

CHAPTER FOURTEEN

GOVERNMENT PROCUREMENT

Article 1401: Scope and Coverage

Application of Chapter

1. This Chapter applies to any measure adopted or maintained by a Party relating to procurement by a procuring entity listed in Annex 1401:

- (a) by any contractual means, including purchase and rental or lease, with or without an option to buy;
- (b) for which the value, as estimated in accordance with paragraph 5, equals or exceeds the relevant threshold specified in Annex 1401; and
- (c) subject to the terms of Annex 1401.

2. This Chapter does not apply to:

- (a) non-contractual agreements or any form of assistance that a Party, including a state enterprise, provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, and cooperative agreements;
- (b) government provision of goods or services to persons or to sub-national governments;
- (c) purchases for the direct purpose of providing foreign assistance;
- (d) purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter;

- (e) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities. For greater certainty, this Chapter does not apply to procurement of banking, financial, or specialized services related to the following activities:
 - (i) the incurring of public indebtedness; or
 - (ii) public debt management;
- (f) hiring of government employees and related employment measures; or
- (g) procurements made by an entity or state enterprise from another entity or state enterprise of that Party.

3. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Chapter.

4. Where a procuring entity awards a contract that is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.

Valuation

5. In estimating the value of a procurement for the purpose of ascertaining whether it is a procurement covered by this Chapter, a procuring entity shall:

- (a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter;

- (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
 - (i) premiums, fees, commissions, and interest; and
 - (ii) where the procurement provides for the possibility of option clauses, the estimated maximum total value of the procurement, inclusive of optional purchases; and
- (c) where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation of the total maximum value of the procurement over its entire duration.

Article 1402: Security and General Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

3. The Parties understand that subparagraph 2 (b) includes environmental measures necessary to protect human, animal or plant life or health.

Article 1403: General Principles

National Treatment and Non-Discrimination

1. With respect to any measure relating to procurement covered by this Chapter, each Party shall accord immediately and unconditionally to the goods and services of the other Party, and to the suppliers of the other Party of such goods or services, treatment no less favourable than the most favourable treatment the Party accords to domestic goods, services and suppliers.

2. With respect to any measure relating to procurement covered by this Chapter, a Party shall not:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Conduct of Procurement

3. A procuring entity shall conduct procurement covered by this Chapter in a transparent and impartial manner that:

- (a) is consistent with this Chapter;
- (b) avoids conflicts of interest; and
- (c) prevents corrupt practices.

Tendering Procedures

4. A procuring entity shall use open tendering except where subparagraphs 6 through 9 of Article 1406 or Article 1409 apply.

Rules of Origin

5. With regard to the procurement of goods covered by this Chapter, each Party shall apply the rules of origin that it applies in the normal course of trade to those goods.

Offsets

6. A Party, including its procuring entities, shall not seek, take account of, impose, or enforce offsets at any stage of a procurement covered by this Chapter.

Measures Not Specific to Procurement

7. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing procurement covered by this Chapter.

Article 1404: Publication of Procurement Information

Each Party shall:

- (a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, and procedure regarding procurement covered by this Chapter, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and
- (b) provide an explanation thereof to the other Party, on request.

Article 1405: Publication of Notices

Notice of Intended Procurement

1. For each procurement covered by this Chapter, a procuring entity shall publish a notice inviting suppliers to submit tenders (“notice of intended procurement”), or where appropriate, a notice inviting applications for participation in the procurement. Any such notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering. Each Party shall maintain a gateway electronic site that includes links to all notices of procuring entities for procurements covered by this Chapter.
2. Each notice of intended procurement shall include:
 - (a) a description of the procurement, including the nature, and where known, the quantity of the goods or services to be procured;
 - (b) the procurement method that will be used and whether it will involve negotiation or electronic auction;
 - (c) a list of conditions for participation of suppliers;
 - (d) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if applicable;
 - (e) the address and time limits for the submission of tenders or applications for participation;
 - (f) the time-frame for delivery of the goods or services to be procured or the duration of the contract;

- (g) where, pursuant to Article 1406, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and
- (h) an indication that the procurement is covered by this Chapter.

Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year notices regarding their respective procurement plans. Such notices should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement.

Article 1406: Conditions for Participation

General Requirements

1. Where a Party, including its procuring entities, requires suppliers to satisfy registration, qualification or any other requirements or conditions for participation in a separate process in order to participate in a procurement covered by this Chapter, the procuring entity shall publish a notice inviting suppliers to apply for participation. The procuring entity shall publish the notice sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the procuring entity to evaluate and make its determination based on such applications.
2. A procuring entity shall limit any conditions for participation in a procurement covered by this Chapter to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

3. In establishing the conditions for participation, a procuring entity:
 - (a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party; and
 - (b) may require relevant prior experience where essential to meet the requirements of the procurement.
4. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:
 - (a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and
 - (b) shall base its evaluation on the conditions that the procuring entity has specified in advance in its notices or tender documentation.
5. In assessing whether a supplier satisfies the conditions for participation, a Party, including its procuring entities, shall recognize as qualified all domestic suppliers and suppliers of the other Party that satisfy the conditions for participation.

Multi-use Lists

6. A procuring entity may establish or maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:
 - (a) published annually; and
 - (b) where published by electronic means, made available continuously.

7. The notice provided for in paragraph 6 shall include:
- (a) a description of the goods or services, or categories thereof, for which the list may be used;
 - (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;
 - (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
 - (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of the list; and
 - (e) an indication that the list may be used for procurement covered by this Chapter.
8. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

Selective Tendering

9. Where a Party's law allows the use of selective tendering procedures, a procuring entity shall, for each intended procurement covered by this Chapter:
- (a) publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the entity to evaluate, and make its determinations based on, such applications; and

- (b) allow all domestic suppliers and suppliers of the other Party that the entity has determined satisfy the conditions for participation to submit a tender, unless the entity has stated in the notice of intended procurement or, where publicly available, in the tender documentation, a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

Information on Procuring Entity Decisions

10. A procuring entity shall promptly inform any supplier that submits an application for participation in a procurement or for inclusion on a multi-use list of the procuring entity's decision with respect to the application.

11. Where a procuring entity rejects a supplier's application for participation in a procurement or an application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

12. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

- (a) bankruptcy;
- (b) false declarations; or
- (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts.

13. Procuring entities of each Party shall not adopt or maintain any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Article 1407: Technical Specifications and Tender Documentation

Technical Specifications

1. A procuring entity shall not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade between the Parties.
2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:
 - (a) specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and
 - (b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.
3. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.
4. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement covered by this Chapter from a person that may have a commercial interest in the procurement.
5. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

Tender Documentation

6. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

- (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;
- (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;
- (c) all evaluation criteria to be considered in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
- (d) where there will be a public opening of tenders, the date, time, and place for the opening of tenders; and
- (e) any other terms or conditions relevant to the evaluation of tenders.

7. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in a procurement covered by this Chapter, except that the entity shall not make available information with regard to a specific procurement in a manner that would give the requesting supplier an advantage over its competitors in the procurement.

Modifications

8. Where a procuring entity, prior to the award of a contract, modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications, amended or re-issued notice or tender documentation:

- (a) to all suppliers that are participating in the procurement at the time of the modification, amendment or re-issuance, where such suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and
- (b) in adequate time to allow such suppliers to modify and submit amended tenders, as appropriate.

Article 1408: Time Limits for the Submission of Tenders

1. A procuring entity shall provide suppliers sufficient time to submit applications to participate in a procurement covered by this Chapter and prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.

Deadlines

2. Except as provided for in paragraphs 3 and 4, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

- (a) in the case of open tendering, the notice of intended procurement is published; or
- (b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

3. A procuring entity may reduce by five days the time limit established under paragraph 2 for the submission of tenders, for each one of the following circumstances:

- (a) the notice of intended procurement is published by electronic means;
- (b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and
- (c) the procuring entity accepts tenders by electronic means.

4. A procuring entity may establish a time limit of less than 40 days for the submission of tenders provided that the time given to suppliers is sufficient to enable them to prepare and submit responsive tenders and is in no case less than 10 days before the final date for the submission of tenders, where:

- (a) the procuring entity published a separate notice containing the information specified in paragraph 3 of Article 1405 at least 40 days and not more than 12 months in advance, and such separate notice contains a description of the procurement, the relevant time limits for the submission of tenders, or, where applicable, applications for participation, and the address from which documents relating to the procurement may be obtained;
- (b) in the case of the second or subsequent publications of notices for procurement of a recurring nature;
- (c) the procuring entity procures commercial goods or services; or
- (d) a state of urgency duly substantiated by the procuring entity renders impracticable the time limits specified in paragraph 2, or where applicable, paragraph 3.

Article 1409: Limited Tendering

1. Provided that a procuring entity does not use this provision to avoid competition among suppliers, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, the procuring entity may contact a supplier or suppliers of its choice and may choose not to apply Articles 1405, 1406, 1407, 1408 and 1410 in any of the following circumstances:

- (a) where the requirements of the tender documentation are not substantially modified and:
 - (i) no tenders were submitted or no suppliers applied to participate in a procurement covered by this Chapter,
 - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted,
 - (iii) no suppliers satisfied the conditions for participation, or
 - (iv) the tenders submitted have been collusive;
- (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
 - (i) the requirement is for a work of art,
 - (ii) the protection of patents, copyrights or other exclusive rights, or
 - (iii) due to an absence of competition for technical reasons;

- (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods and services:
 - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement, and
 - (ii) would cause significant inconvenience or substantial duplication of costs to the procuring entity;
- (d) for goods purchased on a commodity market;
- (e) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production, or supply to establish commercial viability, or to recover research and development costs;
- (f) insofar as it is strictly necessary for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services cannot be obtained in time using an open or selective tendering procedure;

- (g) where a contract is awarded to a winner of a design contest provided that:
 - (i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement, and
 - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner;
- (h) where a procuring entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest; and
- (i) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

Article 1410: Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open, and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders.
2. A procuring entity shall treat tenders in confidence until at least the opening of the tenders.

3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for award, a tender must be submitted in writing by a supplier that satisfies the conditions for participation and must, at the time of opening, comply with the essential requirements of the notices and tender documentation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) where price is the sole criterion, the lowest price.

6. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations in this Chapter.

Information Provided to Suppliers

7. A procuring entity shall promptly inform suppliers participating in the procurement of the entity's contract award decisions and, on request, shall do so in writing. Subject to Article 1411, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

8. Not later than 72 days after an award, a procuring entity shall publish in an officially designated publication, which may be in either an electronic or paper medium, a notice that includes, at a minimum, the following information about the contract:

- (a) the name and address of the procuring entity;
- (b) a description of the goods or services procured;
- (c) the date of award;
- (d) the name and address of the successful supplier;
- (e) the contract value; and
- (f) the procurement method used and, in cases where a procedure has been used pursuant to paragraph 1 of Article 1409, a description of the circumstances justifying the use of such procedure.

Maintenance of Records

9. A procuring entity shall maintain reports and records of tendering procedures relating to procurements covered by this Chapter, including the reports provided for in paragraph 2 of Article 1409, and shall retain such reports and records for a period of at least three years after the award of a contract.

Article 1411: Disclosure of Information

Provision of Information to a Party

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives that information shall not disclose it to any supplier, except after consultation with, and consent of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, may not provide information to a particular supplier that might prejudice fair competition between suppliers.

3. A Party, including its procuring entities, authorities, and review bodies, are not required under this Chapter to release confidential information where release:

- (a) would impede law enforcement;
- (b) might prejudice fair competition between suppliers;
- (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
- (d) would otherwise be contrary to the public interest.

Article 1412: Domestic Review Procedures

1. Each Party shall ensure that its entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement covered by this Chapter in which they have, or have had, an interest. Each Party shall encourage suppliers to seek clarification from its entities through consultations with a view to facilitating the resolution of any such complaints.
2. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by suppliers (“challenge”) arising in the context of a procurement covered by this Chapter in which the supplier has, or has had, an interest.
3. Each Party shall ensure that any authority it establishes or designates under paragraph 2 has written procedures that are generally available. Such procedures shall be timely, effective, transparent, non-discriminatory and provide that:
 - (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
 - (b) the participants in the challenge shall:
 - (i) have the right to be heard prior to a decision of the review body being made on the challenge,
 - (ii) have the right to be represented and accompanied,
 - (iii) have access to all challenge proceedings,
 - (iv) have the right to request that the proceedings take place in public and that witnesses may be presented;
 - and
 - (c) decisions or recommendations relating to challenges shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

4. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known to the supplier or reasonably should have become known to the supplier.

5. Each Party shall provide that an authority it establishes or designates under paragraph 2 has authority to take interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures for taking interim measures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied.

6. Each Party shall ensure that a supplier's submission of a challenge will not prejudice the supplier's participation in ongoing or future procurements.

7. Where a body other than an authority referred to in paragraph 2 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

Article 1413: Modifications and Rectifications to Coverage

1. Where a Party modifies its coverage of procurement under this Chapter, the Party shall:

- (a) notify the other Party in writing; and
- (b) include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding subparagraph 1(b), a Party need not provide compensatory adjustments where:

- (a) the modification in question is a minor amendment or rectification of a purely formal nature; or
- (b) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence.

3. If the other Party does not agree that:

- (a) an adjustment proposed under subparagraph 1(b) is adequate to maintain a comparable level of mutually agreed coverage;
- (b) the proposed modification is a minor amendment or a rectification under subparagraph 2(a); or
- (c) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence under subparagraph 2(b),

it must object in writing within 30 days of receipt of the notification referred to in paragraph 1 or be deemed to have agreed to the adjustment or proposed modification, including for the purposes of Chapter Twenty-One (Dispute Settlement).

4. Where the Parties are in agreement on the proposed modification, rectification, or minor amendment, including where a Party has not objected within 30 days under paragraph 3, they shall give effect to the agreement by modifying forthwith the relevant Annex.

Article 1414: Committee on Procurement

The Parties hereby establish a Committee on Procurement to address matters related to the implementation of this Chapter with a view to maximizing access to government procurement.

Article 1415: Further Negotiations

1. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that contains different procurement procedures and practices, including the introduction of shorter bid periods, on the request of either Party, the Parties shall enter into negotiations with a view to harmonising this Chapter with the new international agreement.
2. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that provides greater access to its procurement market than is provided under this Chapter, including with respect to provincial, territorial or local government procurement, on the request of either Party, the Parties may agree to enter into negotiations with a view to achieving an equivalent level of market access under this Chapter as is contained in the other international agreement.

Article 1416: Information technology

The Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government procurement, particularly as regards tender opportunities offered by procuring entities, while respecting the principles of transparency and non-discrimination.

Article 1417: Definitions

For purposes of this Chapter:

commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

conditions for participation means any registration, qualification or other pre-requisites for participation in a procurement;

construction services means a contractual arrangement for the realization by any means of civil or building works, whether paid for directly by the Party or through, for a specified period of time, any grant to the supplier of temporary ownership or a right to control and operate, and demand payment for the use of such works, for the duration of the contract;

in writing or **written** means any worded or numbered expression that can be read, reproduced, and later communicated. It may include electronically transmitted and stored information;

limited tendering means a procurement method where the procuring entity contacts a supplier or suppliers of its choice;

multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

offsets means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar actions or requirements;

open tendering means a procurement method where all interested suppliers may submit a tender;

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

procuring entity means an entity listed in Annex 1401-1 or 1401-2;

selective tendering means a procurement method where only suppliers satisfying the conditions for participation are invited by the procuring entity to submit a tender;

services includes construction services, unless otherwise specified;

standard means a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a good, service, process, or production method;

supplier means a person or group of persons that provides or could provide goods or services to a procuring entity; and

technical specification means a tendering requirement that:

- (a) lays down the characteristics of goods or services to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production or provision, or
- (b) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.

Annex 1401

Annex 1401-1

Central Level Entities

Schedule of Canada

<i>Thresholds</i>	\$ Cdn 76,500	- Goods covered in Annex 1401-3
	\$ Cdn 76,500	- Services covered in Annex 1401-4
	5,000,000 SDRs	- Construction Services covered in Annex 1401-5

1. Atlantic Canada Opportunities Agency
2. Canada Border Services Agency
3. Canada Employment Insurance Commission
4. Canada Industrial Relations Board
5. Canada Revenue Agency
6. Canada School of Public Service
7. Canadian Centre for Occupational Health and Safety Board
8. Canadian Food Inspection Agency
9. Canadian Human Rights Commission
10. Canadian Institutes of Health Research
11. Canadian Intergovernmental Conference Secretariat
12. Canadian International Development Agency (on its own account)
13. Canadian International Trade Tribunal
14. Canadian Nuclear Safety Commission
15. Canadian Radio-television and Telecommunications Commission
16. Canadian Transportation Accident Investigation and Safety Board
17. Canadian Transportation Agency
18. Copyright Board
19. Correctional Service of Canada
20. Courts Administration Service
21. Department of Agriculture and Agri-Food
22. Department of Canadian Heritage
23. Department of Citizenship and Immigration
24. Department of Finance

25. Department of Fisheries and Oceans
26. Department of Foreign Affairs and International Trade
27. Department of Health
28. Department of Human Resources and Skills Development
29. Department of Indian Affairs and Northern Development
30. Department of Industry
31. Department of Justice
32. Department of National Defence
33. Department of Natural Resources
34. Department of Public Safety and Emergency Preparedness
35. Department of Public Works and Government Services (on its own account)
36. Department of the Environment
37. Department of Transport
38. Department of Veterans Affairs
39. Department of Western Economic Diversification
40. Director of Soldier Settlement
41. Director, The Veterans' Land Act
42. Economic Development Agency of Canada for the Regions of Quebec
43. Hazardous Materials Information Review Commission
44. Immigration and Refugee Board
45. Library and Archives Canada
46. Municipal Development and Loan Board
47. National Battlefields Commission
48. National Energy Board
49. National Farm Products Council
50. National Parole Board
51. National Research Council of Canada
52. Natural Sciences and Engineering Research Council of Canada
53. Northern Pipeline Agency
54. Office of the Auditor General
55. Office of the Chief Electoral Officer
56. Office of the Commissioner for Federal Judicial Affairs
57. Office of the Commissioner of Official Languages
58. Office of the Coordinator, Status of Women
59. Office of the Governor General's Secretary
60. Office of the Superintendent of Financial Institutions
61. Offices of the Information and Privacy Commissioners of Canada
62. Parks Canada Agency
63. Patented Medicine Prices Review Board

- 64. Privy Council Office
- 65. Public Health Agency of Canada
- 66. Public Service Commission
- 67. Public Service Human Resources Management Agency of Canada
- 68. Public Service Labour Relations Board
- 69. Registry of the Competition Tribunal
- 70. Royal Canadian Mounted Police
- 71. Royal Canadian Mounted Police External Review Committee
- 72. Royal Canadian Mounted Police Public Complaints Commission
- 73. Social Sciences and Humanities Research Council
- 74. Statistics Canada
- 75. Statute Revision Commission
- 76. Supreme Court of Canada
- 77. Transportation Appeal Tribunal of Canada
- 78. Treasury Board Secretariat

Note to Annex 1401-1

The General Notes in Annex 1401-6 apply to this Annex.

Schedule of Colombia

<i>Thresholds</i>	US\$67,826	- Goods covered in Annex 1401-3
	US\$67,826	- Services covered in Annex 1401-4
	5,000,000 SDRs	- Construction Services covered in Annex 1401-5

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.

Annex 1401-2

Other Covered Entities

Schedule of Canada

<i>Thresholds</i>	\$ Cdn 382,800	- Goods covered in Annex 1401-3
	\$ Cdn 382,800	- Services covered in Annex 1401-4
	\$ Cdn 12,200,000	- Construction Services covered in Annex 1401-5

1. Canada Post Corporation
2. Canadian Museum of Civilization
3. Canadian Museum of Nature
4. Canadian Tourism Commission
5. Defence Construction (1951) Ltd.
6. National Capital Commission
7. National Gallery of Canada
8. National Museum of Science and Technology
9. Royal Canadian Mint
10. Via Rail Canada Inc

Notes to Annex 1401-2

1. For greater certainty, Article 1411 (Disclosure of Information) applies to procurements by Via Rail Canada Inc. and the Royal Canadian Mint, respecting the protection of the commercial confidentiality of information provided.
2. This Chapter does not cover procurement by or on behalf of the Royal Canadian Mint of direct inputs for use in minting anything other than Canadian legal tender.
3. The General Notes in Annex 1401-6 apply to this Annex.

Schedule of Colombia

Thresholds	US\$ 339,132	- Goods covered in Annex 1401-3
	US\$ 339,132	- Services covered in Annex 1401-4
	US\$ 10,852,752	- Construction Services covered in Annex 1401-5

1. Agencia Logística 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)

Notes to Schedule of Colombia

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 Central Product Classification (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 Policía Nacional.

Annex 1401-3

Goods

Schedule of Canada

Section A - General Provisions

1. All goods are covered subject to paragraph 2.
2. For procurement by the Department of National Defence, the Royal Canadian Mounted Police, and the Canadian Coast Guard, this Chapter covers only the goods listed in Section B subject to paragraph 1 of Article 1402:

Section B - List of Certain Goods

(Numbers refer to the Federal Supply Classification document dated May 2005 which can be found at: <http://www.dlis.dla.mil/forms/forms.asp>)

- 22. Railway equipment
- 23. Motor vehicles, trailers and cycles (except buses in 2310 and military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350 and wheeled combat, assault and tactical vehicles in 2355 formerly classified in 2320)
- 24. Tractors
- 25. Vehicular equipment components
- 26. Tires and tubes
- 29. Engine accessories
- 30. Mechanical power transmission equipment
- 32. Woodworking machinery and equipment
- 34. Metal working machinery
- 35. Service and trade equipment
- 36. Special industry machinery
- 37. Agricultural machinery and equipment
- 38. Construction, mining, excavating and highway maintenance equipment
- 39. Materials handling equipment
- 40. Rope, cable, chain and fittings
- 41. Refrigeration and air conditioning equipment
- 42. Fire fighting, rescue and safety equipment (except 4220: Marine lifesaving and diving equipment; and 4230: Decontaminating and impregnating equipment)
- 43. Pumps and compressors
- 44. Furnace, steam plant, drying equipment and nuclear reactors
- 45. Plumbing, heating and sanitation equipment
- 46. Water purification and sewage treatment equipment
- 47. Pipe, tubing, hose and fittings
- 48. Valves
- 49. Maintenance and repair shop equipment
- 52. Measuring tools
- 53. Hardware and abrasives
- 54. Prefabricated structures and scaffolding

- 55. Lumber, millwork, plywood and veneer
- 56. Construction and building materials
- 61. Electric wire and power and distribution equipment
- 62. Lighting fixtures and lamps
- 63. Alarm and signal systems
- 65. Medical, dental and veterinary equipment and supplies
- 66. Instruments and laboratory equipment (except 6615: Automatic pilot mechanisms and airborne Gyro components; and 6665: Hazard detecting instruments and apparatus)
- 67. Photographic equipment
- 68. Chemicals and chemical products
- 69. Training aids and devices
- 70. General purpose automatic data processing equipment, software, supplies and support equipment (except 7010: Automatic Data Processing Equipment (ADPE) configurations)
- 71. Furniture
- 72. Household and commercial furnishings and appliances
- 73. Food preparation and serving equipment
- 74. Office machines, text processing system and visible record equipment
- 75. Office supplies and devices
- 76. Books, maps and other publications (except 7650: drawings and specifications)
- 77. Musical instruments, phonographs and home-type radios
- 78. Recreational and athletic equipment
- 79. Cleaning equipment and supplies
- 80. Brushes, paints, sealers and adhesives
- 81. Containers, packaging and packing supplies
- 85. Toiletries
- 87. Agricultural supplies
- 88. Live animals
- 91. Fuels, lubricants, oils and waxes

- 93. Non-metallic fabricated materials
- 94. Non-metallic crude materials
- 96. Ores, minerals and their primary products
- 99. Miscellaneous

Note to Annex 1401-3

The General Notes in Annex 1401-6 apply to this Annex.

Schedule of Colombia

This Chapter does not apply to procurement of goods required to conduct research and development services.

Annex 1401-4

Services

Schedule of Canada

Section A - General Provisions

1. This Chapter covers procurement of all services that are procured by the entities in Annex 1401-1 and Annex 1401-2, subject to paragraph 3 and Section B of this Annex;
2. Services are identified in accordance with the Common Classification System, which may be found at: *<http://www.sice.oas.org/trade/nafta/chap-105.asp>*.
3. Annex 1401-5 applies to contracts for construction services.

Section B - Excluded Coverage

Services Exclusions by Major Service Category

Part I

This Chapter does not cover procurement of the following services by entities listed in Annex 1401-1 and Annex 1401-2:

A. Research and Development

All classes

B. Special Studies and Analysis - not R&D

B002 Animal and Fisheries Studies

B003 Grazing and Range Studies

B400 Aeronautic/Space Studies

B503 Medical and Health Studies

B507 Legal Studies (Except Advisory Services on Foreign Law)

C. Architecture and Engineering Services

C112 Airfield, Communication and Missile Facilities

C216 Marine Architect and Engineering Services

D. Information Processing and Related Telecommunications Services

D304 ADP Telecommunications and Transmission Services, except those classified as “enhanced or value-added services.” Enhanced or value added services means those telecommunications services employing computer processing applications that:

- (a) act on the format, content, code, protocol or similar aspects of a customer’s transmitted information;

- (b) provide a customer with additional, different or restructured information,
or
- (c) involve customer interaction with stored information.

For 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. This provision only extends to providers of enhanced or value-added services whose underlying telecommunications transmission facilities are leased from providers of public telecommunications transport networks.

D305 ADP Teleprocessing and Timesharing Services

D309 Information and Data Broadcasting or Data Distribution Services (except enhanced/value added facsimile services, including store and forward, store and retrieve; Code and protocol conversion)

D316 Telecommunications Network Management Services (except enhanced/value added Electronic Data Interchange (EDI) Services)

D317 Automated News Services, Data Services, or Other Information Services. Buying data (the electronic equivalent of books, periodicals, newspapers, etc.) (except enhanced/value added electronic mail services; telecommunications - voice messaging; information retrieval services, database and automated news services)

D399 Other ADP and Telecommunications Services – (except enhanced/value added CD-ROM services and micrographic services)

F. Natural Resources and Conservation Services

- F004 Land Treatment Practices Services (plowing/clearing, etc)
- F005 Range Seeding Services (ground equipment)
- F006 Crop Services inc. Seed Collection/Production Services
- F011 Pesticides/Insecticides Support Services (except forestry and logging)
- F021 Veterinary/Animal Care Services (inc. livestock services)
- F029 Other Animal Care/Control Services
- F030 Fisheries Resources Management Services
- F031 Fish Hatchery Services
- F050 Recreation Site Maintenance Services (non-construction)
- F059 Other Natural Resource and Conservation Services

G. Health and Social Services

All classes

H. Quality Control, Testing and Inspection and Technical Representative Services

Services for the departments and functions listed in Annex 1401-6 – General Notes, Note 1 (e) to this schedule respecting FSC 36 – (Special Industry Machinery), FSC 70 – (Automatic Data Processing Equipment, software supplies and support equipment) and FSC 74 – (Office machines, text processing systems and visible record equipment)

FSC 58 (Communications, Detection, and Coherent Radiation Equipment)

Services with reference to transportation equipment

J. Maintenance, Repair, Modification, Rebuilding and Installation of Equipment

Services for the departments and functions listed in Annex 1401-6 – General Notes, Note 1 (e) to this schedule respecting FSC 36 – (Special Industry Machinery), FSC 70 – (Automatic Data Processing Equipment, software supplies and support equipment) and FSC 74 – (Office machines, text processing systems and visible record equipment)

FSC 58 (Communications, Detection, and Coherent Radiation Equipment)

Services with reference to transportation equipment

J019 Maintenance, Repair, Modification, Rebuilding and Installation of Equipment related to Ships

J998 Non-nuclear Ship Repair

K. Custodial Operations and Related Services

K0 Personal Care Services

K105 Guard Services

K109 Surveillance Services

K115 Preparation and Disposal of Excess and Surplus Property

L. Financial and Related Services

All classes

M. Operation of Government Owned Facilities

All facilities operated by:

The Department of National Defence

The Department of Transport

The Department of Natural Resources

and for all Departments: M180 and M140

R. Professional, Administrative and Management Support Services

- R003 Legal Services (Except Advisory Services on Foreign Law)
- R004 Certifications and accreditations for products and institutions other than Educational Institutions
- R007 Systems Engineering Services^{*}
- R012 Patent and Trade Mark Services
- R101 Expert Witness
- R102 Weather Reporting/Observation Services
- R104 Transcription Services
- R106 Post Office Services
- R109 Translation and Interpreting Services (inc. sign language)
- R114 Logistics Support Services[†]
- R116 Court Reporting Services
- R117 Paper Shredding Services
- R201 Civilian Personnel Recruitment (inc. Services of Employment Agencies)

S. Utilities

All classes

T. Communications, Photographic, Mapping, Printing and Publications Services

All classes

U. Education and Training Services

- U010 Certifications and accreditations for Educational Institutions

V. Transportation, Travel and Relocation Services

All classes (except V503 Travel Agent Services (not including Tour Guides))

^{*} with reference to transportation systems

[†] with respect to transportation and defence

W. Lease or Rental of Equipment

Services for the departments and functions listed in Annex 1401-6 – General Notes, Note 1 (e) to this schedule respecting FSC 36 – (Special Industry Machinery), FSC 70 – (Automatic Data Processing Equipment, software supplies and support equipment) and FSC 74 – (Office machines, text processing systems and visible record equipment)

FSC 58 (Communications, Detection, and Coherent Radiation Equipment)

Services with reference to transportation equipment

Part II

This Chapter does not cover procurement of the following services by entities listed in Annex 1401-2 :

D. Information Processing and Related Telecommunications Services

D309 Information and Data Broadcasting or Data Distribution Services

D316 Telecommunications Network Management Services

D317 Automated News Service, Data Services, or Other Information Services. Buying data, the electronic equivalent of books, periodicals, newspapers, etc.

D399 Other ADP and Telecommunications Services

F. Natural Resources and Conservation Services

F007 Seedling Production/Transplanting Services

F010 Other Range/Forest Improvements Services

R. Professional, Administrative and Management Support Services

R113 Data Collection Services

Notes to Annex 1401-4:

1. All services, with reference to those goods purchased by the Department of National Defence, the Royal Canadian Mounted Police and the Canadian Coast Guard which are not identified as subject to coverage by this chapter (Annex 1401-3), will be exempt from the disciplines of the Chapter.
2. All services purchased in support of military forces located overseas will be exempt from coverage by this chapter.
3. The General Notes in Annex 1401-6 apply to this Annex.

Schedule of Colombia

This Chapter does not cover the procurement of the following services, as described in the CPC:

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 construction 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 administration 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

Annex 1401-5

Construction Services

Schedule of Canada

Section A - General Provisions

1. This Chapter covers all construction services set out in the Common Classification System, except those listed in Section B that are procured by the entities listed in Annex 1401-1 and Annex 1401-2.
2. The Common Classification System can be found at:
<http://www.sice.oas.org/trade/nafta/chap-106.asp#An1001.1b-3>

Section B - Excluded Coverage

Services Exclusions by Major Service Category

The following services contracts are excluded:

1. Dredging
2. Construction contracts tendered by or on behalf of the Department of Transport
3. For CPC 5115 mining of oil and gas which is classified under CCS F042

Note to Annex 1401-5

The General Notes in Annex 1401-6 apply to this Annex.

Schedule of Colombia

This Chapter applies to all public works and construction services procured by the covered entities.

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.

Annex 1401-6

General Notes

Schedule of Canada

1. This Chapter does not cover procurements in respect of:
 - (a) shipbuilding and repair;
 - (b) urban rail and urban transportation equipment, systems, components and materials incorporated therein as well as all project related materials of iron or steel;
 - (c) contracts respecting FSC 58 (communications, detection and coherent radiation equipment);
 - (d) set-asides for small and minority businesses;
 - (e)
 - (i) the Department of Transport;
 - (ii) the Department of Fisheries and Oceans;
 - (iii) the Canadian Food Inspection Agency in respect of the administration and enforcement of the *Fish Inspection Act*;
 - (iv) the Department of Canadian Heritage in respect of those functions that were formerly the responsibility of the Department of Communications;

(v) the Department of Industry in respect of telecommunications, except in relation to (a) the planning and coordination of telecommunication services for departments, boards and agencies of the Government of Canada, and (b) broadcasting, other than in relation to spectrum management and the technical aspects of broadcasting; and

(vi) the Department of Public Works and Government Services in respect of the Government Telecommunications Agency;

respecting Federal Supply Classification (FSC) 70 (automatic data processing equipment, software supplies and support equipment), FSC 74 (office machines, text processing systems and visible record equipment) and FSC 36 (special industry machinery); and

(f) agricultural products made in furtherance of agricultural support programs or human feeding programs.

2. This Chapter does not cover procurement of transportation services that form a part of, or are incidental to, a procurement contract.

3. Pursuant to Article 1402 (Security and General Exceptions), national security exceptions include oil purchases related to any strategic reserve requirements.

4. National security exceptions include procurements made in support of safeguarding nuclear materials or technology.

5. The procurement process is the process that begins after an entity has decided on its requirement and continues through to and including contract award.

Schedule of Colombia

This Chapter does not apply to:

- (a) Renting or acquisition of real estate;
- (b) Set-asides of procurements below US\$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;
- (c) 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; and
- (d) Procurements by the missions of the foreign service of Colombia exclusively for their operation and management.

Annex 1401-7

Threshold Adjustment Formulas

1. The thresholds shall be adjusted at two-year intervals with each adjustment taking effect on January 1, beginning on January 1, 2010.

2. The thresholds for:

- (a) goods and services procured by entities listed in Annex 1401-1 (Central Level Entities); and
- (b) goods, services and construction services procured by entities listed in Annex 1401-2 (Other Covered Entities)

shall be adjusted in accordance with Annex 1001.1c of the *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, done at Mexico, Ottawa and Washington on 17 December 1992 (“North American Free Trade Agreement”). Canada shall notify Colombia in writing of the adjusted threshold values, in U.S. dollars, in December of the year before the adjusted thresholds take effect.

3. The threshold for construction services in Annex 1401-1 Central Level Entities for Canada and for Colombia shall be converted into the domestic currencies of the Parties based on an average daily conversion rates of the Canadian dollar for Canada and Pesos for Colombia 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 threshold is to take effect.

4. Each Party shall notify the other in writing of its adjusted thresholds in their domestic currencies by January 15 of the year in which the adjusted threshold takes effect.

5. Where a major change in a national currency of either Party during a year creates a significant problem with regard to the application of this Chapter, the Parties shall consult as to whether an interim adjustment is appropriate.

6. In the event that:

- (a) Canada withdraws from the *North American Free Trade Agreement* pursuant to Article 2205 of that agreement;
- (b) The *North American Free Trade Agreement* is terminated; or
- (c) A threshold adjustment formula referenced in paragraphs 1, 2 and 3 is altered,

the Committee on Procurement shall agree on a suitable alternate threshold adjustment formula.

Annex 1401-8

Colombian Authorities for the Purpose of Article 1412

In the case of Colombia, the *Tribunal Contencioso Administrativo* and *Consejo de Estado* are impartial authorities for the purposes of paragraph 2 of Article 1412. As these impartial authorities do not have authority to provide the interim measures referred to in Paragraph 5 of Article 1412, 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 agents responsible for a procurement.

Annex 1401-9

Extended Transparency Commitments

The provisions of Article 1402, Article 1404; Article 1405; paragraphs 1, 10,11 and subparagraph 4(b) of Article 1406; paragraphs 6 and 8 of Article 1407; paragraph 1 of Article 1408; paragraphs 4 and 5 of Article 1410; and Article 1411 apply where:

- (a) the procuring entity uses an open tendering process; and
- (b) the procurement is for goods, services and construction services in excess of CDN \$150,000 for Canada and COP \$300,000,000 for Colombia for entities listed in Annex 1401-1 and is otherwise excluded by Annexes 1401-3 (Goods), 1401-4 (Services), and 1401-5 (Construction Services).

Annex 1401-10

Non - Covered Entities

Pursuant to its *Law 1150* of 2007, Colombia shall ensure that each of the following listed Colombian entities conducts its procurements in a transparent manner, in accordance with commercial considerations, and treats Canadian suppliers at least as favorably as it treats domestic and other foreign suppliers with respect to all aspects of its procurement including the conditions, requirements, procedures and awarding rules for a procurement.

Schedule of Colombia

1. Comisión de Regulación de Energía y Gas (CREG)
2. Unidad de Planeación Minero Energética (UPME)
3. Caja de Previsión Social de Comunicaciones (CAPRECOM)
4. Caja Nacional de Previsión Social (CAJANAL)
5. Empresa Territorial para la Salud (ETESA)
6. Imprenta Nacional de Colombia
7. Industria Militar (INDUMIL)
8. Instituto de Seguros Sociales (ISS)
9. Radio Televisión Nacional de Colombia (RTVC)
10. Servicio Aéreo a Territorios Nacionales (SATENA)
11. Empresa Colombiana de Petroleos, S.A. (ECOPETROL)
12. Interconexion Electrica S.A. (ISA)
13. ISAGEN

CHAPTER FIFTEEN

ELECTRONIC COMMERCE

Article 1501: Scope and Coverage

1. The Parties confirm that this Agreement, including Chapter Nine (Cross-Border Trade in Services), Chapter Two (National Treatment and Market Access for Goods), Chapter Eight (Investment), Chapter Fourteen (Government Procurement), Chapter Eleven (Financial Services), Chapter Ten (Telecommunications), and Chapter Twenty-Two (Exceptions) applies to trade conducted by electronic means.¹ In particular, the Parties recognize the importance of the access and use provisions of Chapter Ten (Telecommunications) in enabling trade conducted by electronic means.

2. Nothing in this Chapter imposes obligations on a Party to allow products to be delivered electronically, except in accordance with the obligations of that Party in other chapters in this Agreement.

Article 1502: General Provisions

1. The Parties recognize the economic growth and opportunities provided by electronic commerce and the applicability of WTO rules to electronic commerce.

2. Considering the potential of electronic commerce as a social and economic development tool, the Parties recognize the importance of:

- (a) clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce;

¹ For greater certainty, the application of this Agreement to trade conducted by electronic means includes the application of the reservations or exceptions taken by a Party as set out in its schedule to Annex I, II, or III.

- (b) encouraging self-regulation by the private sector to promote trust and confidence in electronic commerce, having regard to the interests of users, through initiatives such as industry guidelines, model contracts and codes of conduct;
- (c) interoperability, innovation and competition in facilitating electronic commerce;
- (d) ensuring that global and domestic electronic commerce policy takes into account the interest of all stakeholder, including business, consumers, non-government organizations and relevant public institutions;
- (e) facilitating the use of electronic commerce by micro, small and medium sized enterprises; and
- (f) protecting personal information in the on-line environment.

3. Each Party shall endeavour to adopt measures to facilitate trade conducted by electronic means by addressing issues relevant to the electronic environment.

4. The Parties recognize the importance of avoiding unnecessary barriers to trade conducted by electronic means. Having regard to its national policy objectives, each Party shall endeavour to guard against measures that:

- (a) unduly hinder trade conducted by electronic means; or
- (b) have the effect of treating trade conducted by electronic means more restrictively than trade conducted by other means,

Article 1503: Customs Duties

1. Neither Party may apply customs duties, fees or charges on or in connection with the importation or exportation of products by electronic means.

2. For greater clarity, this Chapter does not preclude a Party from imposing internal taxes or other internal charges on products delivered electronically, provided that such taxes or charges are imposed in a manner that is not inconsistent with this Agreement.

Article 1504: Consumer Protection

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices in electronic commerce.
2. To this end, Parties should exchange information and experiences on national approaches for the protection of consumers engaging in electronic commerce.

Article 1505: Paperless Trade Administration

1. Each Party shall endeavour to make trade administration documents available to the public in electronic form.
2. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such documents.

Article 1506: Protection of Personal Information

1. Each Party should adopt or maintain laws, regulations or administrative measures for the protection of personal information of users engaged in electronic commerce.
2. The Parties should exchange information and experiences regarding their domestic regimes for the protection of personal information.

Article 1507: Cooperation

1. Recognizing the global nature of electronic commerce, the Parties affirm the importance of:

- a) working together to facilitate the use of electronic commerce by micro, small and medium sized enterprises;
- b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence, security in electronic communications, authentication, intellectual property rights, and electronic government;
- c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;
- d) fostering electronic commerce through the encouragement of the private sector to adopt codes of conduct, model contracts, guidelines, and enforcement mechanisms; and
- e) actively participating in regional and multilateral fora, to promote the development of electronic commerce.

2. Parties may work together through various means, including through information and communication technologies, face to face meetings or a working group of experts to further the objectives of this Chapter, in particular Articles 1504, 1506 and 1507.

Article 1508: Relation to Other Chapters

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

Article 1509: Definitions

For purposes of this Chapter:

authentication means the process or act of establishing the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

delivered electronically means delivered through telecommunications, alone or in conjunction with other information and communication technologies;

interoperability means the ability of two or more systems or components to exchange information and to use the information that has been exchanged;

personal information means any information relating to an identified or identifiable natural person;

trade administration documents means forms that a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods; and

trade conducted by electronic means trade conducted through telecommunications, alone or in conjunction with other information and communication technologies.

CHAPTER SIXTEEN

LABOUR

Article 1601: Affirmations

The Parties affirm their obligations as members of the International Labour Organization (ILO) and their commitments to the *ILO Declaration on Fundamental Principles and Rights at Work* (1998) and its Follow-Up as well as their continuing respect for each other's Constitution and laws.

Article 1602: Non-Derogation

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

Article 1603: Objectives

The Parties wish to build on their respective international commitments, strengthen their cooperation on labour and in particular:

- (a) improve working conditions and living standards in each Party's territory;
- (b) promote their commitment to the internationally recognized labour principles and rights;
- (c) promote compliance with and effective enforcement by each Party of its labour laws;
- (d) promote social dialogue on labour matters among workers and employers, their respective workers' and employers' organizations, and governments;

- (e) pursue cooperative labour-related activities on the basis of mutual benefit;
- (f) strengthen the capacity of the ministries responsible for labour affairs and other institutions responsible for administering and enforcing labour laws in their territories; and
- (g) foster full and open exchange of information between the Parties in regard to their labour law, its application and institutions in each Party's territory.

Article 1604: Obligations

In order to further the foregoing objectives, the Parties' mutual obligations are set out in the *Labour Cooperation Agreement between Canada and the Republic of Colombia* (LCA) that addresses, *inter alia*:

- (a) general commitments concerning the internationally recognized labour principles and rights that are to be embodied in each Party's labour laws;
- (b) a commitment not to derogate from domestic labour laws in order to encourage trade or investment;
- (c) effective enforcement of labour laws through appropriate government action, private rights of action, procedural guarantees, public information and awareness;
- (d) institutional mechanisms to oversee the implementation of the LCA, such as a Ministerial Council and national Points of Contact to receive and review public communications on specified labour law matters and to enable cooperative activities to further the objectives of the LCA;
- (e) general and ministerial consultations regarding the implementation of the LCA and its obligations; and

- (f) independent review panels to hold hearings and make determinations regarding alleged non-compliance with the terms of the LCA and, if requested, monetary assessments.

Article 1605: Cooperative Activities

The Parties recognize that labour cooperation is an essential element in raising the level of compliance with labour standards and as such the LCA provides for the development of a plan of action for cooperative labour activities for the promotion of the objectives of the LCA. An indicative list of areas of possible cooperation between the Parties is set out in that Agreement.

CHAPTER SEVENTEEN

ENVIRONMENT

Article 1701: Affirmations

1. The Parties recognize that each Party has sovereign rights and responsibilities to conserve and protect its environment and affirm their environmental obligations under their domestic law, as well as their international obligations under multilateral environmental agreements to which they are party.
2. The Parties recognize the mutual supportiveness between trade and environment policies and the need of implementing this Agreement in a manner consistent with environmental protection and conservation and sustainable use of their resources.

Article 1702: Non-derogation

Neither Party shall encourage trade or investment by weakening or reducing the levels of protection afforded in their respective environmental laws.

Article 1703: Agreement on Environment

In furtherance of these principles, the Parties have set out their mutual obligations in the *Agreement on the Environment between Canada and the Republic of Colombia* (“Agreement on the Environment”) that addresses, *inter alia*:

- (a) conservation, protection and improvement of the environment in the territory of each Party for the well being of present and future generations;
- (b) a commitment not to derogate from domestic environmental laws in order to encourage trade or investment;

- (c) conservation and sustainable use of biological diversity and protection and preservation of traditional knowledge;
- (d) development of, compliance with and enforcement of environmental laws;
- (e) transparency and public participation on environmental matters; and
- (f) cooperation between the Parties on the advancement of environmental issues of common interest.

Article 1704: Relationship between this Agreement and the Agreement on the Environment

1. The Parties recognize the importance of balancing trade obligations and environmental obligations, and affirm that the Agreement on the Environment complements this Agreement, and that the two are mutually supportive.
2. The Commission shall consider, as appropriate, reports and recommendations from the Committee on Environment established under the Agreement on Environment, in respect of any trade and environment-related issues.

CHAPTER EIGHTEEN

TRADE-RELATED COOPERATION

Article 1801: Objectives

Recognizing that trade-related cooperation is a catalyst for the reforms and investments necessary to foster trade-driven economic growth and adjustment to liberalized trade, the Parties agree to promote trade-related cooperation pursuant to the following objectives:

- (a) to strengthen the capacities of the Parties to maximize the opportunities and benefits deriving from this Agreement;
- (b) to strengthen and develop cooperation at a bilateral, regional or multilateral level;
- (c) to foster new opportunities for trade and investment, stimulating competitiveness and encouraging innovation, including dialogue and cooperation among their respective academies of science, governmental organizations, non-governmental organizations, universities, colleges, as well as their science, research and technological centers and institutes, and private sector enterprises and firms in areas of mutual interest relating to science and technology and innovation; and
- (d) to promote sustainable economic development, with an emphasis on small and medium sized enterprises, in order to contribute to the reduction of poverty through trade.

Article 1802: Committee on Trade-Related Cooperation

1. Pursuant to Article 1801, the Parties hereby establish a Committee on Trade-Related Cooperation comprising representatives of each Party.
2. Each Party should provide, and periodically update, an Action Plan to the Committee describing proposed trade-related cooperation initiatives.
3. The Committee shall:
 - (a) seek the prioritization and promote the realization of trade-related cooperation initiatives outlined in the Action Plans of the Parties;
 - (b) invite appropriate international donor institutions, private sector entities, and non-governmental organizations to assist in the development and implementation of trade-related cooperation initiatives in accordance with the priorities set out by the Committee pursuant to subparagraph 3(a);
 - (c) work with other committees or working groups established under this Agreement, including through joint meetings, to support the implementation of trade-related cooperation provisions outlined in the Agreement, in accordance with the priorities set out by the Committee pursuant to subparagraph 3(a);
 - (d) establish rules and procedures for the conduct of its work; all decisions of the Committee shall be taken by consensus, unless otherwise agreed;
 - (e) monitor and assess the progress in implementing trade-related cooperation initiatives;

- (f) provide an annual report to the Commission describing the activities of the Committee, unless otherwise agreed; and
- (g) meet annually, or as otherwise agreed, in person or by any other technological means available.

4. The Committee may establish *ad hoc* working groups, which may comprise government and non-government representatives.

5. The implementation of trade-related cooperation initiatives is subject to the joint decision of the Parties.

CHAPTER NINETEEN

TRANSPARENCY

Section A - Transparency

Article 1901: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.
2. To the extent possible, each Party shall:
 - (a) publish in advance any such measure that it proposes to adopt; and
 - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 1902: Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.
2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.
3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 1903: Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 1901 to particular persons, goods or services of the other Party in specific cases:

- (a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when permitted by time, the nature of the proceeding, and the public interest; and
- (c) its procedures are in accordance with domestic law.

Article 1904: Review and Appeal

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

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

- (a) a reasonable opportunity to support or defend their respective positions;
and
- (b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

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

Article 1905: Cooperation on Promoting Increased Transparency

The Parties agree to cooperate in bilateral, regional and multilateral fora on means to promote transparency in respect of international trade and investment.

Article 1906: Definitions

For purposes of this Section:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

Section B - Anti-Corruption

Article 1907: Statement of Principles

The Parties affirm their resolve to prevent and combat bribery and corruption in international trade and investment.

Article 1908: Anti-Corruption Measures

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish, in matters affecting international trade or investment, as criminal offences when committed intentionally:

- (a) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- (b) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- (c) the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and
- (d) aiding, abetting or conspiring to commit any of the offences described in subparagraphs (a) through (c).

2. Each Party shall adopt such measures as may be necessary to establish its jurisdiction over offences committed in its territory.
3. Each Party shall make the commission of an offence covered by this Agreement liable to sanctions that take into account the gravity of that offence.
4. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of enterprises for participation in the offences covered by this Agreement. In particular, each Party shall ensure that enterprises held liable in accordance with this Article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.
5. Each Party shall consider incorporating in its domestic legal system at the national level appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Agreement.

Article 1909: Cooperation in International Fora

The Parties recognize the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in international trade and investment. The Parties agree to work together to advance efforts in regional and multilateral fora to prevent and combat bribery and corruption in international trade and investment, including encouraging and supporting appropriate initiatives.

Article 1910: Definitions

For purposes of this Section:

foreign public official means any natural person holding a legislative, executive, administrative, or judicial office of a foreign country, whether appointed or elected, and any natural person exercising a public function for a foreign country, including for a public agency or public enterprise;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party or its institutions, at any level of its hierarchy; and

public official means any natural person holding a legislative, executive, administrative or judicial office of a Party, whether appointed or elected and whether permanent or temporary.

CHAPTER TWENTY

ADMINISTRATION OF THE AGREEMENT

Article 2001: The Joint Commission

1. The Parties hereby establish a Joint Commission, comprising cabinet-level representatives of the Parties, or their designees.
2. The Commission shall:
 - (a) supervise the implementation of this Agreement;
 - (b) review the general functioning of this Agreement;
 - (c) assess the outcomes of the application of this Agreement;
 - (d) oversee the further elaboration of this Agreement;
 - (e) supervise the work of all committees, working groups and country coordinators established under this Agreement and referred to in Annex 2001;
 - (f) approve the Model Rules of Procedure; and
 - (g) consider any other matter that may affect the operation of this Agreement.
3. The Commission may:
 - (a) adopt interpretive decisions concerning this Agreement binding on panels established under Article 2106 (Dispute Settlement - Establishment of a Panel) and Tribunals established under Section B of Chapter Eight (Investment);
 - (b) seek the advice of non-governmental persons or groups;

- (c) take any other action in the exercise of its functions as the Parties may agree; and
- (d) further the implementation of the objectives of this Agreement by approving any revisions of:
 - (i) the Schedules to Annex 203, with the purpose of adding one or more goods excluded in the schedule of a Party,
 - (ii) the phase-out periods established in the tariff elimination, schedule, with the purpose of accelerating the tariff reduction,
 - (iii) the specific rules of origin established in Annex 301,
 - (iv) the procuring entities listed in Annex 1401, and
 - (v) any Uniform Regulations on Origin Procedures that the Parties may develop;
- (e) consider any amendments or modifications to the rights and obligations under this Agreement; and
- (f) establish the amount of remuneration and expenses that will be paid to panelists.

4. On the request of the Committee on the Environment established under the *Agreement on the Environment between Canada and the Republic of Colombia*, the Commission may consider modifying Annex 103 to include other Multilateral Environment Agreements (MEAs), or to include amendments to any MEAs or remove any MEAs listed in that Annex.

5. Any revision referred to in subparagraph 3(d) shall be subject to the completion of any necessary domestic legal procedures of either Party.

6. The Commission may review the impacts, including any benefits, of this Agreement on the small and medium-size businesses of the Parties. Towards that end, the Commission may:

- (a) designate working groups to evaluate the effects of this Agreement on small and medium-size businesses and make relevant recommendations to the Commission, including working plans focused on the needs of small and medium-size businesses. Any working group recommendations with respect to trade capacity building shall be referred to the Committee on Trade-Related Cooperation for consideration; and
- (b) receive information, input and views from representatives of small and medium-size businesses and their business associations.

7. The Commission may establish and delegate responsibilities to committees, working groups and country coordinators. Except where specifically provided for in this Agreement, the committees, working groups and country coordinators shall work under a mandate recommended by the Agreement Coordinators referred to in Article 2002 and approved by the Commission.

8. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by mutual agreement.

9. The Commission shall normally convene once a year, or upon the request in writing of either Party. Unless otherwise agreed by the Parties, sessions of the Commission shall be held alternately in the territory of each Party, or by any technological means available.

Article 2002: Agreement Coordinators

1. Each Party shall appoint an Agreement Coordinator and notify the other Party within 60 days following the entry into force of this Agreement.
2. The Agreement Coordinators shall jointly:
 - (a) monitor the work of all committees, working groups and country coordinators established under this Agreement, referred to in Annex 2001;
 - (b) recommend to the Commission the establishment of such committees, working groups and country coordinators as they consider necessary to assist the Commission;
 - (c) coordinate preparations for Commission meetings;
 - (d) follow up with any decisions taken by the Commission, as appropriate;
 - (e) receive all notifications and information provided, pursuant to this Agreement and, as necessary, facilitate communications between the Parties on any matter covered by this Agreement; and
 - (f) consider any other matter that may affect the operation of this Agreement as mandated by the Commission.
3. The Coordinators shall meet as often as required.
4. Each Party may request in writing at any time that a special meeting of the Coordinators be held. Such a meeting shall take place within 30 days of receipt of the request.

Annex 2001

Committees, Working Groups and Country Coordinators

1. Committees:

- (a) Committee on Trade in Goods (Article 220);
 - (i) Subcommittee on Agriculture (Article 221),
 - (ii) Subcommittee on Trade Facilitation (Article 420);
- (b) Committee on Sanitary and Phytosanitary Measures (Article 504);
- (c) Committee on Investment (Article 817);
- (d) Committee on Financial Services (Article 1114);
- (e) Committee on Procurement (Article 1414);
- (f) Committee on Trade Related Cooperation (Article 1802).

2. Working Groups:

- (a) Working Group in Cross-Border Trade in Services (Article 912).

3. Country Coordinators:

Country Coordinators on Technical Barriers to Trade (Article 609).

CHAPTER TWENTY-ONE

DISPUTE SETTLEMENT

Article 2101: Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 2102: Scope of Application

1. Except for any matter arising under Chapters Sixteen (Labour) and Seventeen (Environment) and as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that:

- (a) an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement;
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or
- (c) any benefit that the Party could reasonably have expected to accrue to it under any provision of:
 - (i) Chapters Two (National Treatment and Market Access for Goods), Three (Rules of Origin), Four (Origin Procedures and Trade Facilitation) Seven (Emergency Action and Trade Remedies) or Fourteen (Government Procurement), or
 - (ii) Chapter Nine (Cross-Border Trade in Services),

is being nullified or impaired as a result of the application of any measure of the other Party that is not inconsistent with this Agreement.

2. In any dispute in respect of subparagraph 1(c), a panel established under this Chapter shall take into consideration the jurisprudence interpreting Article XXIII:1(b) of the GATT 1994 and Article XXIII(3) of GATS. A Party may not invoke subparagraph 1(c)(ii) with respect to any measure subject to an exception under Article 2201 (Exceptions - General Exceptions) nor invoke paragraph 1(c) with respect to any measure subject to the exception under Article 2206 (Exceptions - Cultural Industries).

Article 2103: Choice of Forum

1. Subject to paragraph 2, disputes regarding any matter arising under both this Agreement and the WTO Agreement or any another free trade agreement to which both Parties are party, or any successor agreement thereto, may be settled in either forum at the discretion of the complaining Party.

2. In any dispute referred to in paragraph 1 where the Party complained against claims that its measures are subject to Article 103 (Initial Provisions and General Definitions - Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party, in respect of that matter, may have recourse to dispute settlement procedures only under this Agreement.

3. Where the complaining Party requests the establishment of a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the other, unless the Party complained against makes a request pursuant to paragraph 2.

Article 2104: Consultations

1. A Party may request in writing consultations with the other Party regarding any matter referred to in Article 2102.

2. The requesting Party shall deliver the request to the other Party, and shall set out the reasons for the request, including the identification of the measure or other matter at issue under Article 2102 and an indication of the legal basis for the complaint.

3. The other Party shall respond in writing and, subject to paragraph 4, the Parties shall, unless they otherwise agree, enter into consultations within 30 days of the date of receipt of the request by the other Party.
4. In cases of urgency, including those concerning perishable goods or otherwise involving goods or services that rapidly lose their trade value, such as certain seasonal goods or services, consultations shall commence within 15 days of the date of receipt of the request by the other Party.
5. The requesting Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.
6. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article. To this end, each Party shall:
 - (a) provide sufficient information to enable a full examination of the measure or other matter at issue; and
 - (b) treat any confidential or proprietary information received in the course of consultations on the same basis as the Party providing the information.
7. Consultations are confidential and without prejudice to the rights of the Parties in proceedings under this Chapter.
8. Consultations may be held in person or by any other means agreed to by the Parties.

Article 2105: Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation.
2. Such alternative methods of dispute resolution shall be conducted according to procedures agreed to by the Parties.

3. Proceedings established under this Article may begin at any time and be suspended or terminated at any time by either Party.
4. Proceedings involving good offices, conciliation or mediation are confidential and without prejudice to the rights of the Parties in any other proceedings.

Article 2106: Establishment of a Panel

1. Unless the Parties agree otherwise, and subject to paragraph 3, if a matter referred to in Article 2104 has not been resolved within:

- (a) 45 days after the date of receipt of the request for consultations; or
- (b) 25 days after the date of receipt of the request for consultations for matters referred to in paragraph 4 of Article 2104;

the complaining Party may refer the matter to a dispute settlement panel.

2. The complaining Party shall deliver the written request for panel establishment to the other Party, indicating the reason for the request, identifying the specific measures or other matters at issue and providing a brief summary of the legal basis of the complaint sufficient to present the problem clearly.
3. A dispute settlement panel may not be established to review a proposed measure.

Article 2107: Qualifications of Panelists

1. Each panelist shall:
 - (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or in the settlement of disputes arising under international trade agreements;

- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of and not be affiliated with or take instructions from, either Party;
- (d) not be a national of either Party, nor have his or her usual place of residence in the territory of either Party, nor be employed by either of them; and
- (e) comply with a Code of Conduct that the Commission shall approve at its first session following the entry into force of this Agreement.

2. Individuals who have been involved in any of the possible alternative dispute settlement proceedings referred to in Article 2105 may not serve as panelists in the same dispute.

Article 2108: Panel Selection

1. The panel shall comprise three panelists.
2. Each Party shall, within 30 days after the date of receipt of the request for panel establishment, appoint a panelist, propose up to four candidates to serve as the chair of the panel and notify the other Party in writing of the appointment and its proposed candidates to serve as the chair. If a Party fails to appoint a panelist within this time, the panelist shall be selected by lot within seven days from the candidates proposed for the chair.
3. The Parties shall, within 45 days after the date of receipt of the request for panel establishment, endeavour to agree on and appoint the chair from among the candidates proposed. If the Parties fail to agree on the chair within this time, within a further seven days the chair shall be selected by lot from the candidates proposed.

4. If a panelist appointed by a Party withdraws, is removed, or becomes unable to serve, a replacement shall be appointed by that Party within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 2. If the chair of the panel withdraws, is removed, or becomes unable to serve, the Parties shall agree on the appointment of a replacement within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 3. If there are no remaining candidates, each Party shall propose up to three additional candidates within a further 30 days and the panelist or chair shall be selected by lot within seven days thereafter from among the candidates proposed. In any case, any time period applicable to the proceeding shall be suspended beginning on the date the panelist or chair withdraws, is removed, or becomes unable to serve and ending on the date the replacement is selected.

Article 2109: Rules of Procedure

1. The Commission shall approve Model Rules of Procedure at its first session following the entry into force of this Agreement.
2. Any panel established under this Chapter shall follow the Model Rules of Procedure. A panel may establish, in consultation with the Parties, supplementary rules of procedure that do not conflict with the provisions of this Chapter.
3. Unless the Parties agree otherwise, the rules of procedure shall ensure:
 - (a) the opportunity for each Party to provide initial and rebuttal written submissions;
 - (b) the right to at least one hearing before the panel, which, subject to subparagraph (g), shall be open to the public;
 - (c) that the Parties have the right to present and receive written submissions and present and hear oral arguments in any of the Parties' official languages;

- (d) subject to subparagraph (g), that each Party's written submissions, written versions of its oral statements and written responses to requests or questions from the panel may be made public;
- (e) that the panel allow non-governmental persons in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submission and arguments of the Parties;
- (f) all submissions and comments made to the panel shall be available to the other Party; and
- (g) the protection of information designated by either Party for confidential treatment.

4. Unless the Parties otherwise agree within 15 days after the date of the establishment of the panel, the terms of reference shall be:

“To examine, objectively and in the light of the relevant provisions of the Agreement, the matter referred to in the request for the establishment of the panel and to make findings, determinations and recommendations as provided in Article 2110.”

5. If the complaining Party wishes to argue that a matter has nullified or impaired benefits, in the sense of subparagraph 1(c) of Article 2102, the terms of reference shall so indicate.

6. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of any measure determined:

- (a) to be inconsistent with the obligations of the Agreement; or
- (b) to have caused nullification or impairment in the sense of subparagraph 1(c) of Article 2102,

the terms of reference shall so indicate.

7. On the request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body it deems appropriate in accordance with the Model Rules of Procedure.
8. The panel may rule on its own jurisdiction.
9. The panel may delegate to the chair authority to make administrative and procedural decisions.
10. Findings, determinations and recommendations of the panel in the sense of Article 2110 shall be made by a majority of its members.
11. Panelists may furnish separate opinions on matters not unanimously agreed. No panel may disclose which panelists are associated with majority or minority opinions.
12. The Parties shall bear the expenses of a panel, including the remuneration of its members, in accordance with the Model Rules of Procedure.

Article 2110: Panel Reports

1. Unless the Parties otherwise agree, the panel shall issue reports in accordance with the provisions of this Chapter.
2. The panel shall base its reports on the provisions of this Agreement applied and interpreted in accordance with the rules of interpretation of public international law, the submissions and arguments of the Parties and on any information and technical advice put before it pursuant to the provisions of this Chapter.
3. The panel shall present to the Parties an initial report within 90 days after the last panelist is selected, unless the Parties agree on a different period of time. The report shall contain:
 - (a) findings of fact;
 - (b) determinations as to whether or not a Party has conformed with its obligations under this Agreement and any other finding or determination requested in the terms of reference; and

- (c) recommendations for resolution of the dispute, if requested by a Party.
- 4. Notwithstanding the provisions of Article 2109, the initial report of the panel shall be confidential.
- 5. A Party may submit written comments to the panel on its initial report, subject to time limits that may be set by the panel. After considering any such comments, the panel, on its own initiative or on the request of a Party, may:
 - (a) request the views of a Party;
 - (b) reconsider its report; or
 - (c) make any further examination that it considers appropriate.
- 6. The panel shall present to the Parties a final report within 30 days of presentation of the initial report.
- 7. Unless the Parties decide otherwise, the final report of the panel may be published by either Party 15 days after it is transmitted to the Parties, subject to subparagraph 3(g) of Article 2109.

Article 2111: Request for Clarification of the Report

- 1. Within 10 days after the presentation of the final report, a Party may submit a written request to the panel for clarification of any determinations or recommendations in the report that the Party considers ambiguous. The panel shall respond to the request within 10 days after the presentation of such request.
- 2. The submission of a request pursuant to paragraph 1 shall affect the time periods referred to in paragraph 3 of Article 2113 and paragraph 1 of Article 2114, unless the panel decides otherwise.

Article 2112: Suspension and Termination of Procedure

1. The Parties may agree to suspend the work of the panel at any time for a period not exceeding 12 months following the date of such agreement. If the work of the panel has been suspended for more than 12 months, the authority of the panel shall lapse, unless the Parties agree otherwise. If the authority of the panel lapses, and the Parties have not reached an agreement on the settlement of the dispute, nothing in this provision shall prevent a Party from requesting a new proceeding regarding the same matter.
2. The Parties may agree to terminate the procedures before a panel at any time by jointly notifying the chair of the panel on this respect.

Article 2113: Implementation of the Final Report

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which shall be in conformity with the determinations and recommendations, if any, of the panel, unless the Parties agree otherwise.
2. Wherever possible, the resolution shall be removal of any measure not conforming to this Agreement or removal of the nullification or impairment in the sense of subparagraph 1(c) of Article 2102.
3. If the Parties are unable to agree on a resolution within 30 days of presentation of the final report, or such other period as the Parties may agree, the Party complained against shall, if so requested by the complaining Party, enter into negotiations with a view to agreeing to compensation. Such compensation shall be provided until the Parties agree on a resolution to the dispute.

Article 2114: Non-Implementation – Suspension of Benefits

1. If no agreement on compensation has been reached pursuant to paragraph 3 of Article 2113 within 20 days after the date of the complaining Party's request, or if 30 days have passed following the presentation of the final report where compensation is not requested pursuant to paragraph 3 of Article 2113, or the Parties have agreed on the resolution of the dispute or on a compensation, and the complaining Party considers that the other Party has failed to observe the terms of the agreement, the complaining Party may suspend the application to the other Party of benefits of equivalent effect, following notice to the other Party and subject to paragraph 3. The notice shall specify the level of benefits that the complaining Party proposes to suspend.
2. In considering which benefits to suspend pursuant to paragraph 1:
 - (a) the complaining Party should first seek to suspend benefits or other obligations in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of subparagraph 1(c) of Article 2102; and
 - (b) the complaining Party that considers it is not practicable or effective to suspend benefits or other obligations in the same sector or sectors may suspend benefits in other sectors.
3. The suspension of benefits shall be temporary and be applied by the complaining Party only until the measure found to be inconsistent with the obligations of this Agreement or otherwise nullifying or impairing benefits in the sense of subparagraph 1(c) of Article 2102 has been brought into conformity with this Agreement, including as a result of the panel process described in Article 2115, or until such time as the Parties have otherwise reached agreement on a resolution of the dispute.

Article 2115: Review of Compliance and Suspension of Benefits

1. A Party may, by written notice to the other Party, request that a panel established under Article 2106 be reconvened to make a determination with respect to:
 - (a) whether the level of benefits suspended by a Party pursuant to paragraph 1 of Article 2114 is manifestly excessive; or
 - (b) any disagreement as to the existence or consistency with this Agreement of measures taken to comply with the determinations or recommendations of the previously established panel.¹
2. In the written notification, a Party shall identify the specific measures or matters at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.
3. The panel shall be reconvened upon receipt by the other Party of the written notice of the request. In the event that any original panelist is unable to serve on the panel the provisions of Article 2108 shall apply *mutatis mutandis*.
4. The provisions of Articles 2109 and 2110 apply *mutatis mutandis* to procedures adopted and reports issued by a panel reconvened under this Article, with the exception that the panel shall present an initial report within 60 days of being reconvened where the request concerns paragraph 1(a) only, and otherwise within 90 days.
5. A panel reconvened under this Article may include in its reports a recommendation, where appropriate, that any suspension of benefits be terminated or that the amount of benefits suspended be modified.

¹ In interpreting the terms “the existence or consistency with” and “measures taken to comply”, a compliance panel established under this paragraph shall take into account relevant jurisprudence under the WTO *Understanding on Rules and Procedures for the Settlement of Disputes*.

Article 2116: Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that either Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Party. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.
2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.
3. If the Commission is unable to agree, each Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 2117: Private Rights

No Party may provide for a right of action under its domestic law against another Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article 2118: Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.
2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of awards in such disputes.
3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958.

CHAPTER TWENTY-TWO

EXCEPTIONS

Article 2201: General Exceptions

1. For the purposes of Chapters Two to Seven and Fifteen (National Treatment and Market Access for Goods, Rules of Origin, Customs Procedures and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Emergency Action and Trade Remedies and Electronic Commerce), except to the extent that a provision of these chapters applies to services or investment, GATT 1994 Article XX or any equivalent provision of a successor agreement to which all Parties are party, is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in GATT 1994 Article XX (b) include environmental measures necessary to protect human, animal or plant life or health. The Parties further understand that GATT 1994 Article XX (g) applies to measures relating to the conservation of living and non-living exhaustible natural resources.
2. For the purposes of Chapters Nine, Twelve and Fifteen (Cross-Border Trade in Services, Telecommunications, Temporary Entry of Business Persons and Electronic Commerce), and of Chapters Two to Seven (National Treatment and Market Access for Goods, Rules of Origin, Customs Procedures and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, and Emergency Action and Trade Remedies) to the extent that a provision of these chapters applies to services, GATS XIV (a), (b) and (c) or any equivalent provision of a successor agreement to which all Parties are party, is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in GATS Article XIV (b) include environmental measures necessary to protect human, animal or plant life or health.

3. For the purposes of Chapter Eight (Investment), subject to the requirement that such measures are not applied in a manner that constitute arbitrary or unjustifiable discrimination between investment or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary:

- (a) to protect human, animal or plant life or health, which the Parties understand to include environmental measures necessary to protect human, animal or plant life and health;
- (b) to ensure compliance with laws and regulations that are not inconsistent with this Agreement; or
- (c) for the conservation of living or non-living exhaustible natural resources.

4. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures relating to nationals of the other Party aimed at preserving public order¹, subject to the requirement that such measures are not applied in a manner that constitutes arbitrary or unjustifiable discrimination. Without prejudice to the foregoing, the Parties understand that the rights and obligations under this Agreement, in particular the rights of investors under Chapter Eight (Investment), remain applicable to such measures.

Article 2202: National Security

Nothing in this Agreement shall be construed:

- (a) to require either Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

¹ As in Article XIV (a) of the GATS, this exception may be invoked only where genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- b) to prevent either Party from taking any actions that it considers necessary for the protection of its essential security interests:
 - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,
 - (ii) taken in time of war or other emergency in international relations, or
 - (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
- (c) to prevent either Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 2203: Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are consistent with paragraphs 2 through 4 and are:

- (a) consistent with paragraph 5 to the extent that they are imposed on transfers other than cross-border trade in financial services; or
- (b) consistent with paragraphs 6 and 7 to the extent they are imposed on cross-border trade in financial services.

General Rules

2. As soon as practicable after a Party imposes a measure under this Article, the Party shall:

- (a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF;
- (b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties; and
- (c) adopt or maintain economic policies consistent with such consultations.

3. A measure adopted or maintained under this Article shall:

- (a) avoid unnecessary damage to the commercial, economic or financial interests of the other Party;
- (b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;
- (c) be temporary and be phased out progressively as the balance of payments situation improves;
- (d) be consistent with subparagraph 2(c) and with the Articles of Agreement of the IMF; and
- (e) be applied on a national treatment or most-favoured-nation treatment basis, whichever is better.

4. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic program, provided that a Party may not impose a measure for the purpose of protecting a specific industry or sector unless the measure is consistent with subparagraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF.

Restrictions on Transfers Other than Cross-Border Trade in Financial Services

5. Restrictions imposed on transfers², other than on cross-border trade in financial services:

- (a) where imposed on payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the IMF;
- (b) where imposed on international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the IMF and be imposed only in conjunction with measures imposed on current international transactions under subparagraph 2(a);
- (c) where imposed on transfers covered by Article 810 (Investment – Transfers) and transfers related to trade in goods, may not substantially impede transfers from being made in a freely usable currency at a market rate of exchange; and
- (d) may not take the form of tariff surcharges, quotas, licenses or similar measures.

Restrictions on Cross-Border Trade in Financial Services

6. A Party imposing a restriction on cross-border trade in financial services:

- (a) may not impose more than one measure for each different type of transfer related to cross border trade in financial services, unless consistent with subparagraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF, and

². These transfers include payments related to trade in goods and services and investments.

- (b) shall promptly notify and consult with the other Party to assess the balance of payments situation of the Party and the measures it has adopted, taking into account among other elements:
 - (i) the nature and extent of the balance of payments difficulties of the Party,
 - (ii) the external economic and trading environment of the Party, and
 - (iii) alternative corrective measures that may be available.

7. The Parties entering into consultations pursuant to paragraph 6(b) shall:

- (a) consider if measures adopted under this Article comply with paragraph 3, in particular paragraph 3(c); and
- (b) accept all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance of payments, and shall base their conclusions on the assessment by the IMF of the balance of payments situation of the Party adopting the measures.

Article 2204: Taxation

1. Except as set out in this Article and paragraph 2 of Annex 1101.5, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention³. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Where similar provisions with respect to a taxation measure exist under this Agreement and under a tax convention, the procedural provisions of the tax convention alone shall be used, by the competent authorities identified in the tax convention, to resolve any issue related to such provisions arising under this Agreement.

³ For purposes of this article, tax convention shall be understood as a convention or other international arrangement on taxation to avoid double taxation.

4. Notwithstanding paragraphs 2 and 3:

- a) Article 202 (National Treatment and Market Access for Goods - National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and
- b) Article 210 (National Treatment and Market Access for Goods - Export Taxes) shall apply to taxation measures.

5. Subject to paragraphs 2 and 3:

- a) Article 902 (Cross-Border Trade in Services - National Treatment) and Article 1102 (Financial Services - National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and
- b) Articles 803 and 804 (Investment - National Treatment and Most-Favoured Nation Treatment), Articles 902 and 903 (Cross-Border Trade in Services - National Treatment and Most-Favoured Nation Treatment), and Articles 1102 and 1103 (Financial Services - National Treatment and Most-Favoured Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances and gifts.
- c) Subparagraphs (a) and (b) shall not:
 - i) impose any most-favoured nation obligation with respect to an advantage accorded by a Party pursuant to any tax convention,
 - ii) apply to a non-conforming provision of any existing taxation measure,

- iii) apply to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure,
- iv) apply to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles,
- v) apply to any new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, any measure that is taken by a Party in order to ensure compliance with the Party's taxation system or to prevent the avoidance or evasion of taxes) and that does not arbitrarily discriminate between persons, goods or services of the Parties, and
- vi) impose on a Party any obligation with respect to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

6. Subject to paragraphs 2 and 3, and without prejudice to the rights and obligations of the Parties under paragraph 4, Article 807 (Investment - Performance Requirements) shall apply to taxation measures.

7. Articles 811 and 822 (Investment - Expropriation and Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation. However,

- a) no investor may invoke Article 811 (Investment - Expropriation) as the basis for a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation;

- b) an investor that seeks to invoke Article 811 (Investment - Expropriation) with respect to a taxation measure must first refer to the designated authorities of the Parties at the time that it gives its notice of intent under subparagraph 1(c) of Article 822 (Investment - Submission of a Claim to Arbitration) the issue of whether that taxation measure is not an expropriation; and
- c) the designated authorities of the Parties shall agree to consider the issue. If the designated authorities fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 822 (Submission of a Claim to Arbitration).

8. In order to give effect to paragraphs 1 to 3:

- (a) Where in a dispute between Parties, an issue arises as to whether a measure of a Party is a taxation measure, either Party may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind any panel established under Article 2106 (Dispute Settlement - Establishment of a Panel) for the dispute. Where the designated authorities have been referred the issue and have not decided the issue within six months of the referral, the panel shall decide the issue;

- (b) Where in connection with a claim by an investor of a Party, an issue arises as to whether a measure is a taxation measure, the Party that has received notice of intention to submit a claim or against which an investor of a Party has submitted a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind any Tribunal formed pursuant to Section B of Chapter Eight (Investment - Settlement of Disputes Between an Investor and the Host Party) with jurisdiction over the claim. A Tribunal seized of a claim in which the issue arises may not proceed pending receipt of the decision of the designated authorities. Where the designated authorities have been referred the issue and have not decided the issue within six months of the referral, the Tribunal shall decide the issue;
- (c) Where in a dispute between Parties, an issue arises as to whether a tax convention prevails over this Agreement, a Party to the dispute may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, no procedures concerning that measure may be initiated under Article 2106 (Dispute Settlement - Establishment of a Panel). No procedures concerning the measure may be initiated during the period that the issue is under consideration by the designated authorities. Where the designated authorities have been referred the issue and have not decided the issue within six months of the referral, the panel shall decide the issue; and

- (d) Where prior to the submission of a claim by an investor of a Party, an issue arises as to whether a tax convention prevails over this Agreement, the Party that has received notice of intention to submit a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, no claim concerning that measure may be submitted under Article 822 (Investment - Submission of a Claim to Arbitration). No claim concerning the measure may be submitted during the period that the issue is under consideration by the designated authorities. An investor of a Party that fails to identify a taxation measure in its notice of intention to submit a claim may not submit a claim concerning that measure under Article 822 (Investment - Submission of a Claim to Arbitration). Where the designated authorities have been referred the issue and have not decided the issue within six months of the referral, the Tribunal shall decide the issue.

9. Where an investor invokes Article 811 (Investment - Expropriation) as the basis for a claim under Article 819 (Investment - Claim by an Investor of a Party on its Own Behalf) or 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise), any determination under paragraph 7 of whether a measure is an expropriation shall be made concurrently with any decision by the designated authorities under subparagraph 8(b) of the issue whether the measure is a taxation measure.

10. The designated authorities seized of an issue under paragraphs 7 or 8 may agree to modify the time period allowed for their consideration of the issue.

11. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would be contrary to the Party's law protecting information concerning the taxation affairs of a taxpayer.

Article 2205: Disclosure of Information

1. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement, or would be contrary to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the financial affairs and accounts of individual customers of financial institutions.

2. Nothing in this Agreement shall be construed to require, during the course of any dispute settlement procedure under this Agreement, a Party to furnish or allow access to information protected under its competition laws, or a competition authority of a Party to furnish or allow access to any other information that is privileged or otherwise protected from disclosure.

Article 2206: Cultural Industries

Nothing in this Agreement shall be construed to apply to measures adopted or maintained by either Party with respect to cultural industries except as specifically provided in Article 203 (National Treatment and Market Access for Goods - Tariff Elimination).

Article 2207: World Trade Organization Waivers

To the extent that there are overlapping rights and obligations in this Agreement and the WTO Agreement, the Parties agree that any measures adopted by a Party in conformity with a waiver decision adopted by the WTO pursuant to Article IX:3 of the WTO Agreement shall be deemed to be also in conformity with the present Agreement, except as otherwise agreed by the Parties. Such conforming measures of either Party may not give rise to legal actions by an investor of one Party against the other under Section B of Chapter Eight (Investment - Settlement of Disputes Between an Investor and the Host Party).

Article 2208: Definitions

For purposes of this Chapter:

competition authority means:

- (a) for Canada, the Commissioner of Competition or any successor, and,
- (b) for Colombia, the Superintendencia de Industria y Comercio, the Superintendencia Financiera, the Superintendencia de Servicios Públicos Domiciliarios, the Comisión Nacional de Televisión, the Aeronáutica Civil, or any successor agencies, when they address matters relating to the administration or enforcement of their competition laws.

cultural industries means persons engaged in any of the following activities:

- (a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;
- (b) the production, distribution, sale or exhibition of film or video recordings;
- (c) the production, distribution, sale or exhibition of audio or video music recordings;
- (d) the publication, distribution or sale of music in print or machine readable form; or
- (e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services;
- (f) production and presentation of performing arts;
- (g) production and exhibition of visual arts; or
- (h) design, production, distribution and sale of handicrafts.

designated authority means:

- (a) in the case of Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance, or any successor authority;
- (b) in the case of Colombia, the Viceministerio Técnico del Ministerio de Hacienda y Crédito Público or any successor authority.

information protected under its competition laws means

- (a) for Canada, information within the scope of section 29 of the Competition Act, R.S. 1985, c.34, or any successor provision; and
- (b) for Colombia, information protected in accordance with numeral 3 of Article 4 and Article 13 of Ley 155 de 1959, or any successor provisions.

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and **taxation measures** do not include:

- (a) a “customs duty” as defined in Article 222 (National Treatment and Market Access for Goods - Definitions);
- (b) the measures listed in exceptions (b) and (c) to that definition.

CHAPTER TWENTY-THREE

FINAL PROVISIONS

Article 2301: Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement constitute integral parts of this Agreement.

Article 2302: Amendments

1. Any amendment of this Agreement shall be done in writing.
2. When so agreed, such an amendment shall enter into force and constitute an integral part of this Agreement following an exchange of written notifications by the Parties certifying the completion of their respective necessary legal procedures and on such date or dates as may be agreed between the Parties.

Article 2303: Reservations

This Agreement shall not be subject to unilateral reservations.

Article 2304: Entry into Force

Each Party shall notify the other Party in writing of the completion of its domestic procedures required for the entry into force of this Agreement. This Agreement shall enter into force 60 days from the date of the second of these notifications.

Article 2305: Termination

This Agreement shall remain in force unless terminated by either Party on six months' written notice to the other Party.

Article 2306: Accession

Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Parties, and following approval in accordance with the legal requirements of each Party and acceding country.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at _____, this _____ day of _____ 2008,
in the English, Spanish and French languages, each version being equally authentic.

FOR CANADA

**FOR THE REPUBLIC OF
COLOMBIA**