

## Section A - Origin Procedures

### Article 401: Certificate of Origin

1. The Parties shall establish, no later than the date of entry into force of this Agreement, a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good. The Certificate of Origin may thereafter be modified as the Parties may decide.
2. Each Party shall permit the Certificate of Origin to be provided to its respective competent authority in English, French or Spanish. Nonetheless, each Party may require the importer to submit a translation of the Certificate of Origin into a language required by its domestic law.
3. Each Party shall:
  - (a) require an exporter in its territory to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment upon importation of the good into the territory of the other Party; and
  - (b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:
    - (i) its knowledge of whether the good qualifies as an originating good, based on information in the exporter's possession,

4. Each Party shall permit a Certificate of Origin to apply to:
  - (a) a single importation of one or more goods into the Party's territory; or
  - (b) multiple importations of identical goods into the Party's territory that occur within a specified period not exceeding 12 months.
5. Each Party shall ensure that the Certificate of Origin is accepted by its competent authority for 4 years after the date on which the Certificate of Origin was signed.

#### **Article 402: Obligations Regarding Importations**

1. Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:
  - (a) make a written declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good;
  - (b) have the Certificate of Origin in its possession at the time the declaration is made;

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

2. For the purpose of subparagraph 1(c), where the competent authority of the importing Party determines that the Certificate of Origin has not been completed in accordance with Article 401, the importing Party shall ensure that the importer is granted no less than five working days to provide the competent authority with a corrected Certificate of Origin.

3. Where an importer claims preferential tariff treatment for a good imported from the territory of the other Party:

- (a) the importing Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Chapter; and
- (b) the importing Party shall not subject the importer to penalties for making an incorrect declaration if the importer voluntarily makes a correction of the declaration pursuant to subparagraph 1(d).

4. Each Party, through its competent authority, may require an importer to demonstrate that a good for which the importer claims preferential tariff treatment was shipped in accordance with Article 314 (Rules of Origin - Transit and Transshipment) by providing:

- (a) bills of lading or waybills indicating the shipping route and all points of shipment and transshipment prior to the importation of the good; and

5. Where a good would have qualified as an originating good when it was imported into the territory of a Party, but no claim for preferential tariff treatment was made at the time of importation, the importing Party shall permit the importer, within no less than one year after the date of importation or for such longer period specified by the importing Party's law, to make a claim for preferential tariff treatment and apply for a refund of any excess duties paid as a result of the good not having been granted preferential tariff treatment, on presentation to the importing Party of:

- (a) a written declaration stating that the good was originating at the time of importation;
- (b) the Certificate of Origin; and
- (c) such other documentation relating to the importation of the good as the importing Party may require.

#### **Article 403: Exceptions**

A Party shall not require a Certificate of Origin for:

- (a) an importation of a good whose customs value does not exceed US\$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a statement from the exporter certifying that the good qualifies as an originating good; or

purpose or avoiding the certification requirements of Articles 401 and 402.

#### **Article 404: Obligations Regarding Exportations**

1. Each Party shall provide that:

- (a) on request of its competent authority, an exporter in its territory, or a producer in its territory that has provided a Certificate of Origin to that exporter in accordance with subparagraph 3(b)(iii) of Article 401, shall provide a copy of the Certificate of Origin to that competent authority;
- (b) where an exporter or a producer in its territory has provided a Certificate of Origin and has reason to believe that the Certificate of Origin contains or is based on incorrect information, the exporter or producer shall promptly notify in writing any change that could affect the accuracy or validity of the Certificate of Origin to every person to whom the exporter or producer has provided the Certificate of Origin; and
- (c) a false certification by an exporter or a producer in its territory that a good to be exported to the territory of the other Party is originating shall be subject to penalties equivalent to those that would apply to an importer in the territory of the exporting Party that makes a false statement or representation in connection with an importation, with appropriate modifications.

2. Each Party may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

## Article 405: Records

1. Each Party shall provide that an exporter or a producer in its territory that provides a Certificate of Origin in accordance with Article 401 shall maintain, for a minimum of 5 years after the date the certification was issued or for such longer period as specified in the Party's laws and regulations, all records necessary to demonstrate that the good for which the producer or exporter provided the Certificate of Origin was an originating good, including records concerning:

- (a) the purchase of, cost of, value of, shipping of and payment for, the exported good;
- (b) the purchase of, cost of, value of, and payment for all materials, including indirect materials, used in the production of the exported good; and
- (c) the production of the good in the form in which it was exported.

2. Each Party shall require an importer claiming preferential tariff treatment for a good imported into its territory to maintain documentation relating to the importation of the good, including a copy of the Certificate of Origin, for five years after the date of importation of the good or for such longer period as specified in the Party's laws and regulations.

3. Where a Party requires importers, exporters and producers in its territory to maintain documentation or records in relation to the origin of a good, in accordance with that Party's laws and regulations, it shall permit them to do so in any medium, provided that the documentation or records can be retrieved and printed.

origin of the good in accordance with the requirements of the Chapter; or

- (b) denies access to such records or documentation.

#### **Article 406: Origin Verifications**

1. For purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, a Party may, through its competent authority, conduct a verification by means of:

- (a) verification letters that request information from the exporter or producer of the good in the territory of the other Party;
- (b) written questionnaires to the exporter or producer of the good in the territory of the other Party;
- (c) visits to the premises of an exporter or producer in the territory of the other Party to review the records referred to in paragraph 1 of Article 405 and observe the facilities used in the production of the good; or
- (d) such other procedures as the Parties may agree.

2. For purposes of verifying the origin of a good, the importing Party may request the importer of the good to voluntarily obtain and supply written information voluntarily provided by the exporter or producer of the good in the territory of the other Party, provided that the importing Party shall not consider the failure or refusal of the importer to obtain and supply such information as a failure of the exporter or producer to supply the information or as a ground for denying preferential tariff treatment.

or producer a single extension of the deadline for no more than 30 days.

4. Where an exporter or producer fails to provide the information and documentation required by a verification letter or fails to return a duly completed questionnaire within the period or extension set out in paragraph 3, an importing Party may deny preferential tariff treatment to the good in question in accordance with the procedures set out in paragraphs 15 and 16.

5. Prior to conducting a verification visit pursuant to subparagraph 1(c), a Party shall, through its competent authority:

- (a) deliver a written notification of its intention to conduct the visit:
  - (i) to the exporter or producer whose premises are to be visited,
  - (ii) to the competent authority of the Party in whose territory the visit is to occur, and
  - (iii) if requested by the Party in whose territory the visit is to occur, to the embassy of that Party in the territory of the Party proposing to conduct the visit; and
- (b) obtain the written consent of the exporter or producer whose premises are to be visited.

6. The notification referred to in paragraph 5 shall include:

- (a) the name of the entity issuing the notification;
- (b) the name of the exporter or producer whose premises are to be visited;
- (c) the date and place of the proposed verification visit;



(f) the legal authority for the verification visit.

7. Where, within 30 days of receipt of a notification pursuant to paragraph 5, an exporter or producer has not given its written consent to a proposed verification visit, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

8. The Party whose competent authority receives notification pursuant to subparagraph 5(a)(ii) may, within 15 days of receipt of the notification, postpone the proposed verification visit for no more than 60 days from the date of such receipt or for such longer period as the Parties may decide.

9. Each Party shall allow, when the exporter or producer receives notification pursuant to subparagraph 5(a)(i), the exporter or producer to, on a single occasion, within 15 days of receipt of the notification, request the postponement of the proposed verification visit for no more than 60 days from the date of such receipt or for such longer period as agreed to by the notifying Party.

10. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraphs 8 or 9.

11. A Party shall permit an exporter or a producer whose good is the subject of a verification visit by the other Party to designate two observers to be present during the visit, provided that:

(a) the observers shall only participate as such; and

(b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

13. Where the producer of a good calculates the net cost of the good as set out in Article 303 (Rules of Origin - Value Test), the importing Party shall not verify, during the time period over which the net cost is being calculated, whether the good satisfies the value test.

14. The Party conducting a verification shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

15. Where a Party determines as a result of an origin verification that the good that is the subject of the verification does not qualify as an originating good, the Party shall include in its written determination under paragraph 14 a written notice of intent to deny preferential tariff treatment of the good.

16. A written notice of intent under paragraph 15 shall provide for no less than 30 days during which the exporter or producer of the good may provide, with regard to that determination, written comments or additional information that will be taken into account by the Party prior to completing the verification.

17. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter Three (Rules of Origin), in accordance with the Party's domestic law.

18. Where, in conducting a verification of origin of a good imported into its territory under this Article, a Party conducts a verification of the origin of a material that is used in the production of the good, the Party shall conduct the verification of the origin of the material in accordance with the procedures set out in paragraphs 1, 2, 3, 5, 6, 8, 9, 10, 11, 12, 13 and 20.

- (a) denial of access to its records;
- (b) failure to respond to a verification questionnaire or letter; or
- (c) refusal to consent, within 30 days of receipt of notification under paragraph 5, to a verification visit.

20. For the purposes of this Article, the importing Party shall ensure that all communication to the exporter or producer and to the Party of export be sent by any means that can produce a confirmation of receipt. The periods referred to in this article will begin from the date of such receipt.

#### **Article 407: Uniform Regulations**

1. The Parties may establish and implement, through their respective laws, regulations or administrative policies, Uniform Regulations regarding the interpretation, application and administration of this Chapter.
2. Each Party shall implement any modification of or addition to the Uniform Regulations within such period as the Parties may agree.

pursuing trade facilitation initiatives on a multilateral basis, the Parties agree to administer their import and export processes for goods traded under this Agreement on the basis that:

- (a) procedures be efficient to reduce costs for importers and exporters and simplified where appropriate to achieve such efficiencies;
- (b) procedures be based on any international trade instruments or standards to which the Parties have agreed;
- (c) entry procedures be transparent to ensure predictability for importers and exporters;
- (d) measures to facilitate trade also support mechanisms to protect persons through effective enforcement of and compliance with national requirements;
- (e) the personnel and procedures involved in those processes reflect standards of integrity;
- (f) the development of significant modifications to procedures of a Party include, in advance of implementation, consultations with the representatives of the trading community of that Party;

- (h) the Parties encourage cooperation, technical assistance and the exchange of information, including information on best practices, for the purpose of promoting the application of and compliance with the trade facilitation measures agreed upon under this Agreement.

#### **Article 409: Transparency**

1. In addition to the obligations set out in Section A of Chapter Nineteen (Transparency), each Party shall:

- (a) publish, including on the internet, its customs laws, customs regulations and general administrative procedures governing customs matters; and
- (b) to the extent possible, publish in advance, including on the internet, any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.

2. Each Party shall designate or maintain one or more contact points to address inquiries by interested persons concerning customs matters and make available on the internet information concerning the procedures for making such inquiries. A Party may provide that such contact points be contacted by any means, including electronic mail.

#### **Article 410: Release of Goods**

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.

- (b) that allow goods, and to the greatest extent possible controlled or regulated goods, to be released at the first point of arrival, without temporary transfer to warehouses or other facilities; and
- (c) that allow importers to withdraw goods from customs before all applicable customs duties, taxes and fees have been paid. Before releasing the goods, a Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of the customs duties, taxes or fees in connection with the importation of the goods.

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

4. Each Party shall adopt or maintain procedures under which goods in need of emergency clearance may be released 24 hours a day, seven days a week, including on holidays.

5. Each Party shall ensure that the requirements of its agencies related to the import and export of goods are coordinated to facilitate trade, regardless of whether these requirements are administered by an agency or on behalf of that agency by the customs administration. In furtherance of this objective, each Party shall harmonize the data requirements of its respective agencies with the objective of allowing importers and exporters to present all required data to one agency.

6. Each Party shall establish means of consultation with its trade and business communities to promote greater cooperation and the electronic exchange of information between the Party and those communities.

- (a) establish a means of providing for the electronic exchange of information between customs administrations and the trading community for the purpose of encouraging rapid release procedures;
- (b) use international standards for such electronic exchange of information;
- (c) develop electronic systems that are compatible as between the Parties' respective customs authorities to facilitate government-to-government exchange of international trade data;
- (d) develop a set of common data elements and processes in accordance with WCO Customs Data Model and related WCO recommendations and guidelines;
- (e) provide for advance electronic submission and processing of information and data before arrival of the goods to allow for release of goods on arrival;
- (f) employ electronic or automated systems for risk analysis and targeting;  
and
- (g) work towards developing or maintaining a fully interconnected and compatible system for a single window in order to facilitate trade between the Parties.

post-entry verification procedures on risk assessment principles, rather than examining each and every shipment offered for entry in a comprehensive manner for compliance with all import requirements. This shall not preclude a Party from conducting quality control and compliance reviews, which may require more extensive examinations.

2. The Parties shall cooperate to carry out an express and efficient release of goods. To this end, the Parties should take into account any certification made in the Party of export relating to the supply chain trade.

**Article 413: Paperless Trade Administration**

1. Each Party shall endeavour to make available by electronic means customs forms that are required for the import or export of goods.
2. Each Party shall, in accordance with its domestic law and procedures, permit the customs forms referred to in paragraph 1 to be submitted in electronic format.

**Article 414: Cooperation**

1. The Parties shall endeavour to cooperate in international fora, such as the WCO, to achieve mutually-recognized goals, such as those set out in the WCO Framework of Standards to Secure and Facilitate Global Trade.
2. The Parties recognize that technical cooperation between the Parties is fundamental to facilitating compliance with the obligations set forth in this Agreement and for reaching a better degree of trade facilitation.



- (a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement;
- (b) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade and the standardization of data elements;
- (c) to the extent practicable, in the harmonization of customs laboratories' methods and exchange of information and personnel between the customs laboratories;
- (d) to the extent practicable, in jointly organizing training programs on customs-related issues, such as simulated audit environment exercises, for the officials and users who participate directly in customs procedures;
- (e) in the development of effective mechanisms for communicating with the trade and business communities;
- (f) to the extent practicable, in developing verification standards and a framework to ensure that both Parties act consistently in determining that goods imported into their territories are originating in accordance with Chapter Three (Rules of Origin); and
- (g) to the extent practicable, to exchange information to assist each other in the tariff classification, valuation and determination of origin for preferential tariff treatment and country of origin marking purposes of imported and exported goods.

fraudulent claim for preferential tariff treatment pursuant to this Agreement has occurred, it may request the other Party to provide it with information pertaining to the offence, such as:

- (a) the name and address of persons and companies relevant to the investigation of the offence;
- (b) shipping information relevant to the offence;
- (c) customs clearance and accounting records or equivalent records for goods or materials imported into the territory of the Party;
- (d) information related to the sourcing of materials, including indirect materials used in the production of goods exported from its territory; and
- (e) information related to production capacity of an exporter or producer who has exported goods to the territory of the other Party.

7. Where a Party makes a request pursuant to paragraph 6, it shall:

- (a) make its request in writing;
- (b) specify the grounds for suspicion of a fraudulent claim for preferential tariff treatment that has been made pursuant to this Agreement and the purposes for which the information is sought; and
- (c) identify the requested information with sufficient detail for the other Party to locate and provide the information.

information to further an investigation related to a suspected fraudulent claim for preferential tariff treatment made pursuant to this Agreement.

10. Each Party shall, where possible on its own initiative, provide the other Party with information relating to fraudulent claims for preferential treatment made pursuant to this Agreement.

11. For the purposes of this Article, all documents provided by a Party shall be considered authentic.

12. Where a Party declines or postpones sharing information requested by the other Party pursuant to this Article, the Party shall provide reasons to the other Party.

13. The Parties shall explore negotiating policies and procedures on customs cooperation, such as a Customs Mutual Assistance Agreement.

**Article 415: Confidentiality**

1. Each Party shall maintain, in accordance with its domestic law, the confidentiality of the information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information. Where the Party receiving the information is required by its law to disclose information, that Party shall notify the Party or person who provided that information.

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

## Article 416: Express Shipments

Each Party shall adopt or maintain separate and expedited customs procedures for express shipments, while maintaining appropriate customs control and selection. These procedures shall:

- (a) where applicable, use the *WCO Guidelines for the Immediate Release of Consignments by Customs*;
- (b) to the extent possible or where applicable, provide for advance electronic submission and processing of information before physical arrival of express shipments to enable their release upon arrival;
- (c) to the extent possible, provide for clearance of certain goods with a minimum of documentation;
- (d) provide for release of express shipments within a period no greater than that required to ensure compliance with its legislation;
- (e) not be limited by a maximum weight; and
- (f) consistent with the Party's legislation, provide simplified documentary requirements for the entry of low value goods as determined by that Party.

- (a) at least one level of administrative review independent of either the official or office responsible for the decision under review; and
- (b) judicial or quasi-judicial review of the decision taken at the final level of administrative review.

#### **Article 418: Penalties**

Each Party shall adopt or maintain measures that allow for the imposition of criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.

#### **Article 419: Advance Rulings**

1. Each Party shall, through its competent authority, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of the other Party, or its duly authorized representative as provided by domestic law, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning:

- (a) tariff classification, applicable rate of customs duty, any tax applicable on importation or information about the application of quotas;
- (b) whether a good re-entered into the territory of a Party after being temporarily exported to the territory of the other Party for repair or alteration qualifies for duty-free treatment in accordance with Article 205 (National Treatment and Market Access for Goods - Goods Re-Entered After Repair or Alteration);

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<sup>1</sup> For Colombia, for purposes of this Article, “decisions” means an administrative act.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling and, where practical and useful, a sample of the good.

3. Each Party shall provide that its competent authority:

- (a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information to be provided within no less than 30 days, from the person requesting the ruling;
- (b) shall, after it has obtained all necessary information from the person requesting an advance ruling, issue the ruling within 120 days; and
- (c) shall provide to the person requesting the ruling a full explanation of the reasons for the ruling.

4. Where application to a Party's competent authority for an advance ruling involves an issue that is the subject of:

- (a) a verification of origin;
- (b) a review by or appeal to the competent authority; or
- (c) judicial or, where applicable, quasi-judicial review, in that Party's territory,

the competent authority may decline or postpone the issuance of the ruling.

6. Each Party shall provide consistent treatment with respect to the application for advance rulings, provided that the facts and circumstances are identical in all material respects.
7. The issuing Party may modify or revoke an advance ruling after the Party notifies the requester. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information.
8. Each Party shall provide that, where an importer claims that the preferential tariff treatment granted to an imported good should be governed by an advance ruling, the competent authority may evaluate whether the facts or circumstances of the importation are consistent with those on which the advance ruling was based.

#### **Article 420: Trade Facilitation Sub-Committee**

1. The Parties hereby establish a Sub-Committee on Trade Facilitation, which shall meet on request of the Committee on Trade in Goods or upon request of either Party. The functions of the Sub-Committee shall include:
  - (a) proposing to the Committee on Trade in Goods the adoption of customs practices and standards that facilitate commercial exchange between the Parties, in accordance with international standards;

- (ii) tariff classification and customs valuation matters related to determinations of origin, and
  - (iii) practices and procedures adopted by either Party that may affect the flow of trade between the Parties;
- (c) any other matter considered appropriate by the Committee on Trade in Goods.

2. If the Sub-Committee on Trade Facilitation does not reach a decision on tariff classification, the Parties shall refer the matter to the WCO for decision. The Parties shall, to the greatest extent possible, apply that decision.

#### **Article 421: Future Work Program**

1. With the objective of developing further steps to facilitate trade under this Agreement, the Parties shall, as appropriate, identify and submit for the consideration of the Commission new measures aimed at facilitating trade between the Parties, taking as a basis the objectives and principles set forth in Article 408.

2. Through the Parties' respective customs administrations and other border-related authorities as appropriate, the Parties shall review relevant international initiatives on trade facilitation, such as the Compendium of Trade Facilitation Recommendations, developed by the United Nations Conference on Trade and Development and the United Nations Economic Commission for Europe, to identify areas where further joint action would facilitate trade between the Parties and promote shared multilateral objectives.



**Article 423: Definitions**

For purposes of this Chapter:

**competent authority** means:

- (a) with respect to Canada, the Canada Border Services Agency or its successor notified in writing to the other Party;
  
- (b) with respect to Colombia, the *Ministerio de Comercio, Industria y Turismo*, or the *Dirección de Impuestos y Aduanas Nacionales*, or their successors notified in writing to the other Party;

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

**identical goods** means goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods under Chapter Three (Rules of Origin);

**pattern of conduct** means at least two instances of false or unsupported representations by an exporter or producer of a good resulting in at least two written determinations being sent to that exporter or producer;

- (a) indirect material;
- (b) material;
- (c) net cost of a good;
- (d) producer;
- (e) production; and
- (f) customs value.

## **Article 501: Objectives**

1. The objectives of this Chapter are to:
  - (a) protect human, animal and plant life or health in the territory of each Party;
  - (b) ensure that the Parties' sanitary and phytosanitary measures do not create unjustified barriers to trade; and
  - (c) enhance the implementation of the SPS Agreement.

## **Article 502: Scope and Coverage**

This Chapter applies to all sanitary and phytosanitary measures that may, directly or indirectly, affect trade between the Parties.

## **Article 503: Relation to other Agreements**

1. The Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. The Parties agree to use the WTO dispute settlement procedures for any formal disputes regarding sanitary and phytosanitary measures.

matters.

2. The Committee shall consider, *inter alia*:

- (a) the design, implementation and review of technical and institutional co-operation programs;
- (b) consultations related to the development and application of sanitary and phytosanitary measures;
- (c) as needed and taking into account guidelines developed or being developed by the WTO Committee on Sanitary and Phytosanitary Measures, the Committees of the Codex Alimentarius Commission, the International Plant Protection Convention (IPPC), and the World Organization for Animal Health (OIE), the development of guidelines for the practical implementation of:
  - (i) mutual recognition and equivalence agreements,
  - (ii) the recognition of pest-or disease-free areas,
  - (iii) risk assessment procedures, or
  - (iv) product control, inspection and approval procedures;
- (d) the review and assessment of progress of specific bilateral sanitary and phytosanitary market access issues;
- (e) the promotion of enhanced transparency of sanitary and phytosanitary measures;

Committee, the Committees of the Codex Alimentarius Commission, the IPPC, the OIE, and other international and regional fora on food safety, human, animal, and plant health; and

(h) the establishment of ad hoc technical working groups, as needed.<sup>1</sup>

3. Unless the Parties otherwise agree, the Committee shall meet no later than six months following the entry into force of this Agreement. The Committee shall establish its rules of procedures and work program at that meeting.

4. Following its initial meeting, the Committee shall meet as required, normally on an annual basis, and report on its activities and work program to the Commission as necessary. The Committee may meet in person, through teleconference, videoconference, or by any other means that ensures its effective operation and the fulfilment of its responsibilities.

5. Upon entry into force of this Agreement, each Party shall designate a Contact Point to coordinate the Committee's agenda and to facilitate communications on trade-related sanitary and phytosanitary matters.

#### **Article 505: Sanitary and Phytosanitary Issue Avoidance and Resolution**

1. The Parties agree to work expeditiously to resolve any specific sanitary and phytosanitary trade-related issues and, to this end, commit to carry out the necessary technical level discussions to resolve any such issue including an assessment of the scientific basis of the measure at issue.

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<sup>1</sup> As used in subparagraphs (b) and (g), "consultations" does not mean consultations pursuant to Article 2104 (Dispute Settlement - Consultations).

level discussions, a Party may refer the issue to the Committee. The Committee should consider any matter referred to it as expeditiously as possible.

4. Pursuant to paragraph 3, in the event that the Committee is unable to resolve an issue expeditiously, the Committee shall, upon request of a Party, report promptly to the Commission on the matter.

## **Article 601: Objectives**

The objectives of this Chapter are to:

- (a) improve the implementation of the TBT Agreement;
- (b) ensure that standards, technical regulations, and conformity assessment procedures, including those related to metrology, do not create unnecessary obstacles to trade; and
- (c) enhance joint cooperation between the Parties in order to resolve specific issues related to the development and application of standards, technical regulations and conformity assessment procedures, thereby facilitating the conduct of international trade in goods.

## **Article 602: Affirmation of the TBT Agreement**

Further to Article 102 (Initial Provision and General Definitions - Relation to Other Agreements), the Parties affirm with respect to each other their existing rights and obligations under the TBT Agreement.

## **Article 603: Scope**

1. The provisions of this Chapter apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures, including those related to metrology, of national government bodies, that may affect the trade in goods between the Parties.

- (b) sanitary and phytosanitary measures.

#### **Article 604: Joint Cooperation**

1. The Parties shall strengthen their joint cooperation in the areas of standards, technical regulations, conformity assessment and metrology with a view to facilitating the conduct of trade between the Parties.
2. Pursuant to paragraph 1, the Parties shall seek to identify, develop and promote bilateral initiatives regarding standards, technical regulations, conformity assessment procedures and metrology that are appropriate for particular issues or sectors, taking into consideration the Parties' experience in regional and multilateral arrangements or agreements. Such initiatives may include:
  - (a) regulatory or technical cooperation programs directed at reaching effective and full compliance with the obligations set forth in this Chapter and the TBT Agreement;
  - (b) initiatives to develop common views on good regulatory practices such as transparency, the use of equivalency and regulatory impact assessment; and
  - (c) the use of mechanisms to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party's territory.
3. A Party shall give positive consideration to any reasonable sector-specific proposal made by the other Party for further cooperation under this Chapter.



2. In determining whether an international standard, guide, or recommendation exists within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, each Party shall follow, to the greatest possible extent, the principles set out in *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995*, G/TBT/1/Rev.8, 23 May 2002, *Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement)*.

3. Each Party shall encourage its national standardizing bodies to cooperate with the relevant national standardizing bodies of the other Party in international standardizing activities. Such cooperation may take place through the Parties' activities in regional and international standardizing bodies of which they are both members.

### **Article 606: Technical Regulations**

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

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, at the request of the other Party, explain its decision. The Parties recognize that it may be necessary to develop common views, methods and procedures to facilitate the use of equivalency.

3. At the request of a Party that has an interest in developing a technical regulation similar to that of the other Party, the other Party shall provide, to the extent practicable, relevant information, studies, or other documents, except for confidential information, on which it has relied in the development of the technical regulation. The Parties recognize that it may be necessary to agree on the scope of a specific request.

- (a) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;
- (b) a Party may recognize the results of conformity assessment procedures conducted in the territory of the other Party;
- (c) a Party may agree with the other Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;
- (d) a Party may designate conformity assessment bodies located in the territory of the other Party;
- (e) a conformity assessment body located in the territory of a Party may enter into voluntary arrangements with a conformity assessment body located in the territory of the other Party to accept the results of each other's assessment procedures; and
- (f) the importing Party may rely on a supplier's declaration of conformity.

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision so that corrective action may be taken, when appropriate, by the requesting Party.

3. Where a Party declines a request from the other Party to enter into negotiations to conclude an agreement for recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall explain the reasons for its decision.

- (b) promoting the accreditation of conformity assessment bodies on the basis of relevant international standards and guides;
- (c) promoting the acceptance of results of conformity assessment bodies that have been recognized under a relevant multilateral agreement or an arrangement between their respective accreditation systems or bodies; and
- (d) encouraging their conformity assessment bodies, including accreditation bodies, to participate in cooperation arrangements that promote the acceptance of conformity assessment results.

#### **Article 608: Transparency**

1. Each Party shall ensure that transparency procedures regarding the development of technical regulations and conformity assessment procedures allow interested parties to participate at an early appropriate stage when amendments can still be introduced and comments taken into account, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Where a consultation process respecting the development of technical regulations and conformity assessment procedures is open to the public, each Party shall permit persons of the other Party to participate on terms no less favourable than those accorded to its own persons.
2. Each Party shall recommend to standardization bodies in its territory that they observe paragraph 1 with respect to their consultation processes for the development of standards and voluntary conformity assessment procedures.

- (a) its proposed technical regulations and conformity assessment procedures, and
- (b) its technical regulations and conformity assessment procedures adopted to address urgent problems of safety, health, environmental protection or national security arising or threatening to arise.

4. Each Party shall transmit electronically to the other Party's enquiry point its proposed technical regulations and conformity assessment procedures that are in accordance with the technical content of the relevant international standards and that may have an effect on trade.

5. The transmission of technical regulations and conformity assessment procedures made pursuant to paragraphs 3 and 4 shall include an electronic link to, or a copy of, the full text of the notified document.

6. Further to subparagraph 3(a) and paragraph 4, each Party shall allow a period of at least 60 days following transmission of proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments. A Party shall give positive consideration to a reasonable request for extending the comment period.

7. Each Party shall publish or otherwise make publicly available, in print or electronically, its responses or a summary of its responses, to significant comments it receives, no later than the date it publishes the final technical regulation or conformity assessment procedure.

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

10. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are published on official websites that are freely and publicly accessible.
11. Where a Party detains at a port of entry a good imported from the territory of the other Party on the ground that the good has failed to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention of the good.
12. Each Party shall implement this Article as soon as is practicable and under no circumstances later than two years from the date of entry into force of this Agreement.

#### **Article 609: Country Coordinators on Technical Barriers to Trade**

1. The Country Coordinators designated in Annex 609.1 shall work jointly to facilitate the implementation of this Chapter and the cooperation between the Parties on matters pertaining to this Chapter.
2. The Country Coordinators' functions include:
  - (a) monitoring the implementation and administration of this Chapter;
  - (b) promptly addressing any issue that a Party raises, under this Chapter or the TBT Agreement, related to the development, adoption or application of standards, technical regulations, or conformity assessment procedures;
  - (c) enhancing joint cooperation by the Parties in the development and improvement of standards, technical regulations, conformity assessment procedures and metrology;
  - (d) exchanging information on standards, technical regulations, and conformity assessment procedures;

recommendations for amendments to this Chapter;

- (g) reporting to the Commission on the implementation of this Chapter as appropriate;
- (h) establishing, if necessary to achieve the objectives of this Chapter, issue- or sector-specific *ad hoc* working groups;
- (i) taking any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade between the Parties.

3. Consultations under subparagraph 2(e) shall constitute consultations under Article 2104 (Dispute Settlement - Consultations) and shall be governed by the procedures set out in that Article.

4. The Country Coordinator of each Party shall:

- (a) be responsible for ensuring that the relevant institutions and persons in its territory participate, as appropriate, in the activities related to this Chapter and for coordinating such participation;
- (b) elaborate their own work rules and shall meet at least once a year unless the Parties otherwise agree; and
- (c) carry out their work through communication channels agreed to by the Parties, which may include electronic mail, videoconferencing or other means.

extend the period of time for answering by giving notice to the enquiring Party prior to the end of the 30 day period.

2. With respect to information exchanges referred to in paragraph 1, the Parties shall apply recommendations 3 and 4 of *Section IV (Procedure for information exchanges)* set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995*, G/TBT/1/Rev. 8, 23 May, 2002, issued by the TBT Committee.

**Article 611: Definitions**

For the purposes of this Chapter, the terms and definitions of Annex 1 of the WTO *Agreement on Technical Barriers to Trade* shall apply, and:

**national government body** means a central government body as defined in Annex 1 of the WTO *Agreement on Technical Barriers to Trade*;

**TBT Agreement** means the WTO *Agreement on Technical Barriers to Trade*; and

**TBT Committee** means the WTO Committee on Technical Barriers to Trade.

The Country Coordinators on Technical Barriers to Trade are:

- (a) in the case of Colombia, *Ministerio de Comercio, Industria y Turismo* or its successor; and
- (b) in the case of Canada, the Department of Foreign Affairs and International Trade, or its successor.



## Section A - Emergency Action

### Article 701: Article XIX of the GATT 1994 and the *Agreement on Safeguards*

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the *Agreement on Safeguards*, which shall exclusively govern global safeguard actions, including the resolution of any disputes in respect thereof.
2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the *Agreement on Safeguards*, except that a Party taking a global safeguard measure may exclude imports of an originating good of the other Party if the competent investigating authority of that Party concludes that such imports are not a substantial cause of serious injury or threat thereof.
3. A Party may not apply or maintain with respect to the same good at the same time:
  - (a) an emergency action; and
  - (b) a measure pursuant to Article XIX of the GATT 1994 and the *Agreement on Safeguards*.

### Article 702: Imposition of an Emergency Action

1. A Party may apply an emergency action described in paragraph 2:
  - (a) during the transition period only; and

or directly competitive good.

2. If the conditions set out in paragraph 1 and Articles 703 and 704 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment:

- (a) suspend the further reduction of any rate of duty provided for under this Agreement on the good; or
- (b) increase the rate of duty on the good to a level not to exceed the lesser of:
  - (i) the most-favoured-nation (MFN) applied tariff rate in effect at the time the emergency action is taken, and
  - (ii) the base tariff rate as provided in the schedule to Annex 203.

### **Article 703: Notification and Consultation**

1. A Party shall, in writing, promptly notify the other Party on and request consultations<sup>1</sup> in connection with:

- (a) initiating an emergency action proceeding;
- (b) making a finding of serious injury or threat thereof under the conditions set out in paragraph 1 of Article 702; and
- (c) applying an emergency action.

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<sup>1</sup>As used in this Article, “consultations” does not mean consultations pursuant to Article 2104 (Dispute Settlement - Consultations).

consultations in order to review the notification under paragraph 1 or any document issued in connection with the emergency action proceeding.

4. Any emergency action shall be initiated no later than one year after the date of institution of the proceeding.

**Article 704: Standards for an Emergency Action**

1. No Party may maintain an emergency action:

- (a) for a period exceeding three years; or
- (b) beyond the expiration of the transition period.

2. No Party may apply an emergency action against a good originating in the territory of the other Party more than once.

3. On the termination of any emergency action, the rate of duty shall be the rate that, according to Annex 203 for the staged elimination of the tariff, would have been in effect but for the action.

4. In order to facilitate adjustment in a situation where the expected duration of an emergency action is over one year, the Party applying a measure under Article 702 shall progressively liberalize it at regular intervals during the period of application.

having trade effects substantially equivalent to the emergency action taken under Article 702. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects and in any event, only while the emergency action under Article 702 is being applied.

#### **Article 705: Investigation Procedures and Transparency Requirements**

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all emergency action proceedings.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in an emergency action proceeding to a competent investigating authority. Such determinations shall be subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. Each Party shall provide its competent investigating authority with the necessary resources to enable it to fulfil its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in paragraph 4 and 5 of this Article.

4. A Party shall apply an emergency action only following an investigation by the Party's competent authority in accordance with Articles 3, 4.2(b) and 4.2(c) of the *Agreement on Safeguards*. To this end, Articles 3, 4.2(b) and 4.2(c) of the *Agreement on Safeguards* are incorporated into and made part of this Agreement, *mutatis mutandis*.



shall exclusively govern the application of antidumping and countervailing measures.

2. The WTO shall have exclusive jurisdiction in respect of the matters referred to in paragraph 1 and no provision of this Agreement, including the provisions of Chapter Twenty-One (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing measures.

**Article 707: Definitions**

For purposes of this Chapter:

*Agreement on Safeguards* means the WTO *Agreement on Safeguards*;

**competent investigating authority** means:

- (a) in the case of Canada, the Canadian International Trade Tribunal, or its successor; and
- (b) in the case of Colombia, the *Subdirección de Prácticas Comerciales* of the *Ministerio de Comercio, Industria y Turismo*, or its successor;

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

**emergency action** means any emergency action described in Article 702;

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

**transition period** means the ten year period beginning on the entry into force of this Agreement, except where the tariff elimination for the good against which the action is taken occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good.

## **Section A – Investment**

### **Article 801: Scope and Coverage**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of the other Party;
  - (b) covered investments; and
  - (c) with respect to Articles 807, 815 and 816, all investments in the territory of the Party.
2. For greater certainty, the provisions of this Chapter do not bind a Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.
3. Consistent with Articles 1305 (Competition Policy, Monopolies and State Enterprises – Designated Monopolies) and 1306 (Competition Policy, Monopolies and State Enterprises State Enterprises) the Parties confirm their understanding that nothing in this Chapter shall be construed to prevent a Party from designating a monopoly, or from maintaining or establishing a state enterprise.

### **Article 802: Relation to Other Chapters**

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



financial security, to the extent that such bond or financial security is a covered investment.

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Eleven (Financial Services).

4. Articles 904 (Cross-Border Trade in Services – Market Access) and 907 (Cross-Border Trade in Services – Domestic Regulation) are hereby incorporated into and made a part of this Chapter and apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment.<sup>1</sup>

**Article 803: National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

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It is understood by the Parties that any reservation taken by a Party pursuant to Article 906 (Cross-border Trade in Services – Non-Conforming Measures) against Article 904 (Cross-Border Trade in Services – Market Access) applies to measures of that Party covered under paragraph 4.

sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

3. For greater clarity, treatment “with respect to establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments” referred to in paragraphs 1 and 2 does not encompass dispute resolution mechanisms, such as those in Section B of this Chapter, that are provided for in international treaties or trade agreements.

4. For greater certainty, the treatment accorded by a Party under this Article means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

**Article 805: Minimum Standard of Treatment**

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.<sup>2</sup> The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

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<sup>2</sup> It is understood that the term “customary international law” refers to international custom, as evidence of a general practice accepted as law, in accordance with subparagraph 1(b) of Article 38 of the Statute of the International Court of Justice.

Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

**Article 806: Compensation for Losses**

1. Notwithstanding subparagraph 3(b) of Article 809, each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
2. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 803, but for subparagraph 3(b) of Article 809.

**Article 807: Performance Requirements**

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of the other Party or of a non-Party in its territory to:<sup>3</sup>
  - (a) export a given level or percentage of goods or services;
  - (b) achieve a given level or percentage of domestic content;
  - (c) purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

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For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 3 does not constitute a “commitment or undertaking” for the purposes of paragraph 1.

produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

- (f) transfer technology, a production process or other proprietary knowledge to a person in its territory;<sup>4</sup> or
- (g) supply exclusively from the territory of the Party the goods that such investment produces or the services it supplies to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with subparagraph 1(f). For greater certainty, Articles 803 and 804 apply to the measure.

3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of the other Party or of a non-Party, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

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<sup>4</sup> For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement or enforcing commitment or undertaking to train workers in its territory, provided that such training does not require the transfer of technology, a production process, or other proprietary knowledge to a person in its territory.

4. (a) Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of the other Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
- (b) Subparagraph 1(f) does not apply when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement<sup>5</sup> (c) For greater certainty, the Parties confirm their understanding that the exceptions in paragraph 3 of Article 2201 (Exceptions - General Exceptions) apply to performance requirements under this Article, including the exceptions concerning the protection of human animal or plant life or health, and the conservation of living or non-living exhaustible natural resources.

5. Paragraphs 1 and 3 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties.

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<sup>5</sup> The Parties recognize that a patent does not necessarily confer market power.

promotion and foreign aid programs,

- (b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b), do not apply to procurement by a Party or a state enterprise; and
- (c) subparagraphs 3(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

#### **Article 808: Senior Management and Boards of Directors**

1. A Party may not require that an enterprise of that Party that is a covered investment appoint to senior management positions individuals of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise that is a covered investment be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

#### **Article 809: Non-Conforming Measures**

1. Articles 803, 804, 807 and 808 do not apply to:
  - (a) any existing non-conforming measure that is maintained by
    - (i) a national government, as set out in its Schedule to Annex I, or

- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 803, 804, 807 and 808.

2. Articles 803, 804, 807 and 808 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

3. Articles 803, 804 and 808 do not apply to:

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

4. With respect to intellectual property rights, a Party may derogate from Articles 803, 804 and subparagraph 1(f) of Article 807 in a manner that is consistent with the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for both Parties, or waivers to the TRIPS Agreement made pursuant to Article IX of the WTO Agreement.

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For purposes of this Article, sub-national government does not include local government.

- (a) contributions to capital;
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
- (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
- (d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement;
- (e) payments made pursuant to Articles 806 and 811; and
- (f) payments arising under Section B.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, including futures, options or derivatives thereof;
- (c) criminal or penal offences;



4. Neither Party may require its investors to transfer, or penalize its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party, provided that the investor is seeking to make, is making or maintains an investment in the territory of the other Party.

5. Paragraph 4 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters in subparagraphs (a) through (e) of paragraph 3.

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict transfers under the WTO Agreement and as set out in paragraph 3.

### **Article 811: Expropriation**

1. Neither Party may nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”), except:

- (a) for a public purpose;<sup>7</sup>
- (b) in a non-discriminatory manner;
- (c) on prompt, adequate, and effective compensation in accordance with paragraphs 2 to 4; and
- (d) in accordance with due process of law.

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<sup>7</sup> The term “public purpose” is a concept of public international law and shall be interpreted in accordance with international law. Domestic law may express this or similar concepts using different terms, such as “social interest”, “public necessity” or “public use”.

including the declared tax value of tangible property, and other criteria.

3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of payment.

4. The investor affected shall have a right under the law of the expropriating Party, to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that Party in accordance with the principles set out in this Article.

5. This Article shall not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the WTO Agreement.

**Article 812: Special Formalities and Information Requirements**

1. Nothing in Article 803 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of covered investments, such as a requirement that agents of investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

**Article 813: Subrogation**

1. If a Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance against non-commercial risks it has entered into in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of the Party or agency thereof to any right or title held by the investor.
2. A Party or any agency thereof, which is subrogated to the rights of an investor in accordance with paragraph 1 of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. Such rights may be exercised by the Party or any agency thereof, or by the investor if the Party or any agency thereof so authorizes.
3. For greater certainty, paragraphs 1 and 2 shall be without prejudice to any right to subrogation that a Party or any agency thereof may have under applicable domestic law of the other Party.

**Article 814: Denial of Benefits**

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of that investor if investors of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

constituted or organized.

**Article 815: Health, Safety and Environmental Measures**

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party. The Parties shall make every attempt through consultations and exchange of information to address the matter.

**Article 816: Corporate Social Responsibility**

Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labour, the environment, human rights, community relations and anti-corruption. The Parties remind those enterprises of the importance of incorporating such corporate social responsibility standards in their internal policies.

2. The Committee shall provide a forum for the Parties to consult on issues related to this Chapter that are referred to it by a Party.

3. The Committee shall meet at such times as agreed by the Parties and should work to promote cooperation and facilitate joint initiatives, which may address issues such as:

- (a) capacity building, to the extent resources are available, in legal expertise on investor-State dispute settlement, investment negotiations and related advisory matters;
- (b) promoting corporate social responsibility; and
- (c) other investment-related issues identified as a priority by the Parties.

Without prejudice to the rights and obligations of the Parties under Chapter Twenty-One (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes.

**Article 819: Claim by an Investor of a Party on Its Own Behalf**

An investor of a Party may submit to arbitration under this Section a claim that the other Party has breached:

- (a) an obligation under Section A, other than an obligation under paragraph 4 of Article 802, Articles 812, 815 or 816; or
  
- (b) an obligation under subparagraph 3(a) of Article 1305 (Competition Policy, Monopolies and State Enterprises – Designated Monopolies) or paragraph 2 of Article 1306 (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party’s obligations under Section A, other than an obligation under paragraph 4 of Article 802, Articles 812, 815 or 816,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

arbitration under this Section a claim that the other Party has breached:

- (a) an obligation under Section A, other than an obligation under paragraph 4 of Article 802, Articles 812, 815 or 816; or
- (b) an obligation under subparagraph 3(a) of Article 1305 (Competition Policy, Monopolies and State Enterprises – Designated Monopolies) or paragraph 2 of Article 1306 (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under paragraph 4 of Article 802, Articles 812, 815 or 816,

and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 819 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 822, the claims should be heard together by a Tribunal established under Article 826, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

3. An investment may not make a claim under this Section.

Submit a Claim to Arbitration under subparagraph 2(c), unless the disputing parties otherwise agree. Consultations and negotiations may include the use of non-binding, third-party procedures. The place of consultations shall be the capital of the disputing Party, unless the disputing parties otherwise agree.

2. A disputing investor may submit a claim to arbitration under Article 819 or Article 820 only if:

- (a) the disputing investor and, where a claim is made under Article 820, the enterprise, consent to arbitration in accordance with the procedures set out in this Section;
- (b) at least six months have elapsed since the events giving rise to the claim;
- (c) the disputing investor has delivered to the disputing Party a written notice of its intent to submit a claim to arbitration (Notice of Intent) at least six months<sup>8</sup> prior to submitting the claim. The Notice of Intent shall specify:
  - (i) the name and address of the disputing investor and, where a claim is made under Article 820, the name and address of the enterprise,
  - (ii) the provisions of this Agreement alleged to have been breached and any other relevant provisions,

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<sup>8</sup> With a view to encouraging the review, confirmation or modification of administrative acts prior to such acts becoming final, the Parties recognize that disputing investors should make every effort to exhaust administrative recourse under Colombian law. A disputing investor that fails to exhaust administrative recourse, where applicable, shall submit its Notice of Intent nine months prior to submitting a claim to arbitration.



- (d) the disputing investor has delivered evidence establishing that it is an investor of the other Party with its Notice of Intent;
- (e) in the case of a claim submitted under Article 819:
  - (i) not more than 39 months have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the disputing investor has incurred loss or damage thereby, and
  - (ii) the disputing investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the disputing investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the applicable law of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's or the enterprise's rights and interests during the pendency of the arbitration; and

incurred loss or damage thereby, and

- (ii) both the disputing investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the applicable law of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's or the enterprise's rights and interests during the pendency of the arbitration.

3. A consent and waiver required by this Article shall be in the form provided in Annex 821, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration. Where a disputing Party has deprived a disputing investor of control of an enterprise, a waiver from the enterprise under subparagraphs 2(e)(ii) or 2(f)(ii) shall not be required.

4. An investor may submit a claim relating to taxation measures covered by this Chapter to arbitration under this Section only if the taxation authorities of the Parties fail to reach the joint determinations specified in Article 2204 (Exceptions – Taxation) within six months of being notified in accordance with those provisions.

5. An investor of a Party who is also a national of a non-Party may not initiate or continue a proceeding under this Article if, as a national of the non-Party, it submits or has submitted, directly or indirectly, an investment claim with respect to the same measure or series of measures under any agreement between the other Party and that non-Party.

- (a) the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;
- (b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention; or
- (c) the UNCITRAL Arbitration Rules.

2. The Commission shall have the power to make rules supplementing the applicable arbitral rules and may amend any supplemental rules of its own making.<sup>9</sup> Such rules shall be binding on a Tribunal established under this Section, and on individual arbitrators serving on such a Tribunal.

3. The arbitration rules applicable under paragraph 1, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Section and supplemented by any rules adopted by the Commission under paragraph 2.

4. A claim is submitted to arbitration under this Section when:

- (a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
- (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General; or

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<sup>9</sup> These supplemental rules shall further develop the existing arbitral rules referred to in paragraph 1.

- (c) the notice of arbitration under Article 3 of the UNCITRAL Arbitration Rules is received by the disputing Party.

5. Delivery of notice and other documents on a Party shall be made to:

For Canada:

Office of the Deputy Attorney General of Canada  
Justice Building  
284 Wellington Street  
Ottawa, Ontario  
K1A 0H8, CANADA

For Colombia:

*Dirección de Inversión Extranjera y Servicios*  
*Ministerio de Comercio, Industria y Turismo*  
Calle 28 # 13A – 15, Piso 3  
Bogotá D.C. – COLOMBIA

6. The disputing investor shall provide with the request for arbitration or the notice of arbitration referred in paragraph 4:

- (a) the name of the arbitrator that the disputing investor appoints; or
- (b) the disputing investor's written consent for the Secretary-General to appoint that arbitrator.

#### **Article 823: Consent to Arbitration**

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Section. For greater certainty, failure to meet any of the conditions precedent listed in Article 821 shall nullify that consent.

2. The consent given in paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirement of:

- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;
- (b) Article II of the New York Convention for an agreement in writing; and
- (c) Article I of the Inter-American Convention for an agreement.

#### **Article 824: Arbitrators**

1. Except in respect of a Tribunal established under Article 826, and unless the disputing parties agree otherwise, the Tribunal shall comprise three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a Tribunal, other than a Tribunal established under Article 826, has not been constituted within 90 days after the date that a claim is submitted to arbitration, either disputing party may ask the Secretary-General to appoint, in his or her discretion and, to the extent practicable, in consultation with the disputing parties, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall not be a national of either Party.

4. Arbitrators shall have expertise or experience in public international law, international investment or international trade rules, or the resolution of disputes arising under international trade or international investment agreements. Arbitrators shall be independent of, and not be affiliated with or take instructions from, either Party or the disputing investor.

5. If the disputing parties do not agree on the remuneration of the arbitrators before the constitution of the Tribunal, the prevailing ICSID rate for arbitrators shall apply.

#### **Article 825: Agreement to Appointment of Arbitrators**

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on paragraph 4 of Article 824 or on a ground other than citizenship or permanent residence:

- (a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a disputing investor referred to in Article 819 may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor agrees in writing to the appointment of each member of the Tribunal; and
- (c) a disputing investor referred to in Article 820 may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor and the enterprise agree in writing to the appointment of each member of the Tribunal.

#### **Article 826: Consolidation**

1. Where two or more claims have been submitted separately to arbitration under Article 822 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the terms of paragraphs 2 through 10 or with the agreement of all the disputing parties sought to be covered by the order.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

- (a) the names and addresses of all the disputing parties sought to be covered by the order;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a Tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a Tribunal established under this Article shall comprise three arbitrators:

- (a) one arbitrator appointed by agreement of the disputing investors;
- (b) one arbitrator appointed by the disputing Party; and
- (c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the disputing Party fails or the disputing investors fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the disputing Party fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the disputing investors fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.

6. Where a Tribunal established under this Article is satisfied that two or more claims submitted to arbitration under Article 822 have a question of law or fact in common, and arise out of the same events or circumstances, the Tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
- (c) instruct a Tribunal previously established under Articles 822 through 825 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:
  - (i) that Tribunal, at the request of any disputing investor not previously a disputing party before that Tribunal, shall be reconstituted with its original members, except that the arbitrator for the disputing investors shall be appointed pursuant to subparagraph 4(a) and paragraph 5, and
  - (ii) that Tribunal shall decide whether any prior hearing shall be repeated.

7. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 822 and that has not been named in a request made under paragraph 2 may make a written request to the Tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

- (a) the name and address of the disputing investor;
- (b) the nature of the order sought; and



- (c) the grounds on which the order is sought.

The disputing investor shall deliver a copy of its request to the Secretary-General.

8. A Tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A Tribunal established under Articles 822 through 825 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a Tribunal established under Articles 822 through 825 be stayed, unless the latter Tribunal has already adjourned its proceedings.

#### **Article 827: Documents to, and Participation of, the Other Party**

1. A disputing Party shall deliver to the other Party a copy of the notice of intent referred in subparagraph 2(c) of Article 821, the notice of arbitration referred in paragraph 4 of Article 822, and any other documents that are appended to such notices, no later than 30 days after the date that such documents have been delivered to the disputing Party. The other Party shall be entitled, at its cost, to receive from the disputing Party:

- (a) pleadings, memorials and briefs submitted to the Tribunal by a disputing party and any written submissions submitted pursuant to Article 826 and Article 831;
- (b) minutes or transcripts of hearings of the Tribunal, where available; and
- (c) orders, awards and decisions of the Tribunal.

The Party receiving such information shall treat the information as if it were a disputing Party.

2. The other Party shall have the right to attend any hearings held under this Section. Upon written notice to the disputing parties, the other Party may make oral and written submissions to a Tribunal on a question of interpretation of this Agreement.

#### **Article 828: Place of Arbitration**

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a country that is a party to the New York Convention, selected in accordance with:

- (a) the ICSID Additional Facility Rules, if the arbitration is under those Rules or the ICSID Convention; or
- (b) the UNCITRAL Arbitration Rules, if the arbitration is under those Rules.

#### **Article 829: Preliminary Objections**

1. The Tribunal shall have the power to rule on preliminary objections to jurisdiction and admissibility.
2. Any preliminary objection that the dispute should not be admitted or registered, is not within the jurisdiction of the Tribunal or, for other reasons, is not within the competence of the Tribunal, shall be made in accordance with the applicable arbitration rules as early as possible.

#### **Article 830: Public Access to Hearings and Documents**

1. Any Tribunal award under this Section shall be publicly available, subject to the deletion of confidential information. All other documents submitted to, or issued by, the Tribunal shall be publicly available, unless the disputing parties otherwise agree, subject to the deletion of confidential information. A disputing party providing information that it claims is confidential has the burden of designating it as confidential.

2. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of hearings *in camera* to the extent necessary to ensure the protection of confidential information. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties.

3. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.

4. The Parties may share with officials of their respective national and sub-national governments all relevant unredacted documents in the course of dispute settlement under this Agreement, but they shall ensure that those persons protect any confidential information in such documents.

5. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

6. Nothing in this Section requires a disputing Party to disclose, furnish or allow access to information that it may withhold in accordance with Article 2202 (Exceptions – National Security) or Article 2205 (Exceptions – Disclosure of Information).

#### **Article 831: Submissions by a Non-Disputing Party**

1. A Tribunal shall have the authority to consider and accept written submissions from a person or entity that is not a disputing party and that has a significant interest in the arbitration. The Tribunal shall ensure that any non-disputing party submission does not disrupt the proceedings and that neither disputing party is unduly burdened or unfairly prejudiced by it.

2. An application to the Tribunal for leave to file a non-disputing party submission, and the filing of a submission, if allowed by the Tribunal, shall be made in accordance with Annex 831.

#### **Article 832: Governing Law**

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.<sup>10</sup> An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section, and any award or other ruling under this Section shall be consistent with the interpretation.

2. Where a disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation set out in Annex I or Annex II, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission shall submit in writing its interpretation to the Tribunal. Further to paragraph 1, a Commission interpretation shall be binding on the Tribunal. If the Commission fails to submit its interpretation within 60 days of the delivery of the request, the Tribunal shall decide the issue.

#### **Article 833: Expert Reports**

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party, or on its own initiative unless the disputing parties disapprove, may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party, subject to such terms and conditions as the disputing parties may agree.

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<sup>10</sup> In accordance with international law, and where relevant and as appropriate, a Tribunal may take into consideration the law of the disputing Party. However, a Tribunal does not have jurisdiction to determine the legality of a measure, alleged to be in breach of this Agreement, under the domestic law of the disputing Party.

#### **Article 834: Interim Measures of Protection and Final Award**

1. A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 819 and Article 820. For purposes of this paragraph, an order includes a recommendation.

2. Where a Tribunal makes a final award against the disputing Party, the Tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest;
- (b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

The Tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

3. Subject to paragraph 2, where a claim is made under Article 820:

- (a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise;
- (b) an award of restitution of property shall provide that restitution be made to the enterprise; and
- (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

4. A Tribunal may not order a disputing Party to pay punitive damages.

### **Article 835: Finality and Enforcement of an Award**

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of that particular case.
2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
3. A disputing party may not seek enforcement of a final award until:
  - (a) in the case of a final award made under the ICSID Convention:
    - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or
    - (ii) revision or annulment proceedings have been completed; and
  - (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
    - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or
    - (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.
4. Each Party shall provide for the enforcement of an award in its territory.

5. If the disputing Party fails to abide by or comply with a final award, on delivery of a request by the Party of the disputing investor a panel shall be established under Article 2106 (Dispute Settlement – Establishment of a Panel). The requesting Party may seek in such proceedings:

- (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
- (b) a recommendation that the disputing Party abide by or comply with the final award.

6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

#### **Article 836: Receipts under Insurance or Guarantee Contracts**

In an arbitration under this Section, a disputing Party shall not assert as a defence, counterclaim, right of setoff or for any other reason that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

#### **Article 837: Exclusions**

The dispute settlement provisions of this Section and of Chapter Twenty-One (Dispute Settlement) shall not apply to the matters referred to in Annex 837.

## Section C - Definitions

### Article 838: Definitions

For purposes of this Chapter:

**administrative recourse** means administrative recourse under *Colombia's Código Contencioso Administrativo* or other similar provisions of Colombian administrative law, including *Ley 142 de 1994* and *Ley 1150 de 2007*;

**confidential information** means:

- (a) confidential business information; and
- (b) information that is privileged or otherwise protected from disclosure under the law of a Party;

**covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party existing on the date of entry into force of this Agreement, as well as investments made or acquired thereafter;

**disputing investor** means an investor that makes a claim under Section B;

**disputing Party** means a Party against which a claim is made under Section B;

**disputing party** means the disputing investor or the disputing Party;

**enterprise** means an enterprise as defined in Article 105 (Initial Provisions and General Definitions – Definitions of General Application), and a branch of any such entity;

**enterprise of a Party** means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

**ICSID** means the International Centre for Settlement of Investment Disputes established by the ICSID Convention;



**ICSID Additional Facility Rules** means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

**ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, done at Washington on 18 March 1965;

**intellectual property rights** means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs of integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights;

**Inter-American Convention** means the *Inter-American Convention on International Commercial Arbitration*, done at Panama on 30 January 1975;

**investment** means:

- (a) an enterprise;
- (b) shares, stocks and other forms of equity participation in an enterprise;
- (c) bonds, debentures and other debt instruments of an enterprise, but does not include a debt instrument of a state enterprise;
- (d) a loan to an enterprise, but does not include a loan to a state enterprise;
- (e) an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise;
- (f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;
- (g) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under
  - (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

- (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;
- (h) intellectual property rights; and
- (i) any other tangible or intangible property, moveable or immovable property, and related property rights acquired in the expectation or used for the purpose of economic benefit or other business purposes;

but **investment does not mean**,<sup>11</sup>

- (j) claims to money arising solely from
  - (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to a national or an enterprise in the territory of the other Party, or
  - (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or
- (k) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) to (i);

**investment of an investor of a Party** means an investment owned or controlled directly or indirectly by an investor of such Party;

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<sup>11</sup> For greater certainty, the following are not investments:

- (a) an order or judgment obtained in a judicial or administrative action;
- (b) a loan issued by one Party to the other Party; and
- (c) public debt operations of a Party or a state enterprise.

**investor of a Party** means a Party or state enterprise thereof, or an enterprise or national of a Party, that seeks to make,<sup>12</sup> is making or has made an investment. A natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship. A natural person who is a citizen of a Party and a permanent resident of the other Party shall be deemed to be exclusively a national of the Party of which he or she is a citizen.

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

**non-disputing Party** means the Party that is not a party to an investment dispute under Section B;

**Secretary-General** means the Secretary-General of ICSID;

**Statute of the International Court of Justice** means the *Statute of the International Court of Justice*, done at San Francisco on 26 June 1945;

**Tribunal** means an arbitration tribunal established under Articles 822 through 825 or Article 826;

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

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December, 1976.

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<sup>12</sup> For greater certainty, it is understood that an investor “seeks to make an investment” only when the investor has taken concrete steps necessary to make said investment, such as when the investor has duly filed an application for a permit or license required to make an investment and has obtained the financing providing it with the funds to set up the investment.

## **Section D: Dispute Settlement for Juridical Stability Contracts**

### **Article 839: Dispute Settlement for Juridical Stability Contracts**

1. Subject to paragraph 2, a Canadian investor may submit an arbitration claim concerning the interpretation of, or compliance by the Colombian Government with, a Juridical Stability Contract only in accordance with Colombian law and paragraph 3 of this Annex.
2. Paragraph 1 is without prejudice to the right of a Canadian investor to make a claim under Section B of this Chapter that a measure taken by Colombia in connection with a Juridical Stability Contract breaches an obligation under Section A of this Chapter.
3. In the case of an arbitration under Colombian law in accordance with paragraph 1:
  - (a) the Tribunal shall have its seat in Bogotá, Colombia;
  - (b) the Tribunal shall consist of three arbitrators, one appointed by each disputing party and the third, who shall be the President of the Tribunal, appointed by the two disputing party-appointed arbitrators;
  - (c) an arbitrator shall be independent of, and not affiliated with, or take instructions from, either Party or the disputing investor;
  - (d) an arbitrator may be of any nationality, except the President of the Tribunal who may not be a national of a Party;
  - (e) unless otherwise agreed by the disputing parties, the Tribunal shall conduct the arbitration in accordance with the UNCITRAL Arbitration Rules, except to the extent modified by this paragraph;

- (f) where a Tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration, the appointing authority under the UNCITRAL Arbitration Rules, on the request of either disputing party, shall appoint, in his or her discretion and, to the extent practicable, in consultation with the disputing parties, the arbitrator or arbitrators not yet appointed, consistent with the criteria set out in this provision; and
- (g) the Tribunal shall decide the issues in dispute in accordance with Colombian law and such rules of international law as may be applicable.

4. For the purpose of this Annex, “Juridical Stability Contract” means a contract between the Colombian Government and a Canadian investor in accordance with *Ley 963 de 2005*, *Decreto 2950 de 2005* and their amendments, where the Colombian Government undertakes the obligation to maintain over the length of the contract those provisions and binding administrative interpretations - including tax provisions - which are considered as decisive for the investment. Such contracts may cover laws, decrees, administrative acts of general application and binding administrative interpretations, subject to the limitations of *Ley 963 de 2005*, *Decreto 2950 de 2005* and their amendments.

## Annex 810

### Capital Controls

1. Colombia reserves the right to maintain or adopt measures to maintain or preserve the stability of its currency, in accordance with Colombian domestic legislation, including *Law 9 of 1991* and *Law 31 of 1992*. These measures shall not affect outward transfers or foreign direct investment transfers. For transparency purposes, Colombia maintains the following measure as of the date of entry into force of this Agreement:

- (a) pursuant to *Resolution 8 of 2000*, a non-interest bearing deposit requirement on foreign credits relating to an investment equivalent to zero per cent of the credit.

Deposits under this paragraph may be reimbursed before the due date subject to a financial penalty.

2. Colombia shall have the right to adopt any reasonable measure that is necessary to prevent the circumvention of measures taken pursuant to paragraph 1.

3. Any measure maintained or adopted by Colombia pursuant to paragraph 1 or 2 shall:

- (a) be temporary and be eliminated as soon as the circumstances leading to their imposition no longer exist;
- (b) be of general application;
- (c) be imposed and be applied in good faith;
- (d) be consistent with Articles 803 and 804; and
- (e) not impose, with respect to deposits of investors of Canada, any terms or conditions that are more restrictive than those applied at the time such deposits were made.

4. Upon adopting a measure pursuant to paragraph 1 or 2, Colombia shall provide to Canada the reasons for the adoption of the measure as well as any relevant information.

5. For the purposes of this Annex:

**foreign credit** means any type of foreign debt financing whatever its nature, form or maturity period; and

**foreign direct investment** means an investment of an investor of Canada, other than a foreign credit, made in order to:

- (a) establish a Colombian enterprise or increase the capital of an existing Colombian enterprise; or
- (b) acquire equity of an existing Colombian enterprise, but excludes such an investment that is of a purely financial character and is designed only to gain indirect access to the financial market of Colombia.

## **Annex 811**

### **Indirect Expropriation**

The Parties confirm their shared understanding that:

1. Paragraph 1 of Article 811 addresses two situations. The first situation is direct expropriation, where an investment is nationalized or otherwise directly expropriated as provided for under international law.
2. The second situation is indirect expropriation, which results from a measure or series of measures of a Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
  - (a) The determination of whether a measure or series of measures of a Party constitute an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
    - (i) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,
    - (ii) the extent to which the measure or series of measures interfere with distinct, reasonable investment-backed expectations, and
    - (iii) the character of the measure or series of measures;
  - (b) Except in rare circumstances, such as when a measure or series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted in good faith, non-discriminatory measures by a Party that are designed and applied to protect legitimate public welfare objectives, for example health, safety and the protection of the environment, do not constitute indirect expropriation.



## **Annex 821**

### **Standard Waiver and Consent In Accordance with Article 821 of this Agreement**

In the interest of facilitating the filing of waivers as required by Article 821 of this Agreement, and to facilitate the orderly conduct of the dispute resolution procedures set out in Section B, the following standard waiver forms shall be used, depending on the type of claim.

Claims filed under Article 819 must be accompanied by either Form 1, where the investor is a national of a Party, or Form 2, where the investor is a Party, a state enterprise thereof, or an enterprise of such Party.

Where the claim is based on loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, either Form 1 or 2 must be accompanied by Form 3.

Claims made under Article 820 must be accompanied by either Form 1, where the investor is a national of a Party, or Form 2, where the investor is a Party, a state enterprise thereof, or an enterprise of such Party, and Form 4.

### **Form 1**

**Consent and waiver for an investor bringing a claim under Article 819 or Article 820 (where the investor is a national of a Party) of the *Free Trade Agreement between Canada and the Republic of Colombia* done on (date of signature):**

I, (Name of investor), consent to arbitration in accordance with the procedures set out in this Agreement, and waive my right to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of (Name of disputing Party).

(To be signed and dated)

### **Form 2**

**Consent and waiver for an investor bringing a claim under Article 819 or Article 820 (where the investor is a Party, a state enterprise thereof, or an enterprise of such Party) of the *Free Trade Agreement between Canada and the Republic of Colombia* done on (date of signature):**

I, (Name of declarant), on behalf of (Name of investor), consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of (Name of investor) to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged to be a breach referred to in Article 819 or Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of (Name of disputing Party). I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of (Name of investor).

(To be signed and dated)

### **Form 3**

**Waiver of an enterprise that is the subject of a claim by an investor under Article 819 of the *Free Trade Agreement between Canada and the Republic of Colombia* done on (date of signature):**

I, (Name of declarant), waive the right of (Name of the enterprise) to initiate or continue before any administrative tribunal or court under the law of either Party to this Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged by (Name of investor) to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of (Name of disputing Party). I hereby solemnly declare that I am duly authorised to execute this waiver on behalf of (Name of the enterprise).

(To be signed and dated)

### **Form 4**

**Consent and waiver of an enterprise that is the subject of a claim by an investor under Article 820 of the *Free Trade Agreement between Canada and the Republic of Colombia* done on (date of signature):**

I, (Name of declarant), on behalf of (Name of enterprise), consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of (Name of enterprise) to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged by (Name of investor) to be a breach referred to in Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of (Name of disputing Party). I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of (Name of the enterprise).

(To be signed and dated)

## **Annex 822**

### **Submission of a Claim to Arbitration**

1. An investor of Canada may not submit to arbitration under Section B a claim that Colombia has breached an obligation under Section A either:

- (a) on its own behalf under paragraph 1 of Article 819; or
- (b) on behalf of an enterprise of Colombia that is a juridical person that the investor owns or controls directly or indirectly under paragraph 1 of Article 820,

if the investor or the enterprise, respectively, has alleged the breach of the obligation under Section A in proceedings before a court or administrative tribunal of Colombia, or to any other binding dispute settlement proceeding agreed by the disputing parties.

2. For greater certainty, if an investor of Canada elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of Colombia, or to any other binding dispute settlement proceeding agreed by the disputing parties, that election shall be definitive, and the investor may not thereafter submit the claim to arbitration under Section B.

3. The forms in Annex 821 that require an investor to waive the right to continue certain proceedings, do not refer to investors that have elected to submit a claim referred to in paragraph 1, and shall not be construed to allow such investors to circumvent paragraphs 1 and 2 and to bring a claim to arbitration under Section B.

4. Paragraphs 1 and 2 do not apply to an investor of Canada exhausting administrative recourse under Colombian law.

## **Annex 831**

### **Submissions by Non-Disputing Parties**

1. The application for leave to file a non-disputing party submission shall:
  - (a) be made in writing, dated and signed by the applicant, and include the applicant's address and other contact details;
  - (b) be no longer than five typed pages;
  - (c) describe the applicant, including, where relevant, its membership and legal status (e.g., company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);
  - (d) disclose whether the applicant has any affiliation, direct or indirect, with any disputing party;
  - (e) identify any government, person or organization that has provided any financial or other assistance in preparing the submission;
  - (f) demonstrate that the applicant has a significant interest and specify the nature of this interest in the arbitration;
  - (g) identify the specific issues of fact or law in the arbitration that the applicant will address in its written submission;
  - (h) explain why the Tribunal should accept the submission; and
  - (i) be made in a language of the arbitration.

2. The submission filed by a non-disputing party shall:
  - (a) be dated and signed by the person filing the submission;
  - (b) be concise, and in no case longer than 20 typed pages, including any appendices;
  - (c) set out a precise statement supporting the applicant's position on the issues; and
  - (d) only address matters within the scope of the dispute.

## **Annex 837**

### **Exclusions from Dispute Settlement**

1. A decision by Canada following a review under the *Investment Canada Act* (1985, c.28, 1<sup>st</sup> supp.), with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).
2. A decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or its investment, pursuant to Article 2202 (Exceptions –National Security) shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).
3. Article 815 shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).

## CHAPTER NINE

### CROSS-BORDER TRADE IN SERVICES

#### Article 901: Scope and Coverage

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

- (a) the production, distribution, marketing, sale and delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service;
- (d) the presence in its territory of a service supplier of the other Party; and
- (e) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. This Chapter does not apply to:

- (a) financial services as defined in Chapter Eleven (Financial Services);
- (b) air services<sup>1</sup> and related services in support of air services, other than:
  - (i) aircraft repair and maintenance services,
  - (ii) the selling and marketing of air transport services, and
  - (iii) computer reservation system (“CRS”) services;

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<sup>1</sup> For greater certainty, the term “air services” includes but is not limited to traffic rights.



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

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

#### **Article 902: National Treatment**

1. Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own service suppliers.
2. The treatment accorded by a Party under paragraph 1 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to service suppliers of the Party of which it forms a part.

#### **Article 903: Most-Favoured-Nation Treatment**

Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to service suppliers of a non-Party.

#### **Article 904: Market Access**

Neither Party may adopt or maintain measures that:

- (a) impose limitations on:
  - (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test,
  - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,
  - (iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test,<sup>2</sup> or
  - (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

#### **Article 905: Local Presence**

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

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<sup>2</sup> Subparagraph (a)(iii) of this Article does not cover measures of a Party that limit inputs for the supply of services.

## **Article 906: Non-Conforming Measures**

1. Articles 902, 903, 904 and 905 do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at the level of:
    - (i) national government, as set out by that Party in its Schedule to Annex I,
    - (ii) provincial or territorial government, as set out by that Party in its Schedule to Annex I, or
    - (iii) local government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 902, 903, 904 and 905.
2. Articles 902, 903, 904 and 905 do not apply to measures that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.

## **Article 907: Domestic Regulation**

1. The Parties note their mutual obligations related to domestic regulation in Article VI:4 of the GATS and affirm their commitment respecting the development of any necessary disciplines pursuant to Article VI:4. To the extent that any such disciplines are adopted by the WTO Members, the Parties shall, as appropriate, review them jointly with a view to determining whether this Article should be supplemented.

2. Where authorisation by a Party is required for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application that is considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

### **Article 908: Recognition<sup>3</sup>**

1. For the purposes of fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based on an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford, if the other Party is interested, adequate opportunity for the other Party to negotiate accession to such an agreement or arrangement or to negotiate a comparable agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognized.

3. No Party may accord recognition in a manner that would constitute a means of discrimination in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

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<sup>3</sup> Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 903 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

4. The Parties shall endeavour to ensure that the relevant professional bodies in their respective territories of certain professional service sectors:

- (a) exchange information on existing standards and criteria for the authorization, licensing and certification of professional service providers;
- (b) meet within 12 months to discuss the development of an agreement or arrangement referred to in paragraph 1;
- (c) be guided by Annex 908.4 for the negotiation of such agreements or arrangements; and
- (d) provide notification following the conclusion of an agreement or arrangement to the Commission.

The professional service sectors to which this paragraph applies shall be determined by the Working Group within six months following the entry into force of this Agreement.

5. On receipt of a notification referred to in subparagraph 4(d), the Commission shall review the agreement or arrangement within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall ensure that its competent authorities, where appropriate, implement the agreement or arrangement within a mutually agreed time.

#### **Article 909: Temporary Licensing**

1. Where the Parties agree, each Party shall encourage the relevant professional bodies in its territory to develop procedures for the temporary licensing of professional services suppliers of the other Party.

2. Each Party shall consider establishing a work program to provide for the temporary licensing in its territory of nationals of the other Party who are licensed as engineers in the territory of the other Party. To this end, each Party shall coordinate with the relevant professional bodies of its territory as appropriate.

3. In furtherance of paragraph 2, the Working Group established under Article 912 shall consult with the relevant professional bodies to obtain their recommendations on:

- (a) the development of procedures for the temporary licensing of engineers to permit them to practice as engineers in each jurisdiction in each of the Parties' territory;
- (b) the development of model procedures for adoption by the competent authorities throughout each of the Parties' territory to facilitate the temporary licensing of engineers;
- (c) the engineering specialties to which priority should be given in developing temporary licensing procedures; and
- (d) other matters relating to the temporary licensing of engineers identified by the Working Group.

4. The Working Group shall request that the relevant professional bodies make recommendations on the matters referred to in paragraph 3 within 18 months of the date of their first meeting.

5. The Working Group shall encourage the relevant professional bodies of each Party to meet at the earliest opportunity with a view to cooperating in the development of joint recommendations, within two years following the entry into force of this Agreement, on the matters referred to in paragraph 3. The Working Group shall request an annual report from the relevant professional bodies on the progress achieved in developing recommendations.

6. The Working Group shall promptly review a recommendation made pursuant to paragraphs 4 or 5 to ensure its consistency with this Agreement. If the recommendation is consistent with this Agreement, the Working Group shall encourage the competent authorities of each Party to implement the recommendation within one year.

## **Article 910: Transfers and Payments**

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.
2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.
3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws relating to:
  - (a) bankruptcy, insolvency, or the protection of the rights of creditors;
  - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
  - (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
  - (d) criminal or penal offences; or
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

## **Article 911: Denial of Benefits**

A Party may deny the benefits of this Chapter to a service supplier of the other Party:

- (a) where the Party establishes that the service is being provided by an enterprise owned or controlled by nationals of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise;
- (b) if the service supplier is an enterprise owned or controlled by persons of a non-Party and the enterprise has no substantial business activities in the territory of the other Party; or
- (c) if the service supplier is an enterprise owned or controlled by persons of the denying Party and the enterprise has no substantial business activities in the territory of the other Party.

## **Article 912: Working Group**

1. The Parties shall establish a Working Group at the entry into force of this Agreement comprising representatives of each Party. The representatives of each Party shall be:

For Canada:                      Director  
    Services Trade Policy Division  
    Department of Foreign Affairs and International Trade

For Colombia:                      *Director*  
    *Dirección de Inversión Extranjera y Servicios*  
    *Ministerio de Comercio, Industria y Turismo*

or their respective successors.



2. The Working Group's functions shall include:

- (a) meeting annually, or as otherwise agreed by the representatives, to review matters concerning the implementation and operation of this Chapter and consider issues of interest to the Parties affecting cross-border trade in services;
- (b) coordinating enquiries from one Party to the other for information regarding measures that pertain to or may affect cross-border trade in services;
- (c) considering the development of procedures to increase the transparency of measures described in Article 906;
- (d) reviewing the professional service sectors referred to in paragraph 4 of Article 908; and
- (e) monitoring the work and developments of the relevant professional bodies in each Party regarding mutual recognition agreements on authorization, licensing and certification of professional service providers, and providing reports annually or as otherwise agreed to the Commission on initiatives and progress undertaken by the Parties with respect to the implementation of Article 908.

**Article 913: Definitions**

For purposes of this Chapter:

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

**computer reservation system (“CRS”) services** mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

**cross-border trade in services** or **cross-border supply of services** means the supply of a service:

- (a) from the territory of one Party into the territory of the other Party;
- (b) in the territory of one Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by a covered investment, as defined in Article 838 (Investment – Definitions);

**enterprise** means an enterprise as defined in Article 106 (Initial Provisions and General Definitions – Definitions of General Application), and a branch of an enterprise;

**enterprise of a Party** means an enterprise organized or constituted under the laws of a Party and a branch located in the territory of a Party and carrying out business activities there;

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

- (a) national, provincial, territorial or local governments, and authorities; and
- (b) non-governmental bodies in the exercise of any regulatory, administrative or other governmental authority delegated by national, provincial, territorial or local governments and authorities;

**professional services** means services, the supply of which requires specialized post secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by trades-persons or vessel and aircraft crew members;

**selling and marketing of air transport services** mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions; and

**service supplier of a Party** means a person of that Party that seeks to supply or supplies a service<sup>4</sup>.

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<sup>4</sup> For purposes of Articles 902 and 903, the treatment that a Party is required to accord to a service provider of the other Party pursuant to these Articles shall extend to the relevant service(s) provided by that service provider. For purposes of Articles 902, 903 and 904 “services suppliers” has the same meaning as “services and service suppliers” as used in Articles XVII, II and XVI of the GATS, respectively.

## **Annex 908.4**

### **Guidelines for Mutual Recognition Agreements or Arrangements (“MRAs”) for the Professional Services Sector**

#### **Introduction**

This Annex provides practical guidance for governments, negotiating entities or other entities entering into mutual recognition negotiations for the professional services sector. The guidelines contained in it are non-binding but a Party shall consider them when negotiating MRAs. They do not modify or affect the rights and obligations of the Parties under this Agreement.

The objective of these guidelines is to make it easier for each Party to negotiate MRAs.

The examples listed under the various sections of these guidelines are provided by way of illustration. The listing of these examples is indicative and is intended neither to be exhaustive nor as an endorsement of the application of such measures by a Party.

## **A. Conduct of Negotiations and Relevant Obligations under this Agreement**

*With reference to the obligations under Article 908, this section sets out elements considered useful in the discharge of these obligations.*

### **1. Opening of Negotiations**

The information supplied by a Party to the Commission should include the following:

- (a) the intent to enter into negotiations;
- (b) the entities involved in discussions (e.g. governments, national organisations in the professional services sector or institutes which have authority - statutory or otherwise - to enter into such negotiations);
- (c) a contact point to obtain further information;
- (d) the subject of negotiations (specific activities covered); and
- (e) the expected time of the start of negotiations and an indicative date for the expression of interest by governments or entities.

### **2. Results**

On the conclusion of an MRA by a Party, the information it should supply to the Commission should include:

- (a) the content of the MRA (if it is new); or
- (b) significant modifications to the MRA (if one already exists).

### 3. Follow-Up Actions

Follow-up actions by the Parties supplying information under paragraph 1 should include ensuring that:

- (a) the conduct of negotiations and the MRA itself comply with the provisions of this Chapter, in particular Article 908; and
- (b) they adopt any measures and undertake any actions required to ensure the implementation and monitoring of the MRA in accordance with paragraph 5 of Article 908.

### 4. Single negotiating entity

Where no single negotiating entity exists, the Party is encouraged to establish one.

## **B. Form and Content of MRA**

*This section sets out various issues that may be addressed in any negotiations and, if so agreed, included in the final MRA. It outlines some basic ideas on what a Party might require of foreign professionals seeking to take advantage of an MRA.*

### **1. Participants**

The MRA should identify clearly:

- (a) the parties to the MRA (e.g. governments, national professional associations or institutes);
- (b) competent authorities or organisations other than the parties to the MRA, if any, and their position in relation to the MRA; and
- (c) the status and area of competence of each party to the MRA.

### **2. Purpose of MRA**

The purpose of the MRA should be clearly stated.

### **3. Scope of agreement**

The MRA should set out clearly:

- (a) the scope of the MRA in terms of the specific profession or titles and professional activities it covers in the territories of the parties;
- (b) who is entitled to use the professional titles concerned;
- (c) whether the recognition mechanism is based on qualifications, or on the licence obtained in the country of origin, or some other requirement; and
- (d) whether the MRA covers temporary and/or permanent access to the profession concerned.

#### 4. Mutual recognition provisions

The MRA should clearly specify the conditions to be met for recognition in the territories of each party and the level of equivalence agreed between the parties. The precise terms of the MRA will depend on the basis on which the MRA is founded, as discussed above. In case the requirements of the various sub-national jurisdictions of a party to an MRA are not identical, the difference should be clearly presented. The MRA should address the applicability of the recognition granted by one sub-national jurisdiction in the other sub-national jurisdictions of the party.

##### (a) Eligibility for recognition

##### (i) Qualifications

If the MRA is based on recognition of qualifications, then it should, where applicable, state:

- the minimum level of education required (e.g. entry requirements, length of study, subjects studied),
- the minimum level of experience required (e.g. location, length and conditions of practical training or supervised professional practice prior to licensing, framework of ethical and disciplinary standards),
- examinations passed (especially examinations of professional competence),
- the extent to which home country qualifications are recognised in the host country, and



- the qualifications which the parties are prepared to recognise, for instance, by listing particular diplomas or certificates issued by certain institutions, or by reference to particular minimum requirements to be certified by the authorities of the country of origin, including whether the possession of a certain level of qualification would allow recognition for some activities but not others.

(ii) Registration

If the MRA is based on recognition of the licensing or registration decision made by regulators in the country of origin, it should specify the mechanism by which eligibility for such recognition may be established.

(b) Additional requirements for recognition in the host country

- (i) Where it is considered necessary to provide for additional requirements, in order to ensure the quality of the service, the MRA should set out the conditions under which those requirements may apply, e.g. in case of shortcomings in relation to qualification requirements in the host country or knowledge of local law, practice, standards and regulations. This knowledge should be essential for practice in the host jurisdiction or required because there are differences in the scope of licensed practice, and
- (ii) Where additional requirements are deemed necessary, the MRA should set out in detail what they entail (e.g. examination, aptitude test, additional practice in the host country or in the country of origin, practical training, and language used for examination).

5. Mechanisms for implementation

The MRA should state:

- (a) the rules and procedures to be used to monitor and enforce the provisions of the MRA;
- (b) the mechanisms for dialogue and administrative co-operation between the parties; and
- (c) the means of arbitration for disputes under the MRA.

As a guide to the treatment of individual applicants, the MRA should include details on:

- (a) the focal point of contact in each party for information on all issues relevant to the application (e.g. name and address of competent authorities, licensing formalities, information on additional requirements which need to be met in the host country);
- (b) the length of procedures for the processing of applications by the relevant authorities of the host country;
- (c) the documentation required of applicants and the form in which it should be presented and any time limits for applications;
- (d) acceptance of documents and certificates issued in the country of origin in relation to qualifications and licensing;
- (e) the procedures of appeal to or review by the relevant authorities; and
- (f) any fees that might be reasonably required.

The MRA should also include the following commitments:

- (a) that requests about the measures will be promptly dealt with;
- (b) that adequate preparation time will be provided where necessary;
- (c) that any exams or tests will be arranged with reasonable frequency;
- (d) that fees to applicants seeking to take advantage of the terms of the MRA will be in proportion to the cost to the host country or organisation; and
- (e) to supply information on any assistance programmes in the host country for practical training, and any commitments of the host country in that context.

6. Licensing and other provisions in the host country

Where applicable:

- (a) the MRA should also set out the means by which, and the conditions under which, a licence is actually obtained following the establishment of eligibility, and what this licence entails (e.g. a licence and its content, membership of a professional body, use of professional and/or academic titles). Any licensing requirements other than qualifications should be explained, and should include such information as:
  - (i) an office address, an establishment requirement or a residency requirement,
  - (ii) a language requirement,
  - (iii) proof of good conduct and financial standing,

- (iv) professional indemnity insurance,
  - (v) compliance with host country's requirements for use of trade/firm names, and
  - (vi) compliance with host country ethics (e.g. independence and inappropriate behaviour);
- (b) in order to ensure the transparency of the system, the MRA should include the following details for each party:
- (i) the relevant laws and regulations to be applied (e.g. disciplinary action, financial responsibility, liability),
  - (ii) the principles of discipline and enforcement of professional standards, including disciplinary jurisdiction and any consequential limitations on the professionals,
  - (iii) the means for ongoing verification of competence,
  - (iv) the criteria for and procedures relating to revocation of the registration of professionals, and
  - (v) regulations relating to any nationality and residency requirements needed for the purposes of the MRA.

## 7. Revision of the MRA

If the MRA includes terms under which it can be reviewed or revoked, the details should be clearly stated.

## CHAPTER TEN

### TELECOMMUNICATIONS

#### Article 1001: Scope and Coverage

1. This Chapter applies to:
  - (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services;
  - (b) measures adopted or maintained by a Party relating to obligations of suppliers of public telecommunications transport networks and services;
  - (c) other measures adopted or maintained by a Party relating to public telecommunications transport networks and services; and
  - (d) measures adopted or maintained by a Party relating to the supply of value-added services.
2. This Chapter does not apply to any measure of a Party affecting the transmission by any means of telecommunications, including broadcast and cable distribution of radio or television programming intended for reception by the public.<sup>1</sup>
3. Nothing in this Chapter shall be construed to:
  - (a) require a Party to authorize an enterprise of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services, other than as specifically provided in this Agreement;

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<sup>1</sup> For greater certainty, this Chapter applies to measures affecting service suppliers that are engaged in the transmission of radio or television programming intended for reception by the public, but only in respect of the provision of public telecommunications transport networks or services by such service suppliers.

- (b) require a Party (or require a Party to compel any enterprise) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally; or
- (c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third persons.

**Article 1002: Access to and Use of Public Telecommunications Transport Networks and Services<sup>2</sup>**

1. Subject to a Party's right to restrict the supply of a service in accordance with its reservations in Annexes I and II, a Party shall ensure that enterprises of the other Party are accorded access to and use of public telecommunications transport networks and services, on reasonable and non-discriminatory terms and conditions.

2. Each Party shall ensure that such enterprises are permitted to:

- (a) purchase or lease and attach terminal or other equipment that interfaces with the public telecommunications transport networks;
- (b) connect private leased or owned circuits with public telecommunications transport networks and services of that Party or with circuits leased or owned by another enterprise;
- (c) perform switching, signalling, and processing and conversion functions;  
and
- (d) use operating protocols of their choice.

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<sup>2</sup> For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply public telecommunications transport networks or services within its territory.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications transport networks and services for the movement of information in its territory or across its borders, including for intra-enterprise communications of such enterprises, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article 2201 (Exceptions – General Exceptions), and notwithstanding paragraph 3, a Party may take such measures as are necessary to:

- (a) ensure the security and confidentiality of messages; or
- (b) to protect the non-public information of users of public telecommunications transport services,

subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
- (b) protect the technical integrity of public telecommunications transport networks and services; or
- (c) ensure that service suppliers of the other Party do not supply services limited by the Party's Reservations in Annexes I and II.

6. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 5, such conditions may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;
- (b) requirements, where necessary, for the inter-operability of such services;
- (c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (d) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; and
- (e) notification, registration, permits and licensing.

### **Article 1003: Conduct of Major Suppliers**

#### *Treatment by Major Suppliers*

1. Each Party shall ensure that major suppliers in its territory provide access to public telecommunications transport networks and services required by the other Party under terms and conditions set out in tariffs approved by the Party's regulatory body, or under market conditions where services are deregulated.

2. With respect to regulated tariffs, each Party shall guarantee reasonable tariffs, as well as tariffs that do not unjustly discriminate or give an undue or unreasonable preference toward any person.



### *Competitive Safeguards*

3.
  - (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
  - (b) The anti-competitive practices referred to in subparagraph (a) include:
    - (i) engaging in anti-competitive cross-subsidization;
    - (ii) using information obtained from competitors with anti-competitive results; and
    - (iii) not making available, to other service suppliers on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications transport services.

### *Regulated Wholesale Supply*

4. Each Party may require owners of facilities or suppliers of public telecommunications transport networks or services, which are classified under a Party's domestic regime as essential wholesale facilities or services, to make their facilities or public telecommunications transport networks or services, available on a regulated wholesale basis.

### *Resale*

5. Each Party may identify the public transport telecommunications services or the public telecommunications transport network elements available, and the classes of competitors eligible to access the services and elements, for provision on a mandatory resale basis. For the public telecommunications transport network and services available on mandatory resale basis, each Party shall ensure that suppliers do not unjustly discriminate or give an undue preference concerning the conditions or limitations on the resale of such services.

### *Unbundling*

6. Each Party may identify the public telecommunications transport services or the public telecommunications transport network elements available for provision on a mandatory unbundled basis, and the classes of competitors eligible to access the services and elements. For the public telecommunications transport network and services available on an unbundled basis, each Party shall ensure that suppliers do not unjustly discriminate or give an undue preference concerning the conditions or limitations on the unbundling of such services.

### *Interconnection*

#### 7. (a) General Terms and Conditions

Except as limited by a Party's reservations in Annexes I or II, each Party shall ensure that major suppliers in its territory provide interconnection:

- (i) at any technically feasible point in the network;
- (ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (iii) of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;
- (iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (v) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Options for Interconnecting with Major Suppliers

Options for suppliers of public telecommunications transport services of a Party to interconnect their facilities and equipment with those of major suppliers in the territory of the other Party may include:

- (i) a reference interconnection offer or another standard interconnection offer containing the terms, rates and conditions that the major suppliers offer generally to suppliers of public telecommunications transport services;
- (ii) the terms and conditions of an interconnection agreement in force;  
or
- (iii) negotiation of a new interconnection agreement.

**Article 1004: Independent Regulatory Bodies and Government-Owned Telecommunications Suppliers**

1. Each Party shall ensure that its regulatory body is separate from, and not accountable to, any supplier of public telecommunications transport networks or services and of value-added services.
2. Each Party shall ensure that its regulatory body's decisions and procedures are impartial with respect to all market participants.
3. No Party may accord more favourable treatment to a supplier of public telecommunications transport services than that accorded to a like supplier of the other Party, on the basis that the supplier receiving more favourable treatment is owned, wholly or in part, by the national government of the Party.

## **Article 1005: Universal Service**

Each Party has the right to define the kind of universal service obligations it wishes to adopt or maintain and shall administer those obligations in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligations are not more burdensome than necessary for the kind of universal service defined by the Party.

## **Article 1006: Licenses and Other Authorizations**

1. Where a Party requires a supplier of public telecommunications transport networks or services to have a license, concession, permit, registration or other type of authorization, the Party shall make publicly available:
  - (a) all applicable licensing or authorization criteria and procedures;
  - (b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration or other type of authorization; and
  - (c) the terms and conditions of all licenses or authorizations it has issued.
2. Where a Party requires a supplier of public telecommunications transport networks or services to have a license, concession, permit, registration or other type of authorization, the Party shall make the decision on the application for a license, concession, permit, registration or other type of authorization within a reasonable period of time and, in the event that it denies the application, shall on the request of the applicant, give the reasons for the denial.

#### **Article 1007: Allocation and Use of Scarce Resources**

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner.
2. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with Article 904 (Cross-Border Trade in Services - Market Access) as it applies to either Chapters Eight (Investment) or Nine (Cross-Border Trade in Services). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies which may limit the number of suppliers of public telecommunications transport services. Each Party also retains the right to allocate frequency bands, taking into account present and future needs and spectrum availability.
3. When making a spectrum allocation for non-government telecommunications services, each Party shall endeavour to rely on an open and transparent public comment process that considers the overall public interest. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial non-government telecommunications services.

#### **Article 1008: Enforcement**

Each Party shall maintain appropriate procedures and authority to enforce the Party's measures relating to the obligations set out in Articles 1002 and 1003. Such procedures shall include the ability to impose appropriate sanctions, which may include financial penalties, injunctive relief (on an interim basis), corrective orders or the modification, suspension or revocation of licenses or other authorizations.

## **Article 1009: Resolution of Domestic Telecommunication Disputes**

Further to Articles 1903 (Transparency - Administrative Proceedings) and 1904 (Transparency – Review and Appeal), each Party shall ensure that:

- (a) suppliers of public telecommunications transport networks or services or value-added services of the other Party have timely recourse to its regulatory body to resolve disputes regarding the Party's measures that relate to matters covered in Articles 1002 and 1003 and that, under the domestic law of the Party, are within the competence of the regulatory body;
- (b) suppliers of public telecommunications transport networks or services of the other Party requesting interconnection with a major supplier in the Party's territory have recourse within a reasonable and publicly specified period after the supplier requests interconnection, to its regulatory body to resolve disputes regarding the appropriate terms, conditions, and rates for interconnection with such major supplier; and
- (c) any supplier of public telecommunications transport networks or services or value-added services aggrieved or whose interests are adversely affected by a determination or decision of its regulatory body may petition that body for reconsideration of that determination or decision.<sup>3,4</sup>

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<sup>3</sup> With respect to Canada, paragraph 2 of Article 1009 does not apply to any determination or decision related to the establishment and application of spectrum and frequency management policies.

<sup>4</sup> With respect to Colombia, suppliers of public telecommunication transport networks or services or value-added services may not petition for reconsideration of rulings of general application, as defined in Article 1906 (Transparency - Definitions), unless provided for under its law and regulation.

- (d) Any supplier of public telecommunications transport networks or services or value-added services that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's regulatory body may obtain judicial, quasi-judicial or administrative review of such determination or decision by an independent authority. It is understood that this obligation does not add to the obligations set out in Article 1904 (Transparency - Review and Appeal).

#### **Article 1010: Transparency**

Further to Articles 1901 (Transparency - Publication) and 1902 (Transparency - Notification and Provision of Information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall:

- (a) ensure that:
  - (i) regulations, including the basis for such regulations, of its regulatory body and tariffs filed with its regulatory body are promptly published or otherwise made publicly available, and
  - (ii) interested persons are provided, to the extent possible, with adequate advance public notice of, and the opportunity to comment on, any regulation that its regulatory body proposes.
- (b) make publicly available:
  - (i) information on bodies responsible for preparing, amending, and adopting standards-related measures,
  - (ii) the current state of allocated frequency bands, but is not required to disclose detailed identification of frequencies allocated for specific government use,

- (iii) relevant procedures of its regulatory body, including those related to interconnection and licensing, and
- (iv) its measures relating to public telecommunications transport networks or services and value-added services, including measures relating to:
  - (A) tariffs and other terms and conditions of service,
  - (B) procedures relating to judicial and other adjudicatory proceedings,
  - (C) specifications of technical interfaces,
  - (D) conditions applying to attachment of terminal and other equipment to the public telecommunications transport network, and
  - (E) notification, permit, registration, or licensing requirements, if any;
- (c) require major suppliers in its territory to make publicly available their interconnection agreements, reference interconnection offers, or other standard interconnection offers containing the terms, and conditions, and where specified, rates, that the major suppliers offer generally to suppliers of public telecommunications transport services; and
- (d) ensure that interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications transport services in its territory are made publicly available.



### **Article 1011: Flexibility in the Choice of Technologies**

Neither Party may prevent suppliers of public telecommunications transport services from choosing the technologies that they use to supply their services subject to requirements necessary to satisfy legitimate public policy interests, including the use of protocols and interoperability.

### **Article 1012: Forbearance**

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may refrain from applying a regulation to a telecommunications service when:

- (a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;
- (b) enforcement of such regulation is not necessary for the protection of consumers; or
- (c) it is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications transport networks or services.

### **Article 1013: Conditions for the Provision of Value-Added Services**

1. No Party may require an enterprise providing value-added services to:
  - (a) provide those services to the public generally;
  - (b) cost justify its rates;
  - (c) file or register a tariff;

- (d) interconnect its networks with any particular customer or network; or
- (e) conform with any particular standard or technical regulation for interconnection other than for interconnections to a public telecommunications transport network.

2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anti-competitive under its domestic law, or to otherwise promote competition or safeguard the interests of consumers.

#### **Article 1014: Relation to Other Chapters**

In the event of any inconsistency between this Chapter and another Chapter in this Agreement, this Chapter shall prevail to the extent of the inconsistency.

#### **Article 1015: International Standards and Organizations**

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

#### **Article 1016: Definitions**

For the purpose of this Chapter:

**cost-oriented** means based on cost (including a reasonable profit), and may involve different cost methodologies for different facilities or services;

**enterprise** means an “enterprise” as defined in Article 106 (Initial Provisions and General Definitions - Definitions of General Application) and includes a branch of an enterprise;

**enterprise of the other Party** means an enterprise constituted or organized under the law of the other Party and owned or controlled by a person of the other Party;

**essential facilities** means facilities of a public telecommunications transport network or service that:

- (a) are exclusively or predominantly provided by a single or a limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to supply a service.

**interconnection** means linking suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

**intra-enterprise communications** means telecommunications through which an enterprise communicates within the enterprise or with or among its subsidiaries, branches and, subject to a Party’s domestic law, affiliates. Intra-enterprise communications exclude commercial or non-commercial services that are supplied to enterprises that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers;

**leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customers choosing;

**major supplier** means a supplier of public telecommunications transport services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications transport networks or services as a result of:

- (a) its control over essential facilities; or
- (b) the use of its position in the market.

**network element** means a facility or equipment used in supplying a public telecommunications transport service, including features, functions and capabilities provided by means of such facility or equipment;

**network termination points** means the final demarcation of the public telecommunications transport network at the user's premises;

**non-discriminatory** means treatment no less favourable than that accorded to any other user in like circumstances of like public telecommunications transport networks or services;

**private network** means a telecommunications network that is used exclusively for intra-enterprise communications;

**public telecommunications transport network** means the public telecommunications infrastructure that permits telecommunications between defined network termination points;

**public telecommunications transport service** means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission;

**reference interconnection offer** means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications transport services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

**regulatory body** means a body responsible for the regulation of telecommunications;

**service supplier** means a person of a Party that seeks to supply or supplies a service, including a supplier of telecommunications networks or services;

**supply of a service** means the provision of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party;
- (c) by a service supplier of a Party, through an enterprise in the territory of the other Party; or
- (d) by a national of a Party in the territory of the other Party.

**telecommunications** means the transmission and reception of signals by any electromagnetic means;

**user** means a service consumer or a service supplier;

**value-added services** means those services that add value to public telecommunications transport services through enhanced functionality by:

- (a) acting on the format, content, code, protocol or similar aspects of a customer's transmitted information;
- (b) providing a customer with additional, different or restructured information; or
- (c) involving customer interaction with stored information.

## **CHAPTER ELEVEN**

### **FINANCIAL SERVICES**

#### **Article 1101: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:
  - (a) financial institutions of the other Party;
  - (b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
  - (c) cross-border trade in financial services.
2. Chapters Eight (Investment) and Nine (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.
  - (a) Articles 810 (Investment - Transfers), 811 (Investment - Expropriation), 812 (Investment-Special Formalities and Information Requirements), 814 (Investment - Denial of Benefits), 815 (Investment - Health, Safety and Environmental Measures) and 911 (Cross-Border Trade in Services - Denial of Benefits) are hereby incorporated into and made a part of this Chapter.
  - (b) Section B of Chapter Eight (Investment - Settlement Of Disputes Between An Investor And The Host Party) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 810 (Investment - Transfers), 811 (Investment - Expropriation), or 814 (Investment - Denial of Benefits), as incorporated into this Chapter.
  - (c) Article 910 (Cross-Border Trade in Services - Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 1105.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:

- (a) activities or services forming part of a public retirement plan or statutory system of social security; or
- (b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.

4. Annex 1101.3(a) sets out the Parties' understanding with respect to certain activities or services described in subparagraph 3(a).

5. Annex 1101.5 sets out, for greater certainty, certain understandings between the Parties regarding financial services measures.

#### **Article 1102: National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favourable than that it accords to its own financial institutions and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in paragraph 1 of Article 1105, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.



4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors in financial institutions, financial institutions, investments of investors in financial institutions and financial service suppliers, of the Party of which it forms a part.

5. Differences in market share, profitability or size do not in themselves establish a breach of the obligations under this Article.

#### **Article 1103: Most-Favoured-Nation Treatment**

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors of the other Party in financial institutions and cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

- (a) accorded unilaterally;
- (b) achieved through harmonization or other means; or
- (c) based upon an agreement or arrangement with the non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under subparagraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement or to negotiate a comparable agreement or arrangement.

#### **Article 1104: Right of Establishment**

1. A Party shall permit an investor of the other Party that does not own or control a financial institution in the Party's territory to establish a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment, without the imposition of numerical restrictions or requirements to take a specific juridical form. The obligation not to impose requirements to take a specific juridical form does not prevent a Party from imposing conditions or requirements in connection with the establishment of a particular type of entity chosen by an investor of the other Party.

2. A Party shall permit an investor of the other Party that owns or controls a financial institution in the Party's territory to establish such additional financial institutions as may be necessary for the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions. Subject to Article 1102, a Party may impose terms and conditions on the establishment of additional financial institutions and determine the institutional and juridical form that shall be used for the supply of specified financial services or the carrying out of specified activities.

3. The right of establishment under paragraphs 1 and 2 shall include the acquisition of existing entities.

4. Subject to Article 1102, a Party may, in exceptional circumstances, prohibit a particular financial service or activity. Such a prohibition may not apply to all financial services or to a complete financial services sub-sector such as banking.

5. For the purpose of this Article, without prejudice to other forms of prudential regulation, a Party may require that an investor of the other Party be engaged in the business of providing financial services in the territory of that Party.

6. For the purpose of this Article, “numerical restrictions” means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory of a Party, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.

#### **Article 1105: Cross-Border Trade**

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 1105.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this Article so long as such definitions are not inconsistent with the obligation of paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

#### **Article 1106: New Financial Services**

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt new laws or modify existing laws.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party would permit the new financial service and authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

3. Nothing in this Article prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is not supplied within either Party's territory. Such application shall be subject to the domestic law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of this Article.

#### **Article 1107: Treatment of Certain Information**

Nothing in this Chapter requires a Party to furnish or allow access to:

- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
- (b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

#### **Article 1108: Senior Management and Boards of Directors**

1. Neither Party may require financial institutions of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. Neither Party may require that more than a simple majority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, natural persons residing in the territory of the Party, or a combination thereof.

## **Article 1109: Non-Conforming Measures**

1. Articles 1102, 1103, 1104 and Article 1108 do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at the level of the:
    - (i) national government, as set out in Section I of its Schedule to Annex III, or
    - (ii) provincial, territorial or local government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1102, 1103, 1104 and Article 1108.
2. Article 1105 does not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at the level of the:
    - (i) national government, as set out in Section I of its Schedule to Annex III, or
    - (ii) provincial, territorial or local government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed upon the entry into force of this Agreement, with Article 1105.

3. Articles 1102, 1103, 1104, 1105 and 1108 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section II of its Schedule to Annex III.

4. Section III of each Party's Schedule to Annex III sets out certain specific commitments by that Party.

5. Where a Party has set out a reservation to Article 803 (Investment - National Treatment), 804 (Investment - Most Favoured Nation Treatment), 902 (Cross-Border Trade in Services - National Treatment) or 903 (Cross-Border Trade in Services - Most Favoured Nation Treatment) in its Schedule to Annex I or II, the reservation also constitutes a reservation to Article 1102 or 1103, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.

#### **Article 1110: Exceptions**

1. Nothing in this Chapter or Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services), Chapter Ten (Telecommunications), Chapter Twelve (Temporary Entry of Business Persons), Chapter Thirteen (Competition Policy, Monopolies and State Enterprises), or Chapter Fifteen (Electronic Commerce) shall be construed to prevent a Party from adopting or maintaining measures for prudential reasons,<sup>1</sup> including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's obligations under such provisions.

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<sup>1</sup> The term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

2. Nothing in this Chapter or Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services), Chapter Ten (Telecommunications), Chapter Twelve (Temporary Entry of Business Persons), Chapter Thirteen (Competition Policy, Monopolies and State Enterprises), or Chapter Fifteen (Electronic Commerce) applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 807 (Investment - Performance Requirements) with respect to measures covered by Chapter Eight (Investment), Article 810 (Investment - Transfers) or Article 910 (Cross- Border Trade in Services - Transfers and Payments).

3. Notwithstanding Article 810 (Investment - Transfers) and Article 910 (Cross Border Trade in Services - Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services, as covered by this Chapter.

## **Article 1111: Transparency**

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.
  2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.
  3. Each Party shall, to the extent practicable:
    - (a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt;
    - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations; and
    - (c) allow reasonable time between publication of final regulations and their effective date,
- and these requirements shall replace those set out in Article 1901 (Transparency - publication).
4. Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.
  5. On the request of an applicant, a regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.



6. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

7. Each Party shall maintain or establish appropriate mechanisms that will, as soon as practicable, respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

#### **Article 1112: Self-Regulatory Organizations**

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in or have access to a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 1102, 1103, 1104, 1111 and other relevant Articles of this Chapter by such self-regulatory organization.

#### **Article 1113: Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities as well as access to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

#### **Article 1114: Financial Services Committee**

1. The Parties hereby establish the Financial Services Committee (the “Committee”). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 1114.
2. In accordance with Article 2001 (Administration of the Agreement – The Joint Commission), the Committee shall:
  - (a) supervise the implementation of this Chapter and its further elaboration;
  - (b) consider issues regarding financial services that are referred to it by a Party; and
  - (c) participate in the dispute settlement procedures in accordance with Article 1117.
3. The Committee shall meet annually, or as it otherwise agrees, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

#### **Article 1115: Consultations**

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.
2. Officials from the authorities specified in Annex 1114 shall participate in the consultations under this Article.
3. A Party may request that regulatory authorities of the other Party participate in consultations under this Article regarding that other Party's measures of general application which may affect the operations of financial institutions or cross-border financial service suppliers in the requesting Party's territory.

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

5. Where a Party requires information for supervisory purposes concerning a financial institution in the other Party's territory or a cross-border financial service supplier in the other Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

6. Nothing in this Article shall be construed to require a Party to derogate from its domestic law regarding the sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

#### **Article 1116: Dispute Settlement**

1. Chapter Twenty-One (Dispute Settlement), as modified by this Article, applies to the settlement of disputes arising under this Chapter.

2. Consultations held pursuant to Article 1115 with respect to a measure or matter constitute consultations under Article 2104 (Dispute Settlement - Consultations), unless the Parties otherwise agree. If the matter has not been resolved within 45 days after commencing consultations under Article 1115 or 90 days after the delivery of the request for consultations pursuant to Article 1115, whichever is earlier, the complaining Party may request in writing the establishment of a panel.

3. The following procedures shall replace Article 2108 (Dispute Settlement - Panel Selection):

- (a) the panel shall comprise three panelists;
- (b) each Party shall, within 30 days of the receipt of the request for the establishment of the panel, appoint a panelist who may be a national of that Party and notify the other Party in writing of the appointment. If a Party fails to appoint a panelist within 30 days, the other Party may request the Appointing Authority to appoint, in its discretion, and subject to paragraph 4, the panelist not yet appointed;
- (c) the Parties shall endeavour to agree on the appointment of the third panelist who shall chair the panel and, unless the Parties agree otherwise, shall not be a national of either Party. If the chair of the panel has not been appointed within 30 days of the most recent appointment under subparagraph (b), either Party may request the Appointing Authority to appoint, in its discretion, and subject to paragraph 4, the chair of the panel, who shall not be a national of either Party;
- (d) subparagraphs (b) and (c) shall apply *mutatis mutandis* where a panelist or the chair of the panel withdraws, is removed or becomes unable to serve on the panel. In such a case, any time period applicable to the panel proceeding shall be suspended for a period beginning on the date a panelist ceases to serve and ending on the date the replacement is appointed.

4. Each panelist appointed under this Chapter shall have the qualifications required by Article 2107 (Dispute Settlement - Qualification of Panelists) with the exception of subparagraph 1(d) of that Article. In addition, each panelist shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measures in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

#### **Article 1117: Investment Disputes in Financial Services**

1. Where an investor of a Party submits 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) to arbitration under Section II of Chapter Eight (Investment) and the respondent invokes an exception under Article 1110, on request of the respondent the Tribunal shall refer the matter in writing to the Committee for a decision in accordance with paragraph 2. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 1110 is a valid defence to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, either Party may, within 10 days thereafter, request the establishment of a panel under Article 2106 (Dispute Settlement - Establishment of a Panel) to decide the issue. The panel shall be constituted in accordance with Article 1116. Further to Article 2110 (Dispute Settlement - Panel Reports), the panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days after the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the issue.

#### **Article 1118: Definitions**

For purposes of this Chapter:

**Appointing Authority** means the Secretary-General, Deputy Secretary-General or next senior member of the staff of the International Centre for Settlement of Investment Disputes, who is not a national of either Party;

**cross-border financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

**cross-border trade in financial services or cross-border supply of financial services** means the supply of a financial service:

- (a) from the territory of one Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

**financial institution** means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

**financial institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

**financial service** means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

*Insurance and insurance-related services*

- (a) Direct insurance (including co-insurance):
  - (i) life,
  - (ii) non-life;
- (b) Reinsurance and retrocession;
- (c) Insurance intermediation, such as brokerage and agency;
- (d) Service auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

*Banking and other financial services (excluding insurance)*

- (e) Acceptance of deposits and other repayable funds from the public;
- (f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (g) Financial leasing;
- (h) All payment and money transmission services, including credit, charge and debit cards, travelers cheques, and bankers drafts;
- (i) Guarantees and commitments;

- (j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
  - (i) money market instruments (including cheques, bills, certificates of deposits),
  - (ii) foreign exchange,
  - (iii) derivative products including, futures and options,
  - (iv) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements,
  - (v) transferable securities,
  - (vi) other negotiable instruments and financial assets, including bullion,
- (k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (l) money broking;
- (m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (n) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- (o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
- (p) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;



**financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

**investment** means “investment” as defined in Article 838 (Investment-Definitions), except that, with respect to “loans” and “debt instruments” referred to in that Article:

- (a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty:

- (c) a loan to, or debt instrument issued by, a Party or a state enterprise thereof is not an investment; and
- (d) a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 838 (Investment-Definitions);

**investor of a Party** means “investor of a Party” as defined in Article 838 (Investment - Definitions);

**new financial service** means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

**person of a Party** means "person of a Party" as defined in Article 106 (Initial Provisions and General Definitions - Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

**public entity** means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; for greater certainty, a public entity shall not be considered a designated monopoly or a state enterprise for the purposes of Chapter Thirteen (Competition Policy, Monopolies and State Enterprises); and

**self-regulatory organization** means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; for greater certainty, a self-regulatory organization shall not be considered a designated monopoly for purposes of Chapter Thirteen (Competition Policy, Monopolies and State Enterprises).

## **Annex 1101.3(a)**

### **Understanding Concerning Subparagraph 3(a) of Article 1101**

1. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or supplying in its territory the activities and services described in subparagraph 3(a) of Article 1101. Further, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures relating to those contributions with respect to which such activities or services are exclusively conducted or supplied.

2. For greater certainty, with respect to the activities or services referred to in subparagraph 3(a) of Article 1101 it shall not be inconsistent with this Chapter for a Party to:

- (a) designate, formally or in effect, a monopoly, including a financial institution, to conduct or supply some or all activities or services;
- (b) permit or require participants to place all or part of their relevant contributions under the management of an entity other than the government, a public entity, or a designated monopoly;
- (c) preclude, whether permanently or temporarily, some or all participants from choosing to have certain activities or services conducted or supplied by an entity other than the government, a public entity, or a designated monopoly; and
- (d) require that some or all activities or services be conducted or supplied by financial institutions located within the Party's territory. Such activities or services may include the management of some or all contributions or the provision of annuities or other withdrawal (distribution) options using certain contributions.

3. For purposes of this Annex, "contribution" means an amount paid by or on behalf of an individual with respect to, or otherwise subject to, a plan or system described in subparagraph 3(a) of Article 1101.

## **Annex 1101.5**

### **Understandings Regarding Financial Services Measures**

1. Nothing in Article 1106 prohibits a Party from requiring the issuance of a decree, resolution, or regulation by the executive branch, regulatory agencies, or central bank, in order to authorize new financial services not specifically authorized in its law.
2. A Party may adopt excise or other taxes levied on cross-border services to the extent such taxes are consistent with Articles 902 (Cross-Border Trade in Services - National Treatment), 903 (Cross-Border Trade in Services - Most-Favored-Nation Treatment), 1102, and 1103, subject to Article 2204 (Exceptions - Taxation).
3. With respect to cross-border trade in financial services, and without prejudice to other means of prudential regulation, a Party may require the authorization of cross-border financial service suppliers of the other Party and of financial instruments.
4. A Party may apply solvency and integrity requirements to branches of insurance companies of the other Party established in its territory, including measures requiring that capital assigned to a branch and technical reserves be effectively brought into the Party's territory and converted into local currency, in accordance with the Party's law.
5. Without limiting the other applications or meaning of paragraph 2 of Article 1110, including its final sentence, paragraph 2 of Article 1110 permits a Party to apply non-discriminatory exchange rate regulations of general application to the acquisition by its residents of financial services from cross-border financial service suppliers.

## **Annex 1105**

### **Cross-Border Trade**

#### **Canada**

##### *Insurance and Insurance-Related Services*

1. Paragraph 1 of Article 1105 applies to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 1118, with respect to:

- (a) insurance of risks relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom, and
  - (ii) goods in international transit; and
- (b) reinsurance and retrocession, services auxiliary to insurance as described in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as described in subparagraph (c) of the definition of financial service.

2. Canada's commitments on cross-border insurance and insurance-related services apply only where a Colombian entity is not in itself or through an agent insuring in Canada a risk.

*Banking and Other Financial Services (excluding insurance)*

3. Paragraph 1 of Article 1105 applies to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 1118, with respect to:

- (a) the provision and transfer of financial information and financial data processing as described in subparagraph (o) of the definition of financial service; and
- (b) advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

4. Canada's commitments on cross-border trade of banking and other financial services (excluding insurance) are made on the basis that neither the foreign bank nor one of its affiliates, if subject to the *Bank Act*, 1991, c. 46, maintains a financial establishment in Canada.

## Colombia

### *Insurance and insurance-related services*

1. Paragraph 1 of Article 1105 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 1118 with respect to:

- (a) insurance of risks relating to:
  - (i) international maritime shipping, international commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) consultancy, risk assessment, actuarial and claims settlement services; and
- (d) brokerage of insurance risks relating to subparagraphs (a) and (b).

2. Paragraph 1 of Article 1105 applies to the cross-border supply of or trade in financial services as defined in paragraph (c) of the definition of cross-border supply of financial services in Article 1118 with respect to services listed in paragraph 1 above.

3. Colombia's commitments in paragraphs 1 and 2 with regard to insurance risks described in subparagraphs 1(a)(i) and (ii) and brokerage of such insurance risks shall become effective four years after the entry into force of this Agreement or when Colombia has adopted and implemented the necessary modifications to its relevant legislation, whichever occurs first.

4. Colombia's commitments on cross-border insurance and insurance-related services apply only where a Canadian entity is not in itself or through an agent insuring in Colombia a risk.

*Banking and other financial services (excluding insurance)*

5. Paragraph 1 of Article 1105 applies with respect to:

- (a) provision and transfer of financial information as referred to in subparagraph (o) of the definition of financial service in Article 1118;
- (b) financial data processing<sup>2</sup> and related software as referred to in subparagraph (o) of the definition of financial service in Article 1118;<sup>3</sup> and
- (c) advisory and other auxiliary financial services,<sup>4</sup> excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service in Article 1118.

6. Notwithstanding subparagraph 5(c), in the event that, after the date of entry into force of this Agreement, Colombia allows credit reference and analysis to be supplied by cross-border financial service suppliers, it shall accord national treatment (as specified in paragraph 3 of Article 1102) to cross-border financial service suppliers of Canada. Nothing in this commitment shall be construed to prevent Colombia from subsequently restricting or prohibiting the supply of credit reference and analysis services by cross-border financial service suppliers.

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<sup>2</sup> It is understood that, where the financial information or financial data processing referred to in subparagraphs (a) and (b) of this paragraph involve personal data, the treatment of such personal data shall be in accordance with Colombian law regulating the protection of such data.

<sup>3</sup> It is understood that a trading platform, whether electronic or physical, does not fall within the range of services specified in this subparagraph.

<sup>4</sup> It is understood that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 1118.



## **Annex 1114**

### **Authorities Responsible for Financial Services**

The authority of each Party responsible for financial services shall be:

- (a) for Canada, the Department of Finance of Canada; and
- (b) for Colombia, the *Ministerio de Hacienda y Crédito Público*, in coordination with the *Ministerio de Comercio, Industria y Turismo*, the *Banco de la República*; and the Superintendencia Financiera de Colombia;

or their respective successors.

## **CHAPTER TWELVE**

### **TEMPORARY ENTRY FOR BUSINESS PERSONS**

#### **Article 1201: General Principles**

Further to Article 1202, this Chapter reflects the preferential trading relationship between the Parties, the mutual objective to facilitate temporary entry for business persons on a reciprocal basis and in accordance with Annex 1203, and the need to establish transparent criteria and procedures for temporary entry and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

#### **Article 1202: General Obligations**

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1201 and, in particular, shall expeditiously apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.
2. Nothing in this Chapter shall be construed to prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

#### **Article 1203: Grant of Temporary Entry**

1. Each Party shall grant temporary entry to business persons who comply with its immigration measures applicable to temporary entry such as those relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 1203.

2. Subject to each Party's labour legislation, a Party may refuse to issue a work permit or authorization to a business person where the temporary entry of that person might affect adversely:

- (a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or
- (b) the employment of any person who is involved in such dispute.

3. Each Party shall limit any fees for processing applications for temporary entry of business persons so as to not unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

#### **Article 1204: Provision of Information**

1. Further to Article 1901 (Transparency - Publication), and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall:

- (a) provide to the other Party relevant materials as will enable the other Party to become acquainted with its measures relating to this Chapter; and
- (b) no later than six months after the date of entry into force of this Agreement, make available explanatory material regarding the requirements for temporary entry under this Chapter, in such a manner as will enable business persons of the other Party to become acquainted with those requirements.

2. Each Party shall collect and maintain, and, on request, make available to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation.

## **Article 1205: Contact Points**

1. The Parties hereby establish the following Contact Points:

(a) in the case of Canada:

Director  
Temporary Resident Policy  
Immigration Branch  
Citizenship and Immigration Canada

(b) in the case of Colombia:

*Coordinador*  
*Coordinación de Visas e Inmigración*  
*Ministerio de Relaciones Exteriores*

or their respective successors.

2. The Contact Points shall exchange information as described in Article 1204 and shall meet as required to consider matters pertaining to this Chapter, such as:

- (a) the implementation and administration of this Chapter;
- (b) the development and adoption of common criteria and interpretations for the implementation of this Chapter;
- (c) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;
- (d) proposed modifications to this Chapter; and
- (e) measures that affect the temporary entry of business persons under this Chapter;

## **Article 1206: Dispute Settlement**

1. A Party may not initiate proceedings under Chapter Twenty-One (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

- (a) the matter involves a pattern of practice;
- (b) the business person has exhausted the available administrative remedies regarding the particular matter; and
- (c) the Contact Points have been unable to resolve the issue.

2. The remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

## **Article 1207: Relation to Other Chapters**

No provision of this Agreement shall be interpreted to impose any obligation on a Party regarding its immigration measures, except as specifically identified in this Chapter and Chapters One (Initial Provisions and General Definitions), Twenty-One (Dispute Settlement), Nineteen (Transparency), Twenty (Administration of the Agreement), and Twenty-Three (Final Provisions).

## **Article 1208: Transparency and Processing of Applications**

1. Further to Chapter Nineteen (Transparency), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding applications and procedures relating to the temporary entry of business persons.

2. Each Party shall endeavor to, within a reasonable period that should not exceed 30 days after an application requesting temporary entry is considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party shall endeavor to provide, without undue delay, information concerning the status of the application

#### **Article 1209: Definitions**

For purposes of this Chapter:

**business person** means a national of a Party who is engaged in trade in goods, the supply of services or the conduct of investment activities;

**immigration measures applicable to temporary entry** means:

- (a) with respect to Canada, the *Immigration and Refugee Protection Act*, S.C. 2001, c.27, as amended and the associated *Immigration and Refugee Protection Regulations*, SOR/2002-227 as amended; and
- (b) with respect to Colombia, *El Decreto 4000 de 2004*, publicado en el Diario Oficial de Colombia el 1 de diciembre de 2004, y las *Resoluciones 0255 y 0273* de enero de 2005, as amended.

**immigration measure** means any measure affecting the entry or sojourn of a foreign national;

**labour dispute** means a conflict or controversy between a union and employer relating to terms or conditions of employment;

**management trainee on professional development** means an employee with a post-secondary degree who is on a temporary work assignment intended to broaden that employee's knowledge of and experience in a company in preparation for a senior leadership position within the company;

**professional** means a national of a Party who is engaged in a specialty occupation<sup>1</sup> requiring:

- (a) theoretical and practical application of a body of specialized knowledge and the appropriate certification/license to practice; and
- (b) attainment of a post-secondary degree in the specialty requiring four or more years of study, as a minimum for entry into the occupation<sup>2</sup> ;

**technician** means a national of a Party who is engaged in a specialty occupation<sup>3</sup> requiring :

- (a) theoretical and practical application of a body of specialized knowledge and the appropriate certification/license to practice; and
- (b) attainment of a post-secondary or technical degree requiring two or more years of study as a minimum for entry into the occupation<sup>4</sup>;

**specialist** means an employee who possesses specialized knowledge of the company's products or services and its application in international markets, or an advanced level of expertise or knowledge of the company's processes and procedures;

**temporary entry** means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

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<sup>1</sup> In the case of Canada, a professional specialty occupation is an occupation which falls within the National Occupation Classification (NOC) levels O and A.

<sup>2</sup> In the case of Canada, these requirements are defined in the NOC. In the case of Colombia, the requirements are stated in the specific laws for regulated professions, which will be provided in accordance with Article 1204.

<sup>3</sup> In the case of Canada, a technical specialty occupation is an occupation which falls within the National Occupation Classification (NOC) level B.

<sup>4</sup> In the case of Canada, these requirements are defined in the NOC. In the case of Colombia, the requirements are stated in the specific laws for regulated professions, which Colombia shall provide in accordance with Article 1204.

## **Annex 1203**

### **Temporary Entry For Business Persons**

#### **Section A - Business Visitors**

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 1203.A, without requiring that person to obtain a work permit or an employment authorization, provided that the business person otherwise complies with its immigration measures applicable to temporary entry, on presentation of:

- (a) proof of nationality, citizenship or permanent residency status of a Party;
- (b) documentation demonstrating that the business person will be engaged in a business activity set out in Appendix 1203.A and describing the purpose of entry; and
- (c) evidence demonstrating that the proposed business activity is international in scope and the business person is not seeking to enter the local labour market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and



- (b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside the territory of the Party granting temporary entry.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer or the representing organization, attesting to these matters as sufficient proof.

3. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

4. Notwithstanding paragraph 3, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

## **Section B - Traders and Investors**

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person seeking to:

- (a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the Party into which entry is sought, or
- (b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with its immigration measures applicable to temporary entry.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

### **Section C - Intra-Company Transferees**

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof as an executive or manager, a specialist, or a management trainee on professional development, provided that the business person otherwise complies with the immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for six months within the three-year period immediately preceding the date of the application for admission.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

## **Section D – Professionals and Technicians**

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person seeking to engage in an occupation at a professional or technical level in accordance with Appendix 1203.D, if the business person otherwise complies with its immigration measures applicable to temporary entry, on presentation of:

- (a) proof of nationality, citizenship or permanent residency status of a Party;  
and
- (b) documentation demonstrating that the business person is seeking to enter the other Party to provide pre-arranged professional services in the field for which the business person has the appropriate qualifications.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

## **Section E – Spouses**

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a spouse of a business person qualifying for temporary entry under Section B (Traders and Investors), Section C (Intra-Company Transferees), or Section D (Professionals and Technicians), if the spouse otherwise complies with its immigration measures applicable to temporary entry.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a spouse of a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

## **Appendix 1203.A**

### **Business Visitors**

#### **Meetings and Consultations**

Business persons attending meetings, seminars or conferences; or engaged in consultations with business associates.

#### **Research and Design**

Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party.

#### **Growth, Manufacture and Production**

Purchasing and production management personnel, conducting commercial transactions for an enterprise located in the territory of the other Party.

Harvester owners supervising a harvesting crew.

#### **Marketing**

Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of the other Party.

Trade-fair and promotional personnel attending a trade convention.

**Sales**

Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services.

Buyers purchasing for an enterprise located in the territory of the other Party.

**Distribution**

Transportation operators transporting goods or passengers to the territory of a Party from the territory of the other Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of the other Party.

Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

**After-Sales or After-Lease Service**

Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer software, purchased or leased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

**General Service**

Professionals and technicians engaging in a business activity at a professional or technician level as set out in Appendix 1203.D

Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party.

Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

Cook personnel (cookers and assistants) attending or participating in gastronomic events or exhibitions, or consulting with business associates.

Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party.

Information and communication technology service providers attending meetings, seminars, or conferences, or engaged in consultations with business associates

Franchise traders and developers who seek to offer their services in the territory of the other Party.



## **Appendix 1203.D**

### **Professionals and Technicians**

#### **Professionals:**

The professionals listed below are not covered under this Chapter:

1. All Health, Education, and Social Services occupations and related occupations, including:

- (a) Managers in Health/Education/Social & Community Services
- (b) Physicians/Dentists/Optometrists/Chiropractors/Other Health Professions
- (c) Pharmacists, Dieticians & Nutritionists
- (d) Therapy & Assessment Professionals
- (e) Nurse Supervisors & Registered Nurses
- (f) Psychologists/Social Workers
- (g) University Professors & Assistants
- (h) College & Other Vocational Instructors
- (i) Secondary/Elementary School Teachers & Counsellors

2. All professional occupations related to cultural industries as defined in Article 2208 (Exceptions – Definitions), including:

- (a) Managers in Libraries, Archives, Museums and Art Galleries
  - (b) Managers – Publishing, Motion Pictures, Broadcasting and Performing Arts
  - (c) Creative & Performing Artists
3. Recreation, Sports and Fitness Program and Service Directors
  4. Managers in Telecommunication Carriers
  5. Managers in Postal and Courier Services
  6. Managers in Manufacturing
  7. Managers in Utilities
  8. Managers in Construction and Transportation
  9. Judges, Lawyers and Notaries except foreign legal consultants

## **Technicians**

The technicians listed below are covered under this chapter:

1. Civil Engineering Technologists and Technicians
2. Mechanical Engineering Technologists and Technicians
3. Industrial Engineering and Manufacturing Technologists and Technicians
4. Construction Inspectors and Estimators
5. Engineering Inspectors, Testers and Regulatory Officers

6. Supervisors in the following: Machinists and Related Occupations, Printing and Related Occupations, Mining and Quarrying, Oil and Gas Drilling and Service, Mineral and Metal Processing, Petroleum, Gas and Chemical Processing and Utilities, Food, Beverage and Tobacco Processing, Plastic and Rubber Products Manufacturing, Forest Products Processing, Textile Processing
7. Contractors and Supervisors in the following: Electrical Trades and Telecommunications Occupations, Pipefitting Trades, Metal Forming, Shaping and Erecting Trades, Carpentry Trades, Mechanic Trades, Heavy Construction Equipment Crews, Other Construction Trades, Installers, Repairers and Servicers
8. Electrical and Electronics Engineering Technologists and Technicians<sup>5</sup>
9. Electricians<sup>6</sup>
10. Plumbers
11. Industrial Instrument Technicians and Mechanics
12. Aircraft Instrument, Electrical and Avionics Mechanics, Technicians and Inspectors
13. Underground Production and Development Miners
14. Oil and Gas Well Drillers, Servicers and Testers
15. Graphic Designers and Illustrators
16. Interior Designers

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<sup>5</sup> Including electronic service technicians.

<sup>6</sup> Including industrial electricians.

17. Chefs
18. Computer and Information System Technicians
19. International Purchasing and Selling Agents

## **CHAPTER THIRTEEN**

### **COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES**

#### **Article 1301: Objectives**

Recognizing that conduct subject to this Chapter has the potential to restrict bilateral trade and investment, the Parties believe that proscribing such conduct, implementing economically sound competition policies and cooperating in matters covered by this Chapter will help secure the benefits of this Agreement.

#### **Article 1302: Competition Law and Policy**

1. Each Party shall maintain its independence in developing and enforcing its competition law.
2. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect to such conduct.
3. Each Party shall ensure that the measures it adopts or maintains to proscribe anti-competitive business conduct and the enforcement actions it takes pursuant to those measures are consistent with principles of transparency, non-discrimination and procedural fairness. Exclusions from these measures shall be transparent. Each Party shall make available to the other Party public information concerning exclusions provided under its competition laws.
4. Each Party should periodically assess its own exclusions to determine whether they are necessary to achieve its overriding policy objectives.
5. Colombia may implement its obligations under this Article through the Andean Community competition laws or an Andean Community enforcement authority.

### **Article 1303: Consultations**

Subject to the independence of each Party to develop, maintain and enforce its competition policy and legislation, the Parties, on request of a Party, shall enter into consultations to foster understanding between them, or to address a specific matter under this Chapter. The requesting Party shall indicate in its request how the matter affects trade or investment between the Parties. The other Party shall give full and sympathetic consideration to the concerns of the requesting Party.

### **Article 1304: Cooperation**

Each Party recognizes the importance of cooperation and coordination between their authorities to further effective competition law enforcement in the free trade area. In this regard, the Parties, through their respective competition authorities, shall negotiate a cooperation instrument that may address, among other matters, notification, consultation, positive and negative comity, technical assistance and exchange of information.

### **Article 1305: Designated Monopolies**

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.
2. Where a Party intends to designate a monopoly and the designation may affect the interests of the other Party, the designating Party shall, whenever possible, provide prior written notification to the other Party of the designation.

3. Each Party shall ensure that any privately-owned monopoly that it designates following the entry into force of this Agreement and any government monopoly that it designates, or has designated prior to the date of entry into force of this Agreement:

- (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;
- (b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d) ;
- (c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and
- (d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiaries or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.

4. Paragraph 3 does not apply to procurement by government of 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.

#### **Article 1306: State Enterprises**

1. Nothing in this Agreement shall be construed to prevent a Party from establishing or maintaining a state enterprise.
2. Each Party shall ensure that any state enterprise that it establishes or maintains, acts in a manner that is not inconsistent with the Party's obligations under Chapters Eight (Investment) and Eleven (Financial Services) wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.
3. Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to covered investments.

#### **Article 1307: Dispute Settlement**

1. No Party may have recourse to dispute settlement under Chapter Twenty-One (Dispute Settlement) for any matter arising under this Chapter except for those matters arising under Articles 1305 and 1306.
2. For the purposes of this Chapter, an investor may have recourse to investor-state dispute settlement pursuant to subparagraph 1(b) of Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or subparagraph 1(b) of Article 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise) only for matters arising under subparagraph 3(a) of Article 1305 or paragraph 2 of Article 1306.



## **Article 1308: Definitions**

For purposes of this Chapter:

**covered investment** means “covered investment” as defined in Article 847 (Investment – Definitions);

**designate** means to establish, authorize, or to expand the scope of a monopoly to cover an additional good or service after the date of entry into force of this Agreement;

**designated monopoly** means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

**government monopoly** means a monopoly that is owned, or controlled through ownership interests, by the national government of a Party, or by another such monopoly;

**in accordance with commercial considerations** means consistent with normal business practices of privately-held (private) enterprises in the relevant business or industry;

**market** means the geographic and commercial market for a good or service;

**non-discriminatory treatment** means the better of national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and

**state enterprise** means, except as set out in Annex 1308, an enterprise owned, or controlled through ownership interests, by a Party.

## Annex 1308

### Country-Specific Definitions of State Enterprises

1. For purposes of paragraph 3 of Article 1306 "state enterprise" means, with respect to Canada, a Crown Corporation within the meaning of the *Financial Administration Act* (Canada), a Crown Corporation within the meaning of any comparable provincial law or equivalent entity that is incorporated under other applicable provincial law.
2. For the purposes of paragraphs 2 and 3 of Article 1306 "state enterprise", with respect to Colombia, means an enterprise that is owned, or controlled through ownership interests, by a Party, except the "*Monopolios Rentísticos*" of the level "*departamental*" referred to in Article 336 of the Colombian Constitution.