avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Chapter Fifteen: Electronic Commerce

Chapter Fifteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The provisions in this and other recent U.S. free trade agreements represent a major advance over previous international understandings on this subject.

Customs Duties. Chapter Fifteen provides that a Party may not impose customs duties on digital products of the other Party transmitted electronically and will determine the customs value of an imported carrier medium bearing a digital product based on the value of the carrier medium alone, without regard to the value of the digital product stored on the carrier medium.

Non-Discrimination. The Parties will apply the principles of national treatment and NTR (MFN) treatment to trade in electronically-transmitted digital products. Thus, a Party may not discriminate against electronically-transmitted digital products on the grounds that they have a nexus to another country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of the

other Party or a non-Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like products that have a nexus to a third country. The non-discrimination rules do not apply to non-conforming measures adopted under Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), or Twelve (Financial Services).

Additional Provisions. Chapter Fifteen contains additional provisions relating to authentication, online consumer protection, and paperless trade administration.

Chapter Sixteen: Intellectual Property Rights

Chapter Sixteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. In Chapter Sixteen the Parties commit to ratify or accede to several agreements on intellectual property rights, including, by the date the Agreement enters into force, the WIPO Copyright Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the WIPO Performances and Phonograms Treaty, and, within specified periods, the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, and the Patent Cooperation Treaty. The United States is already a party to these Agreements. With very limited exceptions, each Party commits to provide national treatment to the other Party's nationals with respect to the enjoyment and protection of the intellectual property rights covered by the Chapter.

Trademarks and Geographical Indications. Each Party must protect trademarks and geographical indications, including by refusing protection or recognition of a geographical indication that is likely to cause confusion with a preexisting trademark. The Chapter calls for trademarks to include collective marks and certification marks, and for geographical indications to be eligible for protection as marks. Each Party must also establish a system for registering trademarks that provides efficient and transparent procedures governing applications to protect trademarks and geographical indications. Furthermore, each Party's Internet domain name management system must include a dispute resolution procedure to address trademark cyber-piracy.

Copyright and Related Rights. Under Chapter Sixteen the Parties must provide broad protection for copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. Each Party must also provide a right of communication to the public, which will further ensure that the right holder has the exclusive right to authorize making protected works available online. Each Party must also protect the rights of performers and producers of phonograms.

To curb copyright piracy, government agencies of the Parties must use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-

circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Sixteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Sixteen provides that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Sixteen also includes a variety of provisions for the protection of patents. The Parties will make patents available for any invention, subject to limited exclusions, and confirm the availability of patents for new uses or methods of using a known product. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. Under Chapter Sixteen, each Party must make best efforts to process patent applications and marketing approval applications expeditiously. With respect to most products, a Party must adjust the patent term to compensate for unreasonable delays that occur while granting a patent. For pharmaceutical products, a Party may provide for such adjustments if there is an unreasonable delay in granting a patent or providing marketing approval for a product.

Certain Regulated Products. Chapter Sixteen includes additional specific provisions relating to pharmaceuticals and agricultural chemicals. Among other things, the Chapter provides for the protection of test data that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection – normally five years for pharmaceuticals and ten years for agricultural chemicals. This means, for example, that during the period of protection, test data that a company submits for approval of a new agricultural chemical product cannot be used without that company's consent in granting approval to market a combination product. If a Party bases its decision to approve a pharmaceutical product for marketing in its territory on a marketing approval the other Party has granted for that product, and it approves the product within six months after the company applies for the approval in the Party, the period of test data protection will be counted from the date the other Party approved the product. The Chapter's rules governing test data protection for pharmaceutical products are subject to a public health exception. The Parties must implement procedures for the expeditious adjudication of disputes concerning the validity or infringement of a patent, a transparent system to provide notice to a patent holder that another person is seeking to market an approved pharmaceutical product during the term of a patent, and sufficient time and opportunity for a patent holder to seek, prior to the marketing of an allegedly infringing product, available remedies for an infringing product..

Public Health. Chapter Sixteen expresses the Parties' understanding that its obligations do not and should not prevent a Party from taking measures to protect public health by promoting access to medicines for all.

Enforcement Provisions. In Chapter Sixteen the Parties also assume obligations with respect to the enforcement of intellectual property rights in civil proceedings, in criminal proceedings, and at the border. For example, the Parties, in determining damages in civil proceedings involving copyright infringement or trademark counterfeiting, must take into account the value of the

legitimate goods as well as the infringer's profits, and must also provide for damages based on a fixed range (*i.e.*, "statutory damages"), as an option that the right holder can elect instead of actual damages.

Chapter Sixteen further provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Sixteen also provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

Each Party must empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint.

Transition Periods. Most obligations in the Chapter take effect on the date the Agreement enters into force. However, Colombia may delay giving effect to certain specified obligations for periods ranging from one year to three years after that date.

Chapter Seventeen: Labor

Chapter Seventeen sets out the Parties' commitments and undertakings regarding trade-related labor rights.

Fundamental Labor Rights. Each Party commits to adopt and maintain in its statutes, regulations, and practice certain enumerated labor rights, as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work and Its Follow Up*. Specifically, these are (1) freedom of association; (2) the effective recognition of the right to collective bargaining; (3) the elimination of all forms of forced or compulsory labor; (4) the effective abolition of child labor and, for purposes of the Agreement, a prohibition on the worst forms of child labor; and (5) the elimination of discrimination in respect of employment and occupation. In order to establish a violation of this obligation, a Party must demonstrate that the other Party has failed to comply in a manner affecting trade or investment between the Parties. Neither Party may waive or otherwise derogate from its statutes or regulations implementing this obligation in a manner affecting bilateral trade or investment where the waiver or derogation would be inconsistent with one of the enumerated rights. For the United States, the Chapter's provisions regarding fundamental labor rights apply to federal law only.

Effective Enforcement. Each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting trade or investment between the Parties. The Chapter defines "labor laws" to include the ILO fundamental labor rights, laws providing for acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, and laws providing labor protections for children and minors, including prohibition of the worst forms of child labor. For the United States, "labor laws" includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws.

Procedural Guarantees. Each Party commits to afford procedural guarantees that ensure workers and employers have access to tribunals for the enforcement of its labor laws. To this end, each Party must ensure that proceedings before these tribunals are fair, equitable, and transparent and comply with due process of law. Decisions of such tribunals must be in writing, made publicly available, and based on information or evidence in respect of which the parties were offered the opportunity to be heard. In addition, hearings in such proceedings must be open to the public, except where the administration of justice otherwise requires. Each Party also commits to make remedies available to ensure the enforcement of its labor laws. Such remedies might include orders, fines, penalties, or temporary workplace closures.

Dispute Settlement. Chapter Seventeen provides for cooperative consultations as a first step if a Party considers that the other Party is not complying with its obligations under the Chapter. The complaining Party may, after an initial 60-day consultation period under Chapter Seventeen, invoke the Agreement's general dispute settlement mechanism by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under the provisions of Chapter Twenty-One (Dispute Settlement). If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel.

Institutional Arrangements, Cooperation and Capacity Building. Chapter Seventeen establishes a cabinet-level Labor Affairs Council to oversee the Chapter's implementation and to provide a forum for consultations and cooperation on labor matters. Each Party must designate a contact point for communications with the other Party and the public regarding the Chapter. Each Party's contact point must provide transparent procedures for the submission, receipt, and consideration of communications from persons of a Party relating to the Chapter.

The Parties also create a labor cooperation and capacity building mechanism through which the Parties will work together to address labor matters of common interest. In particular, the mechanism will assist the Parties to establish priorities for, and carry out, cooperation and capacity building activities relating to such topics as: the effective application of fundamental labor rights; legislation and practice relating to compliance with ILO Convention 182 on the worst forms of child labor; strengthening labor inspection systems and the institutional capacity of labor administrations and tribunals; mechanisms for supervising compliance with laws and regulations pertaining to working conditions; and the elimination of gender discrimination in employment.

Chapter Eighteen: Environment

Chapter Eighteen sets out the Parties' commitments and undertakings regarding environmental protection. Chapter Eighteen builds on the environmental provisions of other recent U.S. free trade agreements, including the Dominican Republic-Central America-United States Free Trade Agreement.

General Principles. Each Party must strive to ensure that its environmental laws provide for high levels of environmental protection and continue to improve its respective levels of environmental protection. Each Party also commits not to waive or otherwise derogate from its environmental laws to weaken or reduce the levels of environmental protection in a manner

affecting trade or investment between the Parties other than pursuant to a provision in its environmental law providing for waivers or derogations. Chapter Eighteen further includes commitments to enhance cooperation between the Parties in environmental matters and encourages the Parties to develop voluntary, market-based mechanisms as one means for achieving and sustaining high levels of environmental protection.

Multilateral Environmental Agreements. The Parties recognize that multilateral environment agreements (MEAs) to which they are parties play an important role globally and domestically in protecting the environment and that their respective implementation of these agreements is critical to achieve each Party's environmental objectives. Accordingly, the Chapter includes a provision requiring each Party to adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under certain multilateral environmental agreements ("covered agreements") to which both governments are parties. To establish a violation of this obligation a Party must demonstrate that the other Party has failed to comply in a manner affecting bilateral trade or investment.

Chapter Eighteen provides that in the event of any inconsistency between a Party's obligations under the Agreement and a covered agreement, the Party must seek to balance its obligation under both agreements, but this will not preclude a Party from taking measures to comply with the MEA as long as the measure's primary purpose is not to impose a disguised restriction on trade.

Effective Enforcement. Each Party commits not to fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, on a sustained or recurring basis in a manner affecting trade or investment between the Parties. For the United States, "environmental laws" comprise environmental statutes and regulations enforceable by the federal government.

Procedural Matters. Each Party commits to make judicial, quasi-judicial, or administrative proceedings available to sanction or remedy violations of its environmental laws. Each Party must ensure that such proceedings are fair, equitable, and transparent, and, to this end, comply with due process of law and are open to the public, except where the administration of justice otherwise requires. Each Party must ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that each Party's competent authorities give such requests due consideration. Each Party also commits to make appropriate and effective remedies available for violations of its environmental laws. Such remedies may include, for example, fines, injunctions, or requirements to take remedial action or pay for the cost of containing or cleaning up pollution.

Environmental Performance: Each Party will encourage the development and use of flexible, voluntary, and incentive-based mechanisms for environmental protection, and to encourage the development and improvement of performance goals and indicators for measuring environmental performance as well as flexible means for achieving such goals, as appropriate and in accordance with its law.

Institutional Arrangements and Cooperation. In Chapter Eighteen, the Parties establish a senior-level Environment Affairs Council. The Council will oversee and provide periodic reports to the Free Trade Commission on the Chapter's implementation. The Council will provide for the public to participate in its work, including by providing an opportunity at each Council meeting, unless the Parties otherwise agree, for the public to express views on how the Chapter is being implemented. Each Party must also take into account public views on environmental cooperation activities. In addition, to facilitate cooperation efforts, the Parties have signed a separate environmental cooperation agreement.

Public Participation and Submissions. Each Party commits to provide for the receipt and consideration of submissions from persons of a Party on matters related to implementation of the Chapter and to convene a national advisory committee to provide views on matters related to the implementation of the Chapter. In addition, the Chapter provides that any person of a Party may file a submission with a secretariat asserting that a Party has failed to effectively enforce its environmental laws. The secretariat will review the submission according to specified criteria and in appropriate cases recommend to the Environmental Affairs Council that a factual record concerning the matter be developed. The secretariat will prepare a factual record if a member of the Environmental Affairs Council instructs it to do so. The Council will consider the record and, where appropriate, provide recommendations to an environmental cooperation commission that will be created under the related environmental cooperation agreement. U.S. persons who consider that the United States is failing to effectively enforce its environmental laws may invoke the comparable public submissions process under the North American Agreement on Environmental Cooperation. The Parties will designate the secretariat and make related arrangements through a separate understanding.

Biological Diversity. The Parties recognize the importance of biological diversity, restate their commitment to encouraging and promoting its protection, and agree to enhance their cooperative efforts with respect to biological diversity. A specific article on biological diversity has been included in the Environment Chapter.

Dispute Settlement. Chapter Eighteen provides for cooperative consultations as a first step if a Party considers that the other Party is not complying with its obligations under the Chapter. The complaining Party may, after an initial 60-day consultation period under the Chapter, invoke the Agreement's general dispute settlement mechanism by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under Chapter Twenty-One (Dispute Settlement). If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. In addition, Chapter Eighteen provides that when an issue relating to a Party's obligations under a covered agreement arises in a dispute settlement proceeding, the panel hearing the matter must consult with any entity authorized under the covered agreement to address the issue and defer to the extent appropriate in light of its nature and status to any interpretive guidance under the covered agreement regarding the issue.

Chapter Nineteen: Transparency

Section A of Chapter Nineteen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of measures on matters covered by the Agreement.

Each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, or otherwise make them available. To the extent possible, the Parties must publish proposed regulations in advance and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected by an agency process, including an adjudication, rulemaking, licensing, determination, and approval process. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit.

Chapter Nineteen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

In Section B of Chapter Nineteen, the Parties affirm their commitment to prevent and combat corruption, including bribery in international trade and investment. To this end, each Party is obligated to make it a criminal offense to offer or accept a bribe in exchange for favorable government action in matters affecting international trade or investment. The Parties must also endeavor to protect persons who, in good faith, report acts of bribery or corruption and to work together to encourage and support initiatives in relevant international fora to prevent bribery and corruption.

Chapter Twenty: Administration of the Agreement and Trade Capacity Building

In Chapter Twenty, the Parties create a Free Trade Commission to supervise the implementation and overall operation of the Agreement. The Commission comprises the Parties' trade ministers and will meet annually. The Commission will assist in the resolution of any disputes that may arise under the Agreement. The Commission may issue interpretations of the Agreement and agree to accelerate duty elimination on particular products and adjust the Agreement's product-specific rules of origin.

Each Party must designate an office to provide administrative assistance to dispute settlement panels and perform such other functions as the Commission may direct.

The Parties also establish a Committee on Trade Capacity Building comprising representatives of each Party. The overall objective of the Committee is to assist Colombia to implement the Agreement and adjust to liberalized bilateral trade. Particular functions of the Committee include: prioritizing trade capacity building projects; inviting international donor institutions, private sector entities, and non-governmental organizations to assist in the development and implementation of trade capacity building projects; and monitoring and assessing progress in implementing those projects.

Chapter Twenty-One: Dispute Settlement

Chapter Twenty-One sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements,

relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.*, the WTO agreements), the complaining government may choose a forum for resolving the matter that is set forth in any valid agreement between the Parties. The selected forum will be the exclusive venue for resolving that dispute.

Consultations. A Party may request consultations with the other Party on any actual or proposed measure that it believes might affect the operation of the Agreement. If the Parties cannot resolve the matter through consultations within a specified period (normally 60 days), any consulting Party may refer the matter to the Free Trade Commission, which will attempt to resolve the dispute.

Panel Procedures. If the Commission cannot resolve the dispute within a specified period (normally 30 days), any consulting Party may refer the matter, if it involves an actual measure, to a panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 120 days after the last panelist is selected. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 30 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

Suspension of Benefits. If the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform to the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of

the assessment will be established by agreement of the Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures either five years after the Agreement enters into force or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, which ever occurs first.

Settlement of Private Disputes. The Parties will encourage the use of arbitration and other alternative dispute resolution mechanisms to settle international commercial disputes between private parties. Each Party must provide appropriate procedures for the recognition and enforcement of arbitral awards, for example by complying with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

Chapter Twenty-Two: Exceptions

Chapter Twenty-Two sets out provisions that generally apply to the entire Agreement. Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement, *mutatis mutandis*, and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Eleven (Cross-Border Trade in Services), Fourteen (Telecommunications), and Fifteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of the Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

Essential Security. Chapter Twenty-Two makes clear that nothing in the Agreement prevents a Party from taking actions it considers necessary to protect its essential security interests, and specifically provides that an arbitration panel must apply the essential security exception if a Party invokes it. With respect to non-conforming measures relating to port activities listed by Colombia and the United States in Annex I and II, respectively, each Party has clarified that the landside aspects of port activities are subject to the Agreement's essential security exception.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect a Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: (1) national treatment obligation for goods; (2) national treatment and NTR (MFN) obligations for services; (3) prohibitions on performance requirements; and (4) expropriation rules.

Disclosure of Information. The Chapter also provides that a Party may withhold information from the other Party where such disclosure would impede domestic law enforcement, otherwise

be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises.

Chapter Twenty-Three: Final Provisions

Chapter Twenty-Three provides that (i) the annexes, appendices, and footnotes are part of the Agreement, (ii) the Parties may amend the Agreement subject to the legal requirements of each Party, and (iii) the English and Spanish texts are both authentic. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

In Chapter Twenty-Three, the Parties establish the procedures for the Agreement to enter into force and terminate. The Chapter provides that any other country or group of countries may accede to the Agreement on terms and conditions that are agreed with the Parties and approved according to each Party's legal requirements.

Tab 7: Letters of Correspondence

Libertad y Orden

Ministerio de Comercio, Industria y Turismo

República de Colombia

22 de Noviembre de 2006

Honorable Embajador John K. Veroneau,
Representante Comercial de los Estados Unidos de América
Washington, D.C.

Estimado Embajador Veroneau:

Colombia reconoce el compromiso que hizo en el Acuerdo de Promoción Comercial Colombia-Estados Unidos (el "Acuerdo"), de ser miembro pleno del Acuerdo de Tecnología de la Información (ITA) de la Organización Mundial del Comercio (OMC). Para hacerlo, Colombia deberá presentar una lista de compromisos arancelarios al Comité del ITA, y el Comité deberá aprobarlo. Colombia trabajará en dicha lista y desarrollará consultas con la Secretaría de la OMC para resolver cualquier asunto técnico. Me complace confirmarle que Colombia será un miembro pleno del ITA a más tardar el 31 de diciembre de 2007.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta constituyan una parte integral del Acuerdo.

Atentamente,

Jorge Humberto Botero

[Courtesy Translation]

November 22, 2006

The Honorable John K. Veroneau
Deputy United States Trade Representative
Washington, DC

Dear Ambassador Veroneau:

Colombia recognizes the commitment it made in the United States – Colombia Trade Promotion Agreement ("the Agreement") to become a full participant in the World Trade Organization (WTO) Information Technology Agreement (ITA). In order to do so, Colombia must present a schedule of tariff commitments to the ITA Committee and the Committee must approve the schedule. Colombia will work on its schedule, and will consult with the WTO Secretariat to resolve any technical issues. I am pleased to confirm that Colombia will become a full participant in the ITA no later than December 31, 2007.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement.

Sincerely,

Jorge Humberto Botero

EXECUTIVE OFFICE OF THE PRESIDENT
DEPUTY UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

November 22, 2006

The Honorable Jorge Humberto Botero
Minister of Commerce, Industry, and Tourism
Ministerio de Comercio, Industria y Turismo
Bogotá, Colombia

Dear Minister Botero:

I am pleased to acknowledge receipt of your letter of this date, which reads as follows:

> "Colombia recognizes the commitment it made in the United States – Colombia Trade Promotion Agreement ("the Agreement") to become a full participant in the World Trade Organization (WTO) Information Technology Agreement (ITA). In order to do so, Colombia must present a schedule of tariff commitments to the ITA Committee and the Committee must approve the schedule. Colombia will work on its schedule, and will consult with the WTO Secretariat to resolve any technical issues. I am pleased to confirm that Colombia will become a full participant in the ITA no later than December 31, 2007.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement."

I have the honor to confirm that your letter and this letter in reply shall constitute an integral part of the Agreement.

Sincerely,

John K. Veroneau

EXECUTIVE OFFICE OF THE PRESIDENT
DEPUTY UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

November 22, 2006

The Honorable Jorge Humberto Botero
Minister of Commerce, Industry and Tourism
Ministerio de Comercio, Industria y Turismo
Bogotá, Colombia

Dear Minister Botero:

In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and Colombia during the course of the negotiation of Chapter Nine (Government Procurement):

> A procuring entity of Colombia may not reduce the time limit for submission of a tender pursuant to paragraph 3 of Article 9.5 unless the United States and Colombia agree that Colombia has demonstrated its ability to comply with the requirements in that paragraph. If Colombia notifies the United States in writing that it has implemented an electronic procurement system that would enable it to comply with paragraph 3 of Article 9.5 and the United States does not object within 60 days of the receipt of the notification, Colombia may reduce the time limit for submission of a tender pursuant to paragraph 3 of Article 9.5. If the United States objects, Colombia shall not reduce its time limit for tendering under paragraph 3 of Article 9.5.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.

Sincerely,

John K. Veroneau

Libertad y Orden
Ministerio de Comercio, Industria y Turismo
República de Colombia

22 de noviembre de 2006

Honorable John K. Veroneau
Representante Comercial Adjunto de los Estados Unidos
Washington, DC

Estimado Embajador Veroneau:

Tengo el honor de confirmar la recepción de su carta de fecha de hoy, la cual lee como sigue a continuación:

> "En conexión con la firma en esta fecha del Acuerdo de Promoción Comercial entre los Estados Unidos y Colombia (el "Acuerdo"), tengo el honor de confirmar el siguiente entendimiento alcanzado por los Gobiernos de los Estados Unidos de América y Colombia durante el curso de la negociación del Capítulo Nueve (Contratación Pública):
>
> > Una entidad contratante de Colombia no reducirá el plazo para la presentación de ofertas de conformidad con el párrafo 3 del Artículo 9.5, a menos que los Estados Unidos y Colombia hayan acordado que Colombia ha demostrado que es capaz de cumplir con los requisitos de ese párrafo. Si Colombia notifica a los Estados Unidos por escrito que ha implementado un sistema de contratación electrónica que le permita cumplir con el párrafo 3 del Artículo 9.5 y los Estados Unidos no se opone dentro de un plazo de 60 días contados desde la recepción de la notificación, Colombia podrá reducir el plazo para la presentación de ofertas de conformidad con el párrafo 3 del Artículo 9.5. Si los Estados Unidos presenta una objeción, no se permitirá a Colombia reducir su plazo para la presentación de ofertas de conformidad con el párrafo 3 del Artículo 9.5.
>
> Tengo el honor de proponer que esta carta y su carta en respuesta confirmando que su Gobierno comparte este entendimiento constituyan parte integral del Acuerdo."

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento expresado en su carta y confirmar que su carta y esta carta de respuesta constituyen parte integral del Acuerdo.

Sinceramente,

Jorge Humberto Botero

[Courtesy Translation]

November 22, 2006

The Honorable John K. Veroneau
Deputy United States Trade Representative
Washington, DC

Dear Ambassador Veroneau:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

> "In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and Colombia during the course of the negotiation of Chapter Nine (Government Procurement):
>
> > A procuring entity of Colombia may not reduce the time limit for submission of a tender pursuant to paragraph 3 of Article 9.5 unless the United States and Colombia agree that Colombia has demonstrated its ability to comply with the requirements in that paragraph. If Colombia notifies the United States in writing that it has implemented an electronic procurement system that would enable it to comply with paragraph 3 of Article 9.5 and the United States does not object within 60 days of the receipt of the notification, Colombia may reduce the time limit for submission of a tender pursuant to paragraph 3 of Article 9.5. If the United States objects, Colombia shall not reduce its time limit for tendering under paragraph 3 of Article 9.5.
>
> I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement."

I have the honor to confirm that my Government shares the understanding expressed in your letter and to confirm that your letter and this letter in reply shall constitute an integral part of the Agreement.

Sincerely,

Jorge Humberto Botero
Minister of Commerce, Industry and Tourism

EXECUTIVE OFFICE OF THE PRESIDENT
DEPUTY UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

November 22, 2006

The Honorable Jorge Humberto Botero
Minister of Commerce, Industry and Tourism
Ministerio de Comercio, Industria y Turismo
Bogotá, Colombia

Dear Minister Botero:

In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and Colombia during the course of the negotiation of Chapter Nine (Government Procurement).

> In respect of Article 9.11, in the case of Colombia, the *Tribunal Contencioso Administrativo* and *Consejo de Estado* are impartial authorities for the purposes of paragraph 1 of Article 9.11. As these impartial authorities do not have authority to provide the interim remedies referred to in paragraph 3 of Article 9.11, the remedies available to the *Procuraduría General de la Nación* shall be deemed to satisfy the requirements of that paragraph. The *Procuraduría General de la Nación* is an independent agency that has the authority to suspend tendering procedures and the awarding of a contract in the course of any disciplinary proceedings brought against the government officials responsible for a procurement.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments.

Sincerely,

John K. Veroneau

Libertad y Orden
Ministerio de Comercio, Industria y Turismo
República de Colombia

22 de noviembre de 2006

Honorable John K. Veroneau
Representante Comercial Adjunto de los Estados Unidos
Washington, DC

Estimado Embajador Veroneau:

Tengo el honor de confirmar la recepción de su carta de fecha de hoy, la cual lee como sigue a continuación:

> "En relación con la firma en esta fecha del Acuerdo de Promoción Comercial entre los Estados Unidos y Colombia (el "Acuerdo"), tengo el honor de confirmar el siguiente entendimiento alcanzado por los Gobiernos de los Estados Unidos y Colombia durante el curso de la negociación del Capítulo Nueve (Contratación Pública).
>
> Con respecto al Artículo 9.11, en el caso de Colombia, el Tribunal Contencioso Administrativo y el Consejo de Estado son autoridades imparciales para los propósitos del párrafo 1 del Artículo 9.11. Como estas autoridades imparciales no tienen la autoridad de disponer medidas provisionales de conformidad con el párrafo 3 del Artículo 9.11, las medidas atribuidas a la Procuraduría General de la Nación se consideran suficientes para satisfacer los requisitos de ese párrafo. La Procuraduría General de la Nación es una entidad independiente que tiene la autoridad de suspender los procedimientos de licitación y la adjudicación de los contratos en el curso de cualquier proceso disciplinario que se siga contra los representantes del gobierno responsables de la contratación pública.
>
> Tengo el honor en proponer que esta carta y su carta en respuesta confirmando que su Gobierno comparte este entendimiento constituirá un acuerdo entre nuestros dos Gobiernos".

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento expresado en su carta y confirmar que su carta y esta carta de respuesta constituyen parte integral del Acuerdo.

Sinceramente,

Jorge Humberto Botero

[Courtesy Translation]

November 22, 2006

The Honorable John K. Veroneau
United States Trade Representative
Washington, DC

Dear Ambassador Veroneau:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

> "In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and Colombia during the course of the negotiation of Chapter Nine (Government Procurement).
>
> > In respect of Article 9.11, in the case of Colombia, the *Tribunal Contencioso Administrativo* and *Consejo de Estado* are impartial authorities for the purposes of paragraph 1 of Article 9.11. As these impartial authorities do not have authority to provide the interim remedies referred to in paragraph 3 of Article 9.11, the remedies available to the *Procuraduría General de la Nación* shall be deemed to satisfy the requirements of that paragraph. The *Procuraduría General de la Nación* is an independent agency that has the authority to suspend tendering procedures and the awarding of a contract in the course of any disciplinary proceedings brought against the government officials responsible for a procurement.
>
> I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments."

I have the honor to confirm that my Government shares the understanding expressed in your letter and to confirm that your letter and this letter in reply shall constitute an agreement between our two Governments.

Sincerely,

Jorge Humberto Botero
Minister of Commerce, Industry and Tourism

EXECUTIVE OFFICE OF THE PRESIDENT
DEPUTY UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

November 22, 2006

The Honorable Jorge Humberto Botero
Minister of Commerce, Industry, and Tourism
Ministerio de Comercio , Industria y Turismo
Bogotá, Colombia

Dear Minister Botero:

In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and the Republic of Colombia during the course of negotiation of Chapter Eleven (Cross-Border Trade in Services).

> In the interest of greater transparency, this is to notify the Government of Colombia that upon entry into force of the Agreement, the United States will initiate a review of state-level measures for the states of New York, New Jersey, California, Texas, and Florida and the District of Columbia in the following services subsectors: engineering; accounting; architecture; legal services; nursing; dentistry; medical general practitioners; and paramedics. The United States will review measures requiring permanent residency or citizenship and this review will be completed one year after the date of entry into force of the Agreement. The United States will inform the Government of Colombia of the results of the review pursuant to Article 11.13 (Implementation).

I would be grateful if you would confirm, by an affirmative letter in response, that this understanding is shared by your Government.

Sincerely,

John K. Veroneau

Libertad y Orden
Ministerio de Comercio, Industria y Turismo
República de Colombia

22 de noviembre de 2006

Honorable John K. Veroneau
Representante Comercial Adjunto de los Estados Unidos
Washington, D.C.

Estimado Embajador Veroneau:

Tengo el honor de confirmar la recepción de su carta de fecha de hoy, la cual se lee como sigue a continuación:

> "En conexión con la firma en esta fecha del Acuerdo de Promoción de Comercio Estados Unidos–Colombia (el "Acuerdo"), tengo el honor de confirmar el siguiente entendimiento alcanzado entre los Gobiernos de los Estados Unidos de América y de la República de Colombia durante el curso de la negociación del Capítulo Once (Comercio Transfronterizo de Servicios).
>
> > En el interés de mayor transparencia, se notifica al Gobierno de Colombia que a la entrada en vigor del Acuerdo, los Estados Unidos iniciará una revisión de sus medidas a nivel estatal para los estados de New York, New Jersey, California, Texas, y Florida y el Distrito de Columbia en los siguientes subsectores de servicios: ingeniería; contabilidad; arquitectura; servicios jurídicos; enfermería; odontología; medicina general y servicios proporcionados por personal paramédico. Los Estados Unidos revisará las medidas que requieran residencia permanente o ciudadanía y ésta revisión será concluida un año después de la entrada en vigor del Acuerdo. Los Estados Unidos informará al Gobierno de Colombia los resultados de la revisión de acuerdo al Artículo 11.13 (Implementación).
>
> Estaré complacido si pudiera confirmar, a través de una carta afirmativa de respuesta, que este entendimiento es compartido por su Gobierno."

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento expresado en su carta.

Sinceramente,

Jorge Humberto Botero

[Courtesy Translation]

The Honorable John K. Veroneau
Deputy United States Trade Representative
Washington, DC

Dear Ambassador Veroneau:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

> "In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and the Republic of Colombia during the course of negotiation of Chapter Eleven (Cross-Border Trade in Services).
>
> > In the interest of greater transparency, this is to notify the Government of Colombia that upon entry into force of the Agreement, the United States will initiate a review of state-level measures for the states of New York, New Jersey, California, Texas, and Florida and the District of Columbia in the following services subsectors: engineering; accounting; architecture; legal services; nursing; dentistry; medical general practitioners; and paramedics. The United States will review measures requiring permanent residency or citizenship and this review will be completed one year after the date of entry into force of the Agreement. The United States will inform the Government of Colombia of the results of the review pursuant to Article 11.13 (Implementation).
>
> I would be grateful if you would confirm, by an affirmative letter in response, that this understanding is shared by your Government."

I have the honor to confirm that my Government shares the understanding expressed in your letter.

Sincerely,

Jorge Humberto Botero

EXECUTIVE OFFICE OF THE PRESIDENT
DEPUTY UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

November 22, 2006

The Honorable Jorge Humberto Botero
Minister of Commerce, Industry and Tourism
Ministerio de Comercio, Industria y Turismo
Bogotá, Colombia

Dear Minister Botero:

In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understandings reached by the Governments of the United States of America and the Republic of Colombia during the course of the negotiation of Chapter Sixteen (Intellectual Property Rights) of the Agreement:

(1) Colombia shall take measures to expeditiously process patent applications that have been pending for a significant period of time ("backlog applications"), such that the number of backlog applications will be significantly reduced as of December 31, 2008. Colombia shall accomplish this by, among other measures, significantly increasing the number of patent examiners and enhancing examination training for patent examiners.

(2) * For greater certainty, the Parties recognize that there may be a variety of ways to implement the obligations of Article 16.10.3 of the Agreement; in particular, the Parties recognize that nothing in Article 16.10.3(b) specifically sets out an obligation as to when a patent should be identified to the approving authority, who should identify the patent to the approving authority, or how the patent owner shall be informed of the identity of persons requesting marketing approval during the term of the patent. The Parties recognize that the measures implementing Article 16.10.3(a) and (b) will operate together in such a manner as to prevent approval of a pharmaceutical product to enter the market during the term of a patent in the territory of that Party as set out in that Article.

I would be grateful if you would confirm that your Government shares these understandings.

Sincerely,

John K. Veroneau

*Following amendments to the Agreement dated June 28 ,2007, paragraph 2 of this letter no longer has legal effect.

Libertad y Orden
Ministerio de Comercio, Industria y Turismo
República de Colombia

22 de noviembre de 2006

Honorable John K. Veroneau
Representante Comercial Adjunto de los Estados Unidos
Washington D.C.

Apreciado Embajador Veroneau:

Tengo el honor de acusar recibo de su comunicación de esta fecha, que establece lo siguiente:

"En relación con la firma en esta fecha del Acuerdo de Promoción Comercial entre los Estados Unidos y Colombia (el "Acuerdo"), tengo el honor de confirmar los siguientes entendimientos alcanzados por los Gobiernos de los Estados Unidos de América y la República de Colombia durante el curso de la negociación del Capítulo Dieciséis (Derechos de Propiedad Intelectual) del Acuerdo:

(1) Colombia deberá adoptar medidas para procesar de manera expedita las solicitudes de patente que estén sin resolver por un período significativo de tiempo (solicitudes retrasadas), de manera que el número de solicitudes retrasadas se reduzca significativamente a Diciembre 31, 2008. Colombia logrará esto, entre otras medidas, a través de un incremento significativo del número de examinadores de patentes y mejorando el entrenamiento para hacer examinaciones de los examinadores de patentes.

(2) Para mayor certeza, las Partes reconocen que podrán existir una variedad de formas para implementar las obligaciones del Artículo 16.10.3 del Acuerdo; en particular, las Partes reconocen que nada en el Artículo 16.10.3 (b) específicamente establece una obligación respecto de cuando una patente deberá ser identificada ante la autoridad de aprobación, quien debe identificar la patente ante la autoridad de aprobación, o cómo el titular de la patente debe ser informado de la identidad de las personas que soliciten aprobación de comercialización durante el término de la patente. Las Partes reconocen que las medidas que implementen el Artículo 16.10.3 (a) y (b) operarán conjuntamente de manera tal que se evite la aprobación de un producto farmacéutico para que entre al mercado durante el término de una patente en el territorio de esa Parte como está dispuesto en ese Artículo.

Libertad y Orden
Ministerio de Comercio, Industria y Turismo
República de Colombia

Estaría agradecido si usted pudiera confirmar que su Gobierno comparte estos entendimientos."

Tengo el honor de confirmar que mi Gobierno comparte los entendimientos expresados en su carta.

Cordialmente,

Jorge Humberto Botero

[Courtesy Translation]

November 22, 2006

The Honorable John K. Veroneau
Deputy United States Trade Representative
Washington, DC

Dear Ambassador Veroneau:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

"In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understandings reached by the Governments of the United States of America and the Republic of Colombia during the course of the negotiation of Chapter Sixteen (Intellectual Property Rights) of the Agreement:

(1) Colombia shall take measures to expeditiously process patent applications that have been pending for a significant period of time ("backlog applications"), such that the number of backlog applications will be significantly reduced as of December 31, 2008. Colombia shall accomplish this by, among other measures, significantly increasing the number of patent examiners and enhancing examination training for patent examiners.

(2) For greater certainty, the Parties recognize that there may be a variety of ways to implement the obligations of Article 16.10.3 of the Agreement; in particular, the Parties recognize that nothing in Article 16.10.3(b) specifically sets out an obligation as to when a patent should be identified to the approving authority, who should identify the patent to the approving authority, or how the patent owner shall be informed of the identity of persons requesting marketing approval during the term of the patent. The Parties recognize that the measures implementing Article 16.10.3(a) and (b) will operate together in such a manner as to prevent approval of a pharmaceutical product to enter the market during the term of a patent in the territory of that Party as set out in that Article.

I would be grateful if you would confirm that your Government shares these understandings."

I have the honor to confirm that my Government shares the understandings expressed in your letter.

Sincerely,

Jorge Humberto Botero

EXECUTIVE OFFICE OF THE PRESIDENT
DEPUTY UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

November 22, 2006

The Honorable Jorge Humberto Botero
Minister of Commerce, Industry, and Tourism
Ministerio de Comercio, Industria y Turismo
Bogotá, Colombia

Dear Minister Botero:

In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understandings reached between the Governments of the United States of America and the Republic of Colombia during the course of the negotiation of Chapter Sixteen (Intellectual Property Rights) of the Agreement:

In meeting the obligations of Article 16.11.29(b)(ix), the United States shall apply the pertinent provisions of its law[1] and Colombia shall adopt requirements for: (a) effective written notice to service providers with respect to materials that are claimed to be infringing and (b) effective written counter-notification by those whose material is removed or disabled and who claim that it was removed or disabled through mistake or misidentification, as set forth below. Substantial compliance with the elements listed below shall be deemed to be effective written notice or counter-notification.

(a) *Model of an effective notice, by a copyright[2] owner or person authorized to act on behalf of an owner of an exclusive right, to a service provider's publicly designated representative[3]*

In order for a notice to a service provider to be compliant with Article 16.11.29(b)(ix), it must be a written or electronic communication that includes substantially the following items:

1. The identity, address, telephone number and electronic mail address of the complaining party (or its authorized agent).

2. Information that is reasonably sufficient to enable the service provider to identify the copyrighted work(s)[4] claimed to have been infringed.

[1] 17 U.S.C. sections 512(c)(3)(A) and 512(g)(3).

[2] All references to copyright in this letter are understood to include related rights, and all references to works are understood to include the subject matter of related rights.

[3] It is understood that a representative is publicly designated to receive notification on behalf of a service provider if the representative's name, physical and electronic address, and telephone number are posted on a publicly accessible portion of the service provider's website, and also in a public register publicly accessible through the Internet or such other form or manner appropriate for Colombia.

3. Information that is reasonably sufficient to permit the service provider to identify and locate the material that is residing on a system or network controlled or operated by it or for it, that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled.[5]

4. Statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law.

5. Statement that the information in the notice is accurate.

6. Statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the complaining party is the owner of an exclusive right that is allegedly infringed or is authorized to act on the owner's behalf.

7. The signature of the person giving notice.[6]

(b) Model of an Effective Counter-Notification by a Subscriber[7] Whose Material Was Removed or Disabled as a Result of Mistake or Misidentification of Material

In order for a counter-notification to a service provider to be compliant with Article 16.11.29(b)(ix), it must be a written or electronic communication that includes substantially the following items:

1. The identity, address, telephone number and electronic mail address of the subscriber.

2. Identification of the material that has been removed or to which access has been disabled.

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[4] If multiple copyrighted works at, or linked to from, a single online site on a system or network controlled or operated by or for the service provider are covered by a single notification, a representative list of such works at, or linked to from, that site may be provided.

[5] In the case of notices regarding an information location tool pursuant to subparagraph (b)(i)(D) of Article 16.11.29 information provided must be reasonably sufficient to permit the service provider to locate the reference or link residing on a system or network controlled or operated by or for it, except that in the case of a notice regarding a substantial number of references or links at a single online site residing on a system or network controlled or operated by or for the service provider, a representative list of such references or links at the site may be provided, if accompanied by information sufficient to permit the service provider to locate the references or links.

[6] A signature transmitted as part of an electronic communication satisfies this requirement.

[7] All references to "subscriber" in this letter refer to the person whose material has been removed or disabled by a service provider as a result of an effective notice described in paragraph (a) of this letter.

3. Location at which the material appeared before it was removed or access to it was disabled.

4. Statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the subscriber is the supplier of the material and has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material.

5. Statement that the subscriber agrees to be subject to orders of any court that has jurisdiction over the place where the subscriber's address is located, or if that address is located outside of the Party's territory, any other court with jurisdiction over any place in the Party's territory in which the service provider may be found, and in which a copyright infringement suit could be brought with respect to the alleged infringement.

6. Statement that the subscriber will accept service of process in any such suit.

7. The signature of the subscriber.[8]

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.

Sincerely,

John K. Veroneau

[8] A signature transmitted as part of an electronic communication satisfies this requirement.

Libertad y Orden
Ministerio de Comercio, Industria y Turismo
República de Colombia

22 de noviembre de 2006

Honorable John K. Veroneau
Representante Comercial Adjunto de los Estados Unidos
Washington, DC

Estimado Embajador Veroneau:

Tengo el honor de confirmar la recepción de su carta de fecha de hoy, la cual se lee como sigue a continuación:

> "En relación con la suscripción en la fecha de hoy del Acuerdo de Promoción Comercial Estados Unidos – Colombia ("Acuerdo"), tengo el honor de confirmar los siguientes entendimientos alcanzados entre los Gobiernos de los Estados Unidos de América y la República de Colombia durante el curso de las negociaciones del Capítulo Dieciséis (Derechos de Propiedad Intelectual) del Acuerdo:
>
> En cumplimiento de las obligaciones contenidas en el Artículo 16.11.29(b)(ix), los Estados Unidos aplicarán las disposiciones pertinentes de su legislación[1] y Colombia adoptará requerimientos para: (a) una notificación efectiva por escrito a los proveedores de servicio con relación a los materiales que se alegue están infringiendo y (b) una contra - notificación efectiva por escrito por aquellos cuyo material es removido o inhabilitado y que aleguen que ha sido removido o inhabilitado por error o una indebida identificación, de conformidad con lo establecido más adelante. El cumplimiento sustancial de los asuntos listados a continuación será requerido para que se dé una efectiva notificación o contra - notificación.
>
> *(a) Modelo de una notificación efectiva, hecha por el titular de un derecho de autor[2] o por la persona autorizada para actuar en nombre del titular de un derecho exclusivo, para quien sea públicamente designado como representante del proveedor de servicios[3]:*

[1] 17 U.S.C., secciones 512 (c)(3)(A) y 512(g)(3).

[2] Toda referencia al derecho de autor en esta carta, se entiende que incluye a los derechos conexos, y toda referencia a las obras, se entiende incluyen la materia objeto de protección por los derechos conexos.

[3] Se entiende que el representante esta públicamente designado para recibir notificaciones en nombre del proveedor del servicio, siempre que el nombre, el domicilio y la dirección electrónica y el número de teléfono del representante se

Con el fin de que la notificación al proveedor del servicio esté en concordancia con el Artículo 16.11.29(b)(ix), ésta debe constar por escrito o hacerse mediante comunicación electrónica incluyendo sustancialmente los siguientes aspectos:

1. La identidad, domicilio, número telefónico y dirección de correo electrónico de la parte recurrente (o su agente autorizado).

2. La información razonablemente suficiente que permita al proveedor del servicio identificar las obras protegidas por el derecho de autor[4], que se alega ha sido infringido.

3. La información suficientemente razonable que permita al proveedor del servicio identificar y localizar el material que reside en un sistema o red controlado u operado por éste o para éste, el cual es reclamado de estar infringiendo o de ser el objeto de la actividad infractora, y el cual debe ser removido o cuyo acceso debe ser inhabilitado[5].

4. Una declaración del reclamante en la que exprese que cree de buena fe, que el uso alegado que se le está dando al material no cuenta con la autorización del titular del derecho de autor, su agente o la legislación.

5. Una declaración en el sentido que la información contenida en la notificación es precisa.

6. Una declaración con el suficiente indicio de confiabilidad (tal como una declaración bajo la pena de perjurio o una sanción legal equivalente) en donde

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encuentren publicados en lugar visible de la página web del proveedor del servicio, como también en un registro público de acceso general a través del Internet o a través de cualquier medio adecuado para Colombia.

[4] Si dentro de una única notificación se relacionan muchas obras protegidas por el derecho de autor que se encuentran en o vinculadas con un único sitio en línea en un sistema o red controlado u operado por o para el proveedor del servicio, puede ser puesta a disposición una lista representativa de dichas obras contenidas o vinculadas a la página.

[5] En los casos de notificaciones relacionadas con los localizadores de información, que se presenten de acuerdo con lo establecido en el subpárrafo (b)(i)(D) del Artículo 16.11.29, la información que se ponga a disposición debe ser razonablemente suficiente para permitir que al proveedor del servicio localizar la referencia o enlace que se encuentre dentro del sistema o red controlado u operado por él o para él, con excepción de los casos en que la notificación se relacione con un número considerable de referencias o enlaces que se encuentran en un único sitio en línea, el cual reside en un sistema o red controlado u operado por o para el proveedor del servicio, en donde se puede entregar una lista representativa que contenga dichas referencias o enlaces, si es acompañado por información suficiente que le permita al proveedor del servicio localizar los mismos.

se demuestre que la parte recurrente es el titular del derecho exclusivo que es alegado como infringido o que está autorizado para actuar en nombre del titular.

7. La firma de la persona que hace la notificación.[6]

(b) Modelo de una contra - notificación efectiva del suscriptor[7], cuyo material ha sido removido o inhabilitado como resultado de un error o de una indebida identificación del material.

Con el fin de que la contra - notificación al proveedor del servicio esté en concordancia con el Artículo 16.11.29(b)(ix), ésta debe constar por escrito o hacerse mediante comunicación electrónica que incluya substancialmente los siguientes aspectos:

1. La identidad, domicilio, número telefónico y dirección de correo electrónico del suscriptor.

2. La identificación del material que ha sido removido o cuyo acceso ha sido inhabilitado.

3. La ubicación del sitio en el cual se encontraba el material antes de ser removido o antes de que su acceso haya sido inhabilitado.

4. Una declaración con el suficiente indicio de confiabilidad (tal como una declaración bajo la pena de perjurio o una sanción legal equivalente) de que el suscriptor es quien provee el material y en la que exprese que cree de buena fe que el material fue removido o inhabilitado como consecuencia de un error o de una indebida identificación del material.

5. Una declaración en la que el suscriptor acceda a estar sujeto a las órdenes impuestas por cualquier corte que tenga jurisdicción en su domicilio, o si dicho domicilio se encuentra fuera del territorio de la Parte, cualquier otra corte con jurisdicción en cualquier lugar del territorio de la Parte en donde el proveedor del servicio pueda ser encontrado, y en la cual una demanda por infracción al derecho de autor alegada pueda ser interpuesta con respecto a una infracción alegada.

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[6] La firma transmitida como parte de una comunicación electrónica cumple con este requisito.

[7] Toda referencia hecha al "suscriptor" dentro de esta carta, alude a la persona a la cual le ha sido removido el material o se le inhabilitó el acceso al mismo, por parte del proveedor del servicio, como resultado de la notificación efectiva descrita en el párrafo (a) de esta carta.

6. Una declaración en la que el suscriptor aceptará ser notificado de cualquiera de estas demandas.

7. La firma del suscriptor.[8]

Tengo el honor de proponerle que esta carta y su carta de respuesta confirmando que su Gobierno comparte estos entendimientos, constituyan parte integrante del Acuerdo."

Tengo el honor de confirmar que mi Gobierno comparte los entendimientos expresados en su carta, así como confirmar que su carta y esta carta de respuesta constituyen parte integrante del Acuerdo.

Sinceramente,

Jorge Humberto Botero

[8] La firma transmitida como parte de una comunicación electrónica cumple con este requisito.

[Courtesy Translation]

November 22, 2006

The Honorable John K. Veroneau
Deputy United States Trade Representative
Washington, DC

Dear Ambassador Veroneau:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

> "In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understandings reached by the Governments of the United States of America and the Republic of Colombia during the course of the negotiation of Chapter Sixteen (Intellectual Property Rights) of the Agreement:
>
> In meeting the obligations of Article 16.11.29(b)(ix), the United States shall apply the pertinent provisions of its law[1] and Colombia shall adopt requirements for: (a) effective written notice to service providers with respect to materials that are claimed to be infringing and (b) effective written counter-notification by those whose material is removed or disabled and who claim that it was removed or disabled through mistake or misidentification, as set forth below. Substantial compliance with the elements listed below shall be deemed to be effective written notice or counter-notification.
>
> (a) *Model of an effective notice, by a copyright[2] owner or person authorized to act on behalf of an owner of an exclusive right, to a service provider's publicly designated representative[3]*

[1] 17 U.S.C. sections 512(c)(3)(A) and 512(g)(3).

[2] All references to copyright in this letter are understood to include related rights, and all references to works are understood to include the subject matter of related rights.

[3] It is understood that a representative is publicly designated to receive notification on behalf of a service provider if the representative's name, physical and electronic address, and telephone number are posted on a publicly accessible portion of the service provider's website, and also in a public register publicly accessible through the Internet or such other form or manner appropriate for Colombia.

In order for a notice to a service provider to be compliant with Article 16.11.29(b)(ix), it must be a written or electronic communication that includes substantially the following items:

1. The identity, address, telephone number and electronic mail address of the complaining party (or its authorized agent).

2. Information that is reasonably sufficient to enable the service provider to identify the copyrighted work(s)[4] claimed to have been infringed.

3. Information that is reasonably sufficient to permit the service provider to identify and locate the material that is residing on a system or network controlled or operated by it or for it, that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled.[5]

4. Statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law.

5. Statement that the information in the notice is accurate.

6. Statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the complaining party is the owner of an exclusive right that is allegedly infringed or is authorized to act on the owner's behalf.

7. The signature of the person giving notice.[6]

(b) Model of an Effective Counter-Notification by a Subscriber[7] Whose Material Was Removed or Disabled as a Result of Mistake or Misidentification of Material

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[4] If multiple copyrighted works at, or linked to from, a single online site on a system or network controlled or operated by or for the service provider are covered by a single notification, a representative list of such works at, or linked to from, that site may be provided.

[5] In the case of notices regarding an information location tool pursuant to subparagraph (b)(i)(D) of Article 16.11.29 information provided must be reasonably sufficient to permit the service provider to locate the reference or link residing on a system or network controlled or operated by or for it, except that in the case of a notice regarding a substantial number of references or links at a single online site residing on a system or network controlled or operated by or for the service provider, a representative list of such references or links at the site may be provided, if accompanied by information sufficient to permit the service provider to locate the references or links.

[6] A signature transmitted as part of an electronic communication satisfies this requirement.

In order for a counter-notification to a service provider to be compliant with Article 16.11.29(b)(ix), it must be a written or electronic communication that includes substantially the following items:

1. The identity, address, telephone number and electronic mail address of the subscriber.

2. Identification of the material that has been removed or to which access has been disabled.

3. Location at which the material appeared before it was removed or access to it was disabled.

4. Statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the subscriber is the supplier of the material and has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material.

5. Statement that the subscriber agrees to be subject to orders of any court that has jurisdiction over the place where the subscriber's address is located, or if that address is located outside of the Party's territory, any other court with jurisdiction over any place in the Party's territory in which the service provider may be found, and in which a copyright infringement suit could be brought with respect to the alleged infringement.

6. Statement that the subscriber will accept service of process in any such suit.

7. The signature of the subscriber.[8]

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement."

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[7] All references to "subscriber" in this letter refer to the person whose material has been removed or disabled by a service provider as a result of an effective notice described in paragraph (a) of this letter.

[8] A signature transmitted as part of an electronic communication satisfies this requirement.

I have the honor to confirm that my Government shares the understanding expressed in your letter and to confirm that your letter and this letter in reply shall constitute an integral part of the Agreement.

Sincerely,

Jorge Humberto Botero

EXECUTIVE OFFICE OF THE PRESIDENT
DEPUTY UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

November 22, 2006

The Honorable Jorge Humberto Botero
Minister of Commerce, Industry, and Tourism
Ministerio de Comercio, Industria y Turismo
Bogotá, Colombia

Dear Minister Botero:

In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and the Republic of Colombia in relation to Chapter Sixteen (Intellectual Property Rights) of the Agreement:

> With respect to the obligation set out in Article 16.7.9, if, at any time more than two years after the date of entry into force of the Agreement, it is the considered opinion of either Party that there has been a significant change in the reliability, robustness, implementability, and practical availability of technology to effectively limit the reception of Internet retransmission to users located in a specified geographic market area, that Party may request, and the other Party agrees to enter into, consultations to review the continued applicability of the obligation set out in Article 16.7.9 and whether, in light of technological and other relevant developments, it should be modified, which agreement shall not be unreasonably withheld.

I would be grateful if you would confirm that your Government shares this understanding.

Sincerely,

John K. Veroneau

Libertad y Orden
Ministerio de Comercio, Industria y Turismo
República de Colombia

22 de noviembre de 2006

Honorable John K. Veroneau
Representante Comercial Adjunto de los Estados Unidos
Washington D.C.

Apreciado Embajador Veroneau:

Tengo el honor de confirmar la recepción de su carta de fecha de hoy, la cual se lee como sigue a continuación:

> "En relación con la suscripción en la fecha de hoy del Acuerdo de Promoción Comercial Estados Unidos – Colombia ("Acuerdo"), tengo el honor de confirmarle el siguiente entendimiento alcanzado por los Gobiernos de los Estados Unidos de América y la República de Colombia con respecto al Capítulo Dieciséis (Derechos de Propiedad Intelectual) del Acuerdo:
>
> > Con respecto a la obligación establecida en el Artículo 16.7.9, si, en cualquier momento posterior a dos años luego de la fecha de entrada en vigor del Acuerdo, en opinión de cualquiera de las Partes se ha presentado un cambio significativo en la confiabilidad , vigor, implementabilidad y disponibilidad práctica de la tecnología para limitar efectivamente la recepción de retransmisiones de Internet a usuarios localizados en un área geográfica de mercado específica, esa Parte podrá solicitar, y la otra Parte deberá acceder, a realizar consultas para revisar la aplicación continua de la obligación dispuesta en el Artículo 16.7.9, y si, a la luz de los desarrollos tecnológicos u otros desarrollos relevantes, éste deba ser modificado; y cuyo acuerdo no deberá ser negado irrazonablemente.
>
> Estaré complacido si usted confirmara que su Gobierno comparte este entendimiento."

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento expresado en su carta.

Libertad y Orden
Ministerio de Comercio, Industria y Turismo
República de Colombia

Sinceramente,

Jorge Humberto Botero

[Courtesy Translation]

November 22, 2006

The Honorable John K. Veroneau
Deputy United States Trade Representative
Washington, DC

Dear Ambassador Veroneau:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

> "In connection with the signing on this date of the United States – Colombia Trade Promotion Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and the Republic of Colombia in relation to Chapter Sixteen (Intellectual Property Rights) of the Agreement:
>
> > With respect to the obligation set out in Article 16.7.9, if, at any time more than two years after the entry into force of the Agreement, it is the considered opinion of either Party that there has been a significant change in the reliability, robustness, implementability, and practical availability of technology to effectively limit the reception of Internet retransmission to users located in a specified geographic market area, that Party may request, and the other Party agrees to enter into, consultations to review the continued applicability of the obligation set out in Article 16.7.9 and whether, in light of technological and other relevant developments, it should be modified, which agreement shall not be unreasonably withheld.
>
> I would be grateful if you would confirm that your Government shares this understanding."

I have the honor to confirm that my Government shares the understanding expressed in your letter.

Sincerely,

Jorge Humberto Botero

FOR CONTINUATION OF THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT, SEE VOLUME 2