Colombia-United States Trade Promotion Agreement (2006):

Colombia-United States Trade Promotion agreement, 22 November 2006 (entered into force 15 May 2012).

The full text of this document is available on the Office of the United States Trade Representative website at: https://ustr.gov/trade-agreements/free-trade-agreements/colombia-fta/final-text

PREAMBLE

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

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

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

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

ESTABLISH clear and mutually advantageous rules governing their trade;

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

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

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

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

AVOID distortions to their reciprocal trade;

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

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

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

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

PRESERVE their ability to safeguard the public welfare;

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

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

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

HAVE AGREED as follows:

[…]

Chapter One

Initial Provisions and General Definitions

Section A: Initial Provisions

Article 1.1: Establishment of a Free Trade Area

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

Article 1.2: Relation to Other Agreements

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

Section B: General Definitions

Article 1.3: Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

central level of government means:

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

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

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

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

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

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

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

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

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

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

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

days means calendar days;

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

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

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

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

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

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

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

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

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

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

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

person means a natural person or an enterprise;

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

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

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

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

Safeguards Agreement means the WTO *Agreement on Safeguards*;

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

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

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

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

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

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

WTO means the World Trade Organization; and

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

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

Annex 1.3

Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

natural person who has the nationality of a Party means:

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

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

territory means:

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

(b) with respect to the United States,

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

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

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

Chapter Ten

Investment

Section A: Investment

Article 10.1: Scope and Coverage[1]

1. This Chapter applies to measures adopted or maintained by a Party relating to:

   (a) investors of another Party;

   (b) covered investments; and

   (c) with respect to Articles 10.9 and 10.11, all investments in the territory of the Party.

2. A Party's obligations under this Section shall apply to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party, such as the authority to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

3. For greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

Article 10.2: Relation to Other Chapters

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

2. A requirement by a Party that a service supplier of another Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

[1] For greater certainty, nothing in this Chapter shall be construed to impose an obligation on a Party to privatize any investment that it owns or controls or to prevent a Party from designating a monopoly, provided that, if a Party adopts or maintains a measure to privatize such an investment or a measure to designate a monopoly, this Chapter shall apply to such measure.

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

Article 10.3: National Treatment

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

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

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

Article 10.4: Most-Favored-Nation Treatment

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

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

Article 10.5: Minimum Standard of Treatment[3]

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

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[2] For greater certainty, treatment "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments" referred to in paragraphs 1 and 2 of Article 10.4 does not encompass dispute resolution mechanisms, such as those in Section B, that are provided for in international investment treaties or trade agreements.

[3] Article 10.5 shall be interpreted in accordance with Annex 10-A.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 10.6: Treatment in Case of Strife

1. Notwithstanding Article 10.13.5(b), each Party shall accord to investors of another Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of another Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in accordance with Article 10.7.2 through 10.7.4, *mutatis mutandis*.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.3 but for Article 10.13.5(b).

Article 10.7: Expropriation and Compensation[4]

1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

(a) for a public purpose[5];

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law and Article 10.5.

2. The compensation referred to in paragraph 1(c) shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

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[4] Article 10.7 shall be interpreted in accordance with Annex 10-B.

[5] For greater certainty, for purposes of this article, the term "public purpose" refers to a concept in customary international law. Domestic law may express this or a similar concept using different terms, such as "public necessity," "public interest," or "public use."

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter Sixteen (Intellectual Property Rights).

Article 10.8: Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 10.6.1 and 10.6.2 and Article 10.7; and

(f) payments arising out of a dispute.

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

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of another Party.

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

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offenses;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 10.9: Performance Requirements

1. No Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement or enforce any commitment or undertaking:[6]

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory;[7] or

(g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

2. No Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement:

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[6] For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for the purposes of paragraph 1.

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

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraph 1(f) does not apply:

(i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.[8]

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement,

(ii) necessary to protect human, animal, or plant life or health, or

[8] The Parties recognize that a patent does not necessarily confer market power.

(iii) related to the conservation of living or non-living exhaustible natural resources.

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to procurement.

(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

Article 10.10: Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

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

Article 10.11: Investment and Environment

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Article 10.12: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of any Party, other than the denying Party, and persons of a non-Party, or of the denying Party, own or control the enterprise.

Article 10.13: Non-Conforming Measures

1. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3, 10.4, 10.9, or 10.10.

2. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 10.3 and 10.4 do not apply to any measure that is an exception to, or derogation from, the obligations under paragraph 8 of Article 16.1 (General Provisions) as specifically provided in that Article.

5. Articles 10.3, 10.4, and 10.10 do not apply to:

(a) procurement; or

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

Article 10.14: Special Formalities and Information Requirements

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 10.3 and 10.4, a Party may require an investor of another Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Section B: Investor-State Dispute Settlement

Article 10.15: Consultation and Negotiation

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

Article 10.16: Submission of a Claim to Arbitration

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement;

and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement;

and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or

(d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

Article 10.17: Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

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

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article II of the New York Convention for an "agreement in writing;" and

(c) Article I of the Inter-American Convention for an "agreement."

Article 10.18: Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied,

(i) for claims submitted to arbitration under Article 10.16.1(a), by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 10.16.1(b), by the claimant's and the enterprise's written waivers

of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.16.1(a)) and the claimant or the enterprise (for claims brought under Article 10.16.1(b)) may

initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.[9]

4. (a) No claim may be submitted to arbitration:

(i) for breach of an investment authorization under Article 10.16.1(a)(i)(B) or Article 10.16.1(b)(i)(B), or

(ii) for breach of an investment agreement under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C),

if the claimant (for claims brought under 10.16.1(a)) or the claimant or the enterprise (for claims brought under 10.16.1(b)) has previously submitted the same alleged breach to an administrative tribunal or court of the respondent, or to any other binding dispute settlement procedure.

(b) For greater certainty, if a claimant elects to submit a claim of the type described in subparagraph (a) to an administrative tribunal or court of the respondent, or to any other binding dispute settlement procedure, that election shall be definitive, and the claimant may not thereafter submit the claim to arbitration under Section B.

Article 10.19: Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

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

3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

[9] In an action for interim injunctive relief described in paragraph 3 (including an action seeking to preserve evidence or property during the pendency of a dispute submitted to arbitration), a judicial or administrative tribunal of the Party that is the respondent in a dispute submitted to arbitration under Section B may apply the law of that Party, including its rules on the conflict of laws, and such rules of international law as may be applicable.

4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 10.16.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 10.16.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

Article 10.20: Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.16.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. The tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party. Each submission shall identify the author and any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the tribunal's competence, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26.[10]

[10] For greater certainty, with respect to a claim submitted under Article 10.16.1(a)(i)(C) or 10.16.1(b)(i)(C), an objection that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26 may include, where applicable, an objection provided for under the law of the respondent.

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment).

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

8. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.16. For purposes of this paragraph, an order includes a recommendation.

9. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.

(b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 10 or Annex 10-D.

10. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 10.26 in arbitrations commenced after the multilateral agreement enters into force between the Parties.

Article 10.21: Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties and make them available to the public:

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.20.2 and 10.20.3 and Article 10.25;

(d) minutes or transcripts of hearings of the tribunal, where available; and

(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 22.2 (Essential Security) or Article 22.4 (Disclosure of Information).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;

(c) a disputing party shall, at the time it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Parties and made public in accordance with paragraph 1; and

(d) the tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

Article 10.22: Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)(i)(B) or (C), the tribunal shall apply:

(a) the rules of law specified in the pertinent investment authorization or investment agreement, or as the disputing parties may otherwise agree; or

(b) if the rules of law have not been specified or otherwise agreed:

(i) the law of the respondent, including its rules on the conflict of laws,[11] and

(ii) such rules of international law as may be applicable.

3. A decision of the Commission declaring its interpretation of a provision of this Agreement under Article 20.1.3 (Free Trade Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

Article 10.23: Interpretation of Annexes

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an entry set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision declaring its interpretation under Article 20.1.3 (Free Trade Commission) to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 60 days, the tribunal shall decide the issue.

Article 10.24: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing

[11] The "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 10.25: Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 10.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

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

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

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

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

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

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of any Party.

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

claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of a Party of the claimants.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

(c) instruct a tribunal previously established under Article 10.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that

(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.16.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

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

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

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

9. A tribunal established under Article 10.19 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.26: Awards

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

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

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

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.16.1(b):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A tribunal may not award punitive damages.

4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

6. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention,

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.16.3(d),

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

7. Each Party shall provide for the enforcement of an award in its territory.

8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 21.6 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) in accordance with Article 21.13 (Initial Report), a recommendation that the respondent abide by or comply with the final award.

9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention, or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 8.

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

Article 10.27: Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-C.

Section C: Definitions

Article 10.28: Definitions

For purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes ("ICSID") established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with another Party;

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

enterprise means an enterprise as defined in Article 1.3 (Definitions of General Application), and a branch of an enterprise;

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

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its *Articles of Agreement*;

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

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

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

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans;[12, 13]

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;[14, 15] and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

investment agreement means a written agreement[16] between a national authority[17] of a Party and a covered investment or an investor of another Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

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[12] Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

[13] Loans issued by one Party to another Party are not investments.

[14] Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

[15] The term "investment" does not include an order or judgment entered in a judicial or administrative action.

[16] "Written agreement" refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

[17] For purposes of this definition, "national authority" means an authority at the central level of government.

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

investment authorization means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of another Party; [18, 19]

investor of a non-Party means, with respect to a Party, an investor that attempts through concrete action to make, is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

national means a natural person who has the nationality of a Party according to Annex 1.3 (Country-Specific Definitions);

negotiated restructuring means the restructuring or rescheduling of a debt instrument that has been effected through (i) a modification or amendment of such debt instrument, as provided for under its terms, or (ii) a comprehensive debt exchange or other similar process in which the holders of no less than 75 percent of the aggregate principal amount of the outstanding debt under such debt instrument have consented to such debt exchange or other process.

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

non-disputing Party means a Party that is not a party to an investment dispute;

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[18] For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

[19] The Parties recognize that no Party has a foreign investment authority that grants investment authorizations, as of the date this Agreement enters into force.

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

respondent means the Party that is a party to an investment dispute;

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

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

Annex 10-A

Customary International Law

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 10.5 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Annex 10-B

Expropriation

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Article 10.7.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 10.7.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.[20]

[20] For greater certainty, the list of "legitimate public welfare objectives" in this subparagraph is not exhaustive.

Annex 10-C

Service of Documents on a Party under Section B

Colombia

Notices and other documents in disputes under Section B shall be served on Colombia by delivery to:

Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 # 13 A – 15
Bogotá D.C. - Colombia

United States

Notices and other documents in disputes under Section B shall be served on the United States by delivery to:

Executive Director (L/EX)
Office of the Legal Adviser
Department of State
Washington, D.C. 20520
United States of America

Annex 10-D

Appellate Body or Similar Mechanism

Within three years after the date of entry into force of this Agreement, the Parties shall consider whether to establish an appellate body or similar mechanism to review awards rendered under Article 10.26 in arbitrations commenced after they establish the appellate body or similar mechanism.

Annex 10-E

Special Dispute Settlement Provisions

1. Where a claimant submits a claim to arbitration alleging that a Party other than the United States has breached an obligation under Section A, other than Article 10.3 or 10.4, through the imposition of a restrictive measure with regard to payments and transfers, Section B shall apply, except as follows:

(a) The claimant may not submit any such claim to arbitration until one year after the events that give rise to the claim.

(b) Loss or damages arising from the restrictive measure on capital inflows shall be limited to the reduction in value of the transfers and shall exclude loss of profits or business and any similar consequential or incidental damages.

(c) Subparagraph (a) shall not apply to a claim that arises from restrictions on:

(i) payments or transfers on current transactions,

(ii) payments or transfers associated with equity investments, or

(iii) payments pursuant to a loan or bond,[21] provided that such payments are made in accordance with the terms and conditions of the loan or bond agreement.

(d) If the measure restricts outward payments or transfers:

(i) it shall not prevent investors from earning a market rate of return in the territory of the Party imposing the measure on any restricted assets;

(ii) the Party imposing the measure shall afford investors a reasonable opportunity to mitigate any losses arising from such measure; and

(iii) so long as the Party imposing the measure has complied with its obligations under this paragraph, the claimant may not recover any alleged opportunity costs or any similar consequential or incidental damages from forgoing alternative investments.

[21] For greater certainty, the term "payments pursuant to a loan or bond" as used in this subparagraph does not include capital account transactions relating to inter-bank loans, including loans to or from financial institutions established in the territory of the Party subject to the claim.

2. A Party may not request the establishment of a panel under Chapter Twenty-One (Dispute Settlement) relating to the imposition of a restrictive measure with regard to payments and transfers by a Party other than the United States until one year after the imposition of such measure.

Annex 10-F

Public Debt

1. The Parties recognize that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award may be made in favor of a claimant for a claim under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A) with respect to default or non-payment of debt issued by a Party unless the claimant meets its burden of proving that such default or non-payment constitutes an uncompensated expropriation for purposes of Article 10.7.1 or a breach of any other obligation under Section A.

2. No claim that a restructuring of debt issued by a Party other than the United States breaches an obligation under Section A may be submitted to, or if already submitted continue in, arbitration under Section B if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article 10.3 or 10.4.

3. Notwithstanding Article 10.16.3, and subject to paragraph 2 of this Annex, an investor of another Party may not submit a claim under Section B that a restructuring of debt issued by a Party other than the United States breaches an obligation under Section A (other than Article 10.3 or 10.4) unless 270 days have elapsed from the date of the events giving rise to the claim.

Annex 10-G

Submission of a Claim to Arbitration

1. An investor of the United States may not submit to arbitration under Section B a claim that a Party has breached an obligation under Section A either:

(a) on its own behalf under Article 10.16.1(a), or

(b) on behalf of an enterprise of a Party other than the United States that is a juridical person that the investor owns or controls directly or indirectly under Article 10.16.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of that Party.

2. For greater certainty, if an investor of the United States elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of a Party other than the United States, that election shall be definitive, and the investor may not thereafter submit the claim to arbitration under Section B.

Chapter Twelve

Financial Services

Article 12.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:

   (a) financial institutions of another Party;

   (b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and

   (c) cross-border trade in financial services.

2. Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

   (a) Articles 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.11 (Investment and Environment), 10.12 (Denial of Benefits), 10.14 (Special Formalities and Information Requirements), and 11.11 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

   (b) Section B (Investor-State Dispute Settlement) of Chapter Ten (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.12 (Denial of Benefits), or 10.14 (Special Formalities and Information Requirements), as incorporated into this Chapter.

   (c) Article 11.10 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 12.5.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

   (a) activities or services forming part of a public retirement plan or statutory system of social security; or

   (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. Annex 12.1.3(a) sets out the Parties' understanding with respect to certain activities or services described in subparagraph 3(a).

Article 12.2: National Treatment

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

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

3. For purposes of the national treatment obligations in Article 12.5.1, a Party shall accord to cross-border financial service suppliers of another Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 12.3: Most-Favored-Nation Treatment

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

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

(a) accorded autonomously;

(b) achieved through harmonization or other means; or

(c) based upon an agreement or arrangement with another Party or a non-Party.

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

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to

another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 12.4: Market Access for Financial Institutions

No Party may adopt or maintain, with respect to financial institutions of another Party or investors of another Party seeking to establish such institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test,

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,

(iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test,[1] or

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

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

Article 12.5: Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of another Party to supply the services specified in Annex 12.5.1.

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

[1] This clause does not cover measures of a Party that limit inputs for the supply of financial services.

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

Article 12.6: New Financial Services[2]

Each Party shall permit a financial institution of another Party established in its territory to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 12.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires authorization to supply a new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

Article 12.7: Treatment of Certain Information

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

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 12.8: Senior Management and Boards of Directors

1. A Party may not require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. A Party may not require that more than a minority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 12.9: Non-Conforming Measures

1. Articles 12.2 through 12.5 and 12.8 do not apply to:

[2] The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to another Party to request that it authorize the supply of a financial service that is not supplied in the territory of any Party. Such application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.6.

(a) any existing non-conforming measure that is maintained by a Party at

(i) the central level of government, as set out by that Party in Section A of its Schedule to Annex III (Non-Conforming Measures),

(ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III (Non-Conforming Measures), or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 12.2, 12.3, 12.4, or 12.8.[3]

2. Articles 12.2 through 12.5 and 12.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities as set out, in Section B of its Schedule to Annex III.

3. A non-conforming measure set out in a Party's Schedule to Annex I or II as a measure to which Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), 11.2 (National Treatment), or 11.3 (Most-Favored-Nation Treatment) does not apply shall be treated as a non-conforming measure not subject to Article 12.2 or 12.3, as the case may be, to the extent that the measure, sector, subsector, or activity set out in the non-conforming measure is covered by this Chapter.

Article 12.10: Exceptions

1. Notwithstanding any other provision of this Chapter or Chapter Ten (Investment), Fourteen (Telecommunications), or Fifteen (Electronic Commerce), including specifically Articles 14.16 (Relationship to Other Chapters), and 11.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,[4] including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the

[3] For greater certainty, Article 12.5 does not apply to an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed on the date of entry into force of the Agreement, with Article 12.5.

[4] It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapter Ten (Investment), Fourteen (Telecommunications), or Fifteen (Electronic-Commerce), including specifically Articles 14.16 (Relationship to Other Chapters), and 11.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.9 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or under Article 10.8 (Transfers) or 11.10 (Transfers and Payments).

3. Notwithstanding Articles 10.8 (Transfers) and 11.10 (Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

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

Article 12.11: Transparency and Administration of Certain Measures

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in another Party's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

3. In lieu of Article 19.2.2, each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt and the purpose of the regulations; and

(b) provide interested persons and Parties a reasonable opportunity to comment on the proposed regulations.

4. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.[5]

5. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

6. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of financial services.

9. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

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

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

12. Annex 12.11 sets out the Parties' understanding with regard to certain provisions of this Article.

[5] For greater certainty, a Party may consolidate its responses to the comments received from interested persons and publish them in a separate document from that setting forth the final regulations.

Article 12.12: Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into its territory, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such self-regulatory organization.

Article 12.13: Payment and Clearing Systems

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

Article 12.14: Expedited Availability of Insurance Services

1. The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

2. Annex 12.14 sets out certain commitments of the Parties with regard to the expedited availability of insurance services.

Article 12.15: Specific Commitments

Annex 12.15 sets out certain specific commitments by each Party.

Article 12.16: Financial Services Committee

1. The Parties hereby establish a Financial Services Committee (Committee). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.16.1.

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party; and

(c) participate in the dispute settlement procedures in accordance with Article 12.19.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 12.17: Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.16.1.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

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

Article 12.18: Dispute Settlement

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

2. When a Party claims that a dispute arises under this Chapter, Article 21.9 (Panel Selection) shall apply, except that:

(a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and

(b) in any other case,

(i) each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 21.8 (Qualifications of Panelists), and

(ii) if the Party complained against invokes Article 12.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the disputing Parties agree otherwise.

3. Financial services panelists shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, a disputing Party; and

(d) comply with the code of conduct to be established by the Commission.

4. Notwithstanding Article 21.15 (Non-Implementation – Suspension of Benefits), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

(a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector.

Article 12.19: Investment Disputes in Financial Services

1. Where an investor of a Party submits a claim to arbitration under Section B of Chapter Ten, (Investor-State Dispute Settlement) and the respondent invokes Article 12.10 as a defense, the following provisions shall apply:

(a) The respondent shall, within 120 days of the date the claim is submitted to arbitration under Section B of Chapter Ten (Investor-State Dispute Settlement), submit in writing to the authorities responsible for financial services for the respondent and for the Party of the claimant, as set out in Annex 12.16.1, a request for a joint determination on the issue of whether and to what extent Article 12.10 is a valid defense to the claim. The respondent shall promptly provide the tribunal, if constituted, a copy of such request. The arbitration may proceed with respect to the claim only as provided in subparagraph (d).

(b) If a non-disputing Party other than the Party of the claimant considers that it has a substantial interest in the joint determination, such non-disputing Party may request that its authorities responsible for financial services, as set out in Annex 12.16.1, be included in any consultations held with a view to making that determination. They shall be included in such consultations if the respondent and the Party of the claimant agree that the claim of substantial interest is well founded. Where the substantial interest of the non-disputing Party is based on ownership or control of the claimant by a person of the non-disputing Party, the substantial interest shall be deemed to be well founded.

(c) The authorities referred to in subparagraph (a) shall attempt in good faith to make a joint determination as described in that subparagraph. Any such joint determination shall be transmitted promptly to the disputing parties, the Financial Services Committee, and, if constituted, to the tribunal. The joint determination shall be binding on the tribunal.

(d) If the authorities referred to in subparagraph (a), within 60 days of the date by which they have received the respondent's written request for a joint determination under that subparagraph, have not made a joint determination as described in that subparagraph, the tribunal shall decide the issue left unresolved by the authorities. The provisions of Section B of Chapter Ten (Investor-State Dispute Settlement) shall apply, except as modified by this subparagraph.

(i) In the appointment of all arbitrators not yet appointed to the tribunal, each disputing party shall take appropriate steps to ensure that the tribunal has expertise or experience as described in Article 12.18.3(a). The expertise or experience of particular candidates with respect to financial services shall be taken into account to the greatest extent possible in the appointment of the presiding arbitrator.

(ii) If, prior to the submission of the request for a joint determination in conformance with subparagraph (a), the presiding arbitrator has been appointed pursuant to Article 10.19.2, such arbitrator shall be replaced upon the request of either disputing party and the tribunal shall be reconstituted consistent with subparagraph (d)(i). If, within 30 days of the date the arbitration proceedings are resumed under subparagraph (e), the disputing parties have not agreed on the appointment of a new presiding arbitrator, the Secretary-General, on the request of a disputing party, shall appoint the presiding arbitrator consistent with subparagraph (d)(i).

(iii) The Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 12.10 is a valid defense to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for purposes of the arbitration, to take a position on Article 12.10 not inconsistent with that of the respondent.

(e) The arbitration referred to in subparagraph (a) may proceed with respect to the claim:

(i) 10 days after the date the joint determination has been received, in accordance with subparagraph (c), by the disputing parties, the Committee, and, if constituted, the tribunal, or

(ii) 10 days after the expiration of the 60-day period extended to the authorities in subparagraph (d).

2. For purposes of this Article, the definitions of the following terms set out in Article 10.28 (Definitions) are incorporated, *mutatis mutandis*: disputing parties, disputing party, respondent, and Secretary-General.

Article 12.20: Definitions

For purposes of this Chapter:

claimant means an investor of a Party that is a party to an investment dispute with another Party;

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

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

(a) from the territory of one Party into the territory of another Party,

(b) in the territory of one Party by a person of that Party to a person of another Party, or

(c) by a national of one Party in the territory of another Party,

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

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

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

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

Insurance and insurance-related services

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

(i) life,

(ii) non-life;

(b) Reinsurance and retrocession;

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

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

Banking and other financial services (excluding insurance)

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

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

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;

(i) Guarantees and commitments;

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

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

(ii) foreign exchange,

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

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

(v) transferable securities,

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

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

(l) Money broking;

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

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

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

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

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

investment means "investment" as defined in Article 10.28 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for purposes of Chapter Ten (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 10.28 (Definitions);

investor of a Party means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective nationality;

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

person of a Party means "person of a Party" as defined in Article 1.3 (Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; for greater certainty, a public entity[6] shall not be considered a

[6] The Federal Deposit Insurance Corporation of the United States shall be deemed to be within the definition of public entity for purposes of Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises).

designated monopoly or a state enterprise for purposes of Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises); and

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

Annex 12.1.3(a)

Understanding Concerning Article 12.1.3(a)

1. The Parties understand that this Chapter applies to measures adopted or maintained by a Party relating to activities and services described in Article 12.1.3(a) only to the extent that a Party allows its financial institutions to supply such activities and services in competition with a public entity or a financial institution. The Parties further understand that this Chapter does not apply to such measures: (a) to the extent that a Party reserves such activities and services to the government, a public entity, or a financial institution and they are not supplied in competition with another financial institution, or (b) relating to those contributions with respect to which the supply of such activities or services is so reserved.

2. For greater certainty, with respect to the activities or services referred to in Article 12.1.3(a), the Parties recognize that the taking of any of the following actions is not inconsistent with this Chapter.

A Party may:

(a) designate, formally or in effect, a monopoly, including a financial institution, to supply some or all activities or services;

(b) permit or require participants to place all or part of their relevant contributions under the management of an entity other than the government, a public entity, or a designated monopoly;

(c) preclude, whether permanently or temporarily, some or all participants from choosing to have certain activities or services supplied by an entity other than the government, a public entity, or a designated monopoly; and

(d) require that some or all activities or services be supplied by financial institutions located within the Party's territory. Such activities or services may include the management of some or all contributions or the provision of annuities or other withdrawal (distribution) options using certain contributions.

3. For purposes of this Annex, "contribution" means an amount paid by or on behalf of an individual with respect to, or otherwise subject to, a plan or system described in Article 12.1.3(a).

Annex 12.5.1

Cross-Border Trade

United States

Insurance and Insurance-Related Services

1. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.20 with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and

(ii) goods in international transit; and

(b) reinsurance and retrocession, services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service in Article 12.20.

2. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in paragraph (c) of the definition of cross-border supply of financial services in Article 12.20 with respect to insurance services.

Banking and Other Financial Services (Excluding Insurance)

3. Article 12.5.1 applies only with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service,[7] and advisory and other auxiliary financial services,[8] excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.[9]

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[7] It is understood that, where the financial information or financial data processing referred to in paragraph 3 of this annex involves personal data, the treatment of such personal data shall be in accordance with the United States' law regulating the protection of such data.

[8] It is understood that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 12.20.

[9] It is understood that a trading platform, whether electronic or physical, does not fall within the range of services specified in paragraph 3.

Colombia

Insurance and insurance-related services

1. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.20 with respect to:

(a) insurance of risks relating to:

(i) international maritime shipping, internationalcommercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) consultancy, risk assessment, actuarial and claims settlement services; and

(d) brokerage of insurance risks relating to subparagraphs (a) and (b).

2. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in paragraph (c) of the definition of cross-border supply of financial services in Article 12.20 with respect to services listed in paragraph 1 above.

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

Banking and other financial services (excluding insurance)

4. Article 12.5.1 applies only with respect to:

(a) provision and transfer of financial information as referred to in subparagraph (o) of the definition of financial service in Article 12.20;

(b) financial data processing[10] and related software as referred to in subparagraph (o) of the definition of financial service in Article 12.20;[11] and

[10] It is understood that, where the financial information or financial data processing referred to in subparagraphs (a) and (b) of this annex involve personal data, the treatment of such personal data shall be in accordance with Colombian law regulating the protection of such data.

(c) advisory and other auxiliary financial services,[12] excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service in Article 12.20.

5. Notwithstanding subparagraph 4(c), in the event that, after the date of entry into force of this Agreement, Colombia allows credit reference and analysis to be supplied by cross-border financial service suppliers, it shall accord national treatment (as specified in Article 12.2.3) to cross-border financial service suppliers of the other Parties. Nothing in this commitment shall be construed to prevent Colombia from subsequently restricting or prohibiting the supply of credit reference and analysis services by cross-border financial service suppliers.

[11] It is understood that a trading platform, whether electronic or physical, does not fall within the range of services specified in paragraph 3.

[12] It is understood that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 12.20.

Annex 12.14

Expedited Availability of Insurance Services

United States

The United States should endeavor to maintain existing opportunities or may wish to consider policies or procedures such as not requiring product approval for insurance other than insurance sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable period of time; and not imposing limitations on the number or frequency of product introductions.

Colombia

Colombia shall endeavor to maintain existing procedures or may consider adopting measures such as not requiring product approval or authorization of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable time; and not imposing limitations on the number or frequency of product introductions.

Annex 12.15

Specific Commitments

United States

Portfolio Management

1. The United States shall allow a financial institution organized outside its territory to provide the following services to a collective investment scheme located in its territory:[13]

(a) investment advice; and

(b) portfolio management services, excluding:

(i) custodial services, unless they are related to managing a collective investment scheme,

(ii) trustee services, but not excluding the holding in trust of investments by a collective investment scheme established as a trust, and

(iii) execution services, unless they are related to managing a collective investment scheme.[14]

2. Paragraph 1 is subject to Articles 12.1 and 12.5.3.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** means an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940.

Insurance Company Branches

4. Recognizing the principles of federalism under the U.S. Constitution, the history of state regulation of insurance in the United States, and the *McCarran-Ferguson Act*, the United States will work with the National Association of Insurance Commissioners (NAIC) in its review of those states that do not allow initial entry of a non-U.S. insurance company as a branch to supply life, accident, health (excluding workers compensation) insurance, non-life insurance, or

[13] Notwithstanding paragraph 1, a Party may require a collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme, including the assets of the collective investment scheme.

[14] Custodial and trustee services are included in the scope of this specific commitment only with respect to investments for which the primary market is outside the United States.

reinsurance and retrocession to determine whether such entry could be provided in the future. Those states are Arkansas, Arizona, Connecticut, Georgia, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, Vermont, and Wyoming.

Colombia[15]

A. Specific Commitment Regarding Portfolio Management

1. Not later than four years after the entry into force of the Agreement, Colombia shall allow a financial institution organized either inside or outside its territory to provide the following services to a collective investment scheme located in its territory:[16]

(a) investment advice; and

(b) portfolio management services, excluding:

(i) custodial services, unless they are related to managing a collective investment scheme,

(ii) trustee services, but not excluding the holding in trust of investments by a collective investment scheme established as a trust, and

(iii) execution services, unless they are related to managing a collective investment scheme.

2. This commitment is subject to Article 12.1 and to Article 12.5.3.

3. For purposes of this commitment, **collective investment scheme** means:

(i) a *fondo común ordinario* organized in accordance with the provisions of the *Estatuto Orgánico del Sistema Financiero* and managed by a *sociedad fiduciaria* (subparagaphs 3 and 4 of paragraph 2, Article 29 of the *Estatuto Orgánico del Sistema Financiero*);

[15] The Parties understand that Colombia is committed to opening its financial services sector gradually, pursuant to the provisions of this Chapter, in a manner that benefits consumers and is based on prudential regulation, and in accordance with the provisions of Colombia's Political Constitution, including the provisions set forth in Article 13 thereof.

[16] Notwithstanding paragraph 1, a Party may require a collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme, including the assets of the collective investment scheme.

(ii) a *fondo común especial* organized in accordance with the provisions of the *Estatuto Orgánico del Sistema Financiero* and managed by a trust company (paragraph 6, Article 146 of the *Estatuto Orgánico del Sistema Financiero*);

(iii) a *fondo de valores* organized in accordance with regulations pertaining to the market for public securities and managed by a *sociedad comisionista de bolsa* (Article 7, subparagraph (g) of Law 45 of 1990 and Title 4 of Resolution 400 of 1995 issued by the *Superintendencia de Valores*);

(iv) a *fondo de inversión* organized in accordance with regulations pertaining to the market for public securities and managed by a *sociedad administradora de inversión* (Decree 384 of 1980 and Title 4 of Resolution 400 of 1995 issued by the *Superintendencia de Valores*); and

(v) a *fondo voluntario de pensiones de jubilación e invalidez*, organized in accordance with the provisions of Article 169 of the *Estatuto Orgánico del Sistema Financiero* and managed by a *sociedad fiduciaria*, an insurance company, a *Sociedad Administradora de Fondos de Pensiones y de Cesantía*, or a *Sociedad Administradora de Fondos de Cesantía* (in accordance with Articles 29(h), 183(3), and 30(1) of the *Estatuto Orgánico del Sistema Financiero*, respectively).

B. Establishment of Bank Branches

1. Notwithstanding the inclusion of the non-conforming measures of Colombia in Section B of Annex III, in relation to Article 12.4 for banking services, no later than four years after the entry into force of this Agreement, Colombia will allow banks of another Party to establish in its territory by way of branches.

2. For that purpose, Colombia may require that the capital assigned to the branches of banks of another Party in Colombia be effectively brought into Colombia and converted into local currency, in accordance with Colombian law. The operations of branches of banks of another Party shall be limited by the capital assigned and brought into Colombia.

3. For greater certainty, Colombia may choose how to regulate branches of banks of another Party, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves, and obligations regarding risk patrimony and their investments.[17]

[17] The Parties understand that, for this purpose, Colombia may establish the following requirements, among others:

(a) require branches to comply with the same obligations currently required or that may be required in the future of banks established under Colombian law;

C. Establishment of Insurance Company Branches

1. Notwithstanding the inclusion of the non-conforming measures of Colombia in Section B of Annex III, in relation to Article 12.4 for insurance services, no later than four years after the entry into force of this Agreement, Colombia will allow insurance companies of another Party to establish in its territory by way of branches.

2. For greater certainty, Colombia may choose how to regulate branches of insurance companies of another Party, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves,[18] and obligations regarding risk patrimony

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(b) ensure that mechanisms exist to ensure the availability to Colombia of information pertaining to a particular bank of another Party from that Party's financial supervisory or regulatory authorities before permitting the establishment of a branch by that bank;

(c) require a bank that seeks to establish through a branch to demonstrate that it fulfills the regulatory and prudential supervision requirements in its country of origin, in accordance with international practices;

(d) require that the acts undertaken and contracts entered into in Colombia by branches of banks of another Party established in Colombia be subject to Colombian law and authorities;

(e) issue regulations for the branches referred to in this section, which may relate to the following aspects of their operation, among others: the licensing regime; accounting; the responsibility of administrators; the authorized operations, including operations with the central bank; and responsibility vis-à-vis local creditors;

(f) require that any subsequent capitalization have the same treatment as the branch's initial capital;

(g) require that, for the purposes of transactions between a branch established in Colombia and its parent company or other related companies, each one of these entities be considered as an independent institution and that, without prejudice to the foregoing, a financial institution of another Party be liable for the obligations contracted by its branch in Colombia;

(h) require the owners and representatives of branches established in Colombia to comply with the solvency and moral integrity requirements established by law in Colombia that must be complied with by the shareholders of financial entities organized in Colombia; and

(i) allow branches established in Colombia to make transfers of their net profits, provided that no deficiencies arise in the solvency margin and other capital requirements contemplated in local regulations.

[18] In accordance with Decreto 2779 of 2001, an insurance company established in Colombia may currently invest up to thirty percent of the value of its portfolio that corresponds to its technical reserves in instruments issued or guaranteed by foreign entities identified in that decree, such as fixed income securities (i) issued or guaranteed by a foreign government or foreign central bank, if the sovereign debt of the country is rated as investment grade; (ii) issued or guaranteed by a multilateral credit organization; (iii) issued by foreign non-banking entities; or (iv) guaranteed or accepted by commercial banks or investment banks, but in the case of clauses (iii) and (iv), only if the issuer is located in a country the sovereign debt of which is rated as investment grade.

and their investments.[19]

[19] The Parties understand that, for this purpose, Colombia may establish the following requirements, among others:

(a) require branches to comply with the same obligations currently required or that may be required in the future of insurance companies established under Colombian law;

(b) ensure that mechanisms exist to ensure the availability to Colombia of information pertaining to a particular insurance company of another Party from that Party's financial supervisory or regulatory authorities before permitting the establishment of a branch by that insurance company;

(c) require an insurance company that seeks to establish through a branch to demonstrate that it fulfills the regulatory and prudential supervision requirements in its country of origin, in accordance with international practices;

(d) require that the acts undertaken in Colombia and contracts entered into in Colombia by branches of insurance companies of another Party established in Colombia be subject to Colombian law and authorities;

(e) issue regulations for the branches referred to in this section, which may relate to the following aspects of their operation, among others: the licensing regime; accounting; the responsibility of administrators; the authorized operations, including operations with the central bank; responsibility vis-à-vis local creditors;

(f) require that any subsequent capitalization or reserve increase have the same treatment as the branch's initial capital and reserves;

(g) require that, for the purposes of transactions between a branch established in Colombia and its parent company or other related companies, each one of these entities be considered as an independent institution and that, without prejudice to the foregoing, a financial institution of another Party be liable for the obligations contracted by its branch in Colombia;

(h) require the owners and representatives of branches established in Colombia to comply with the solvency and moral integrity requirements established by law in Colombia that must be complied with by the shareholders of financial entities organized in Colombia; and

(i) allow branches established in Colombia to make transfers of their net profits, provided that there is no deficit in the investment of their technical reserves that could constitute a breach of their contractual obligations, nor a deficit in their solvency margin or technical reserves that constitutes insufficient coverage from the claims rate deviation reserve and other risks that may arise in their operation, nor a deficit in other capital requirements contemplated in local regulations.

D. Cross-Border Consumption of Insurance and Insurance-Related Services

No later than four years after the entry into force of this Agreement, Colombia will allow, in accordance with Article 12.5.2, persons located in its territory, and its nationals wherever located, to purchase any insurance service[20] from cross-border financial service suppliers of another Party located in the territory of that other Party or of any other Party[21], except for the following services:[22]

(a) those insurance services the purchase of which is mandatory under Colombian law;

(b) those insurance services the purchase of which is prohibited under Colombian law prior to purchase of insurance services described in subparagraph (a) or participation in Colombia's social security system; and

(c) all insurance services, when the policy holder, insured, or beneficiary is a Colombian government ministry, department, or agency (*entidad del Estado*).

E. Pension Fund Managers

Notwithstanding the non-conforming measure of Colombia in Annex II referring to social services, and subject to Article 12.1, including Annex 12.1.3(a), Colombia shall, with regard to *Sociedades Administradoras de Fondos de Pensiones y Cesantías*, *Sociedades Administradoras de Fondos de Pensiones*, and *Sociedades Administradoras de Fondos de Cesantías* (collectively, "SAFPs")**:**[23]

[20] For greater certainty, policies covered by paragraphs (a) and (b) of the definition of financial service in Article 12.20 (Definitions) are financial instruments, consistent with the meaning of financial instruments in Article 12.5.3 (Cross-Border Trade).

[21] For greater certainty, Colombia may, as permitted under Article 12.5.3, require cross-border financial service suppliers to provide information such as the aggregate value of premiums paid to them by persons resident in Colombia.

[22] For greater certainty, the Parties understand that Colombia may, in accordance with subparagraph 4 of Annex 12.1.3(a), prohibit the purchase from insurance companies not established in Colombia of insurance services, including all types of lifetime annuities (*renta vitalicia*), death and disability insurance (*previsionales de invalidez y sobrevivencia*), and workers compensation insurance (*riesgos profesionales*), to the extent these services are described in Article 12.1.3(a).

[23] This commitment shall also apply with regard to any successor to SAFPs, in the context of the modification or adoption by Colombia of a privatized or partially privatized retirement plan or social security system. For greater certainty, this specific commitment applies only with regard to measures within the scope of this Chapter, as specified in Articles 12.1, including Annex 12.1.3 (a).

(1) extend the obligations of Articles 12.2.1 and 12.2.2 to the supply by SAFPs that are financial institutions of another Party established in Colombia of those activities and services described in Article 12.1.3(a) that are not reserved for supply by the government of Colombia, a public entity, or a financial institution;

(2) adopt or maintain no measure that imposes limitations on the number of SAFPs in the form of either numerical quotas or the requirements of an economic needs test, with respect to investors of another Party seeking to establish SAFPs to supply those activities and services referred to in paragraph 1;

(3) no later than four years after entry into force of the Agreement, permit SAFPs to subcontract to financial institutions of another Party established in Colombia the services described in Annex 12.15(A)(1)(a)-(b) (Specific Commitment Regarding Portfolio Management);

(4) no later than four years after entry into force of the Agreement, and subject to Articles 12.1 and 12.5.3, permit a financial institution organized under the laws of the United States to provide to an SAFP, with respect to those assets, if any, that are permitted under relevant Colombian law to be invested outside the territory of Colombia, (i) investment advice; (ii) execution services in fulfillment of instructions from the SAFP, to the extent required by and consistent with Colombian law; and (iii) custodial services, if applicable law does not permit those assets to be held within the territory of Colombia.[24]

[24] Nothing in paragraph 4 of this specific commitment requires Colombia to permit a financial institution organized under the laws of the United States to make investment or other management decisions regarding the investment portfolio of an SAFP or to hold custody of the assets of an SAFP absent execution instructions from the SAFP.

Annex 12.16.1

Financial Services Committee

Authorities Responsible for Financial Services

The authority of each Party responsible for financial services is:

(a) for Colombia, the Ministry of Finance and Public Credit (*Ministerio de Hacienda y Crédito Público*), in coordination with the Ministry of Commerce, Industry and Tourism (*Ministerio de Comercio, Industria y Turismo*) and the Bank of the Republic (*Banco de la República*); and

(b) for the United States, the Department of the Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance.

Chapter Twenty-Two

Exceptions

Article 22.1: General Exceptions

1. For purposes of Chapters Two through Seven (National Treatment and Market Access for Goods, Textiles and Apparel, Rules of Origin and Origin Procedures, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Eleven, Fourteen, and Fifteen[1] (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal, or plant life or health.

Article 22.2: Essential Security

Nothing in this Agreement shall be construed:

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

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.[2]

Article 22.3: Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such

[1] This Article is without prejudice to whether digital products should be classified as goods or services.

[2] For greater certainty, if a Party invokes Article 22.2 in an arbitral proceeding initiated under Chapter Ten (Investment) or Chapter Twenty-One (Dispute Settlement), the tribunal or panel hearing the matter shall find that the exception applies.

convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between two or more Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Notwithstanding paragraph 2:

(a) Article 2.2 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 2.11 (Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article 11.2 (National Treatment) and Article 12.2 (National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and

(b) Articles 10.3 (National Treatment) and 10.4 (Most-Favored-Nation Treatment), Articles 11.2 (National Treatment) and 11.3 (Most-Favored-Nation Treatment), and Articles 12.2 (National Treatment) and 12.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers,

except that nothing in the articles referred to in subparagraphs (a) and (b) shall apply:

(c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to any tax convention;

(d) to a non-conforming provision of any existing taxation measure;

(e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of the GATS); or

(h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 10.9 (Performance Requirements) shall apply to taxation measures.

6. Article 10.7 (Expropriation and Compensation) and Article 10.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or investment authorization. However, no investor may invoke Article 10.7 (Expropriation and Compensation) as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.7 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities of the Parties of the claimant and the respondent set out in Annex 22.3 at the time that it gives its notice of intent under Article 10.16 (Submission of a Claim to Arbitration) the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 10.16 (Submission of a Claim to Arbitration).

Article 22.4: Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 22.5: Definitions

For purposes of this Chapter:

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

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

(a) a customs duty; or

(b) the measures listed in exceptions (b) and (c) of the definition of customs duty.

Annex 22.3

Competent Authorities

For purposes of Article 22.3:

competent authorities means

(a) in the case of Colombia, the *Viceministro Técnico del Ministerio de Hacienda y Crédito Público*; and

(b) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury,

or their successors.