ANNEX 2

CHAPTER-BY-CHAPTER SUMMARY OF EACH FTA THAT HAS BEEN CONCLUDED

UNITED STATES – AUSTRALIA FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States – Australia Free Trade Agreement.

Preamble and Chapter One: Establishment of a Free Trade Area and Definitions

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the Agreement and provides context to the provisions that follow. Chapter One sets out provisions establishing a free trade area. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which both the United States and Australia are party. Chapter One also includes definitions of certain terms that recur in various chapters of the Agreement.

Chapter Two: National Treatment and Market Access for Goods

Chapter Two sets out the Agreement's principal rules governing trade in goods. It requires each Party to treat goods from the other Party in a non-discriminatory manner, provides for the phase-out of tariffs on "originating goods" (as defined in Chapter Five (Rules of Origin)) traded between the two Parties, and requires the elimination of a wide variety of non-tariff barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Two provides rules for the elimination of customs duties on originating goods traded between the Parties. Duties on virtually all tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other goods will be phased out over periods of up to 10 years. Some agricultural goods will have longer periods for elimination of duties or be subject to other provisions, including in some cases the application of preferential tariff-rate quotas (TRQs). Annex 2-B (General Notes to the U.S. Tariff Schedule) includes detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. The United States also has agreed not to apply its merchandise processing fee on imports of originating goods from Australia.

Temporary Admission. Chapter Two requires the Parties to provide duty-free temporary admission for certain goods without the usual bonding requirement that applies to imports. Such items include professional equipment, goods for display or demonstration, and commercial samples.

Import/Export Restrictions, Fees, and Formalities. The Agreement clarifies that restrictions prohibited under the General Agreement on Tariffs and Trade (GATT) 1994 and this Agreement include export and import price requirements (except under antidumping and countervailing duty orders) and import licensing conditioned on the fulfillment of a performance requirement. In

addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered.

Pharmaceuticals. The Parties affirm their commitment to several basic principles related to their shared objective of facilitating high quality health care and improvements in public health. These principles are: (1) the important role played by innovative pharmaceutical products in delivering high quality health care; (2) the importance of research and development in the pharmaceutical industry and of appropriate government support, including through intellectual property protection and other policies; (3) the need to promote timely and affordable access to innovative pharmaceuticals through transparent, expeditious, and accountable procedures, without impeding a Party's ability to apply appropriate standards of quality, safety, and efficacy; and (4) the need to recognize the value of innovative pharmaceuticals through the operation of competitive markets or by adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical. When a Party takes the latter approach, it will ensure that its respective federal health care authorities maintain prompt and transparent procedures for listing pharmaceutical products for reimbursement purposes, or for setting the amount of reimbursement for pharmaceuticals, under its federal health care programs.

Government procurement of pharmaceuticals by each Party is covered under Chapter Fifteen (Government Procurement) rather than under the pharmaceutical-specific provisions of the Agreement. Australia will establish and maintain procedures enhancing transparency and accountability in the listing and pricing of pharmaceuticals under its Pharmaceutical Benefits Scheme, including access to an independent review process for listing decisions. The Parties also will establish a Medicines Working Group, consisting of officials from their federal health agencies, to promote discussion and understanding of pharmaceutical issues. Finally, each Party confirms that it will allow pharmaceutical manufacturers to publish certain information regarding their products on the Internet.

Chapter Three: Agriculture

Chapter Three sets out various provisions governing trade in agricultural goods between the Parties.

Cooperation. Chapter Three provides that the Parties will work together in WTO agriculture negotiations to: (1) improve market access; (2) reduce, with a view to phasing out, all forms of export subsidies; (3) develop disciplines eliminating state trading enterprises' monopoly export rights; and (4) substantially reduce trade-distorting domestic support. In addition, the Parties will establish a Committee on Agriculture that will meet at least once each year to promote trade, address barriers to bilateral trade in agricultural goods, and oversee implementation of this Chapter.

Export Subsidies. Each Party will eliminate export subsidies on agricultural goods destined for the other country. According to Article 3.3, neither Party may introduce or maintain a subsidy on agricultural goods destined for the other Party unless the exporting Party believes that a third

country is subsidizing its exports to the other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

Safeguards. Chapter Three establishes safeguard procedures to aid domestic industries that are facing increased imports or imports below a price threshold of certain agricultural goods. The United States will apply safeguard measures (in the form of additional duties) according to Annex 3-A. Annex 3-A contains three distinct safeguard mechanisms: (1) a price-based safeguard for certain horticultural goods; (2) a quantity-based safeguard for certain beef goods (available in years 9 through 18 of the Agreement); and (3) a price-based safeguard for certain beef goods (available starting in year 19 of the Agreement). The United States has the discretion to forego imposing the beef safeguard measures.

The price-based horticultural safeguard consists of a schedule of eligible horticultural goods and their respective "trigger" prices, as well as a methodology for determining the amount of an additional safeguard duty. The U.S. horticulture schedule includes goods such as dried onion and garlic, canned fruit, processed tomato products, and various juices. In years 9 through 18 of the Agreement, the United States will impose a quantity-based safeguard measure on certain beef imports when such imports exceed an established volume "trigger". The safeguard measure will remain in force until the end of the calendar year in which the measure applies. Starting in year 19 of the Agreement, the U.S. will impose a price-based safeguard on certain beef imports when the U.S. monthly average index price for beef falls below a trigger price that is calculated at 6.5 percent less than the average of the previous 24 monthly average index prices.

A Party may not apply a safeguard measure to a good that is already the subject of a safeguard under either Chapter Nine (Safeguards) of this Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. All safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must, upon request, consult with the other Party concerning the application of the measure.

Additional Provisions. Chapter Three contains certain additional provisions designed to facilitate trade in agricultural goods. One such provision concerns the administration of TRQs. If an importing Party believes that an exporting Party has increased its imports of an agricultural good from a third country, thereby increasing its exports of a good subject to a TRQ administered by the importing Party, the exporting Party must immediately consult upon request to remedy the situation. A second provision relates to market access for dairy goods, establishing that, following year 20 of the Agreement, either Party may request consultations with the other Party to consider modifying market access commitments for dairy goods set out in Annex 2-B. The market access commitments on dairy can only be modified if both Parties agree to do so.

Chapter Four: Textiles and Apparel

Chapter Four sets out provisions addressing trade in textile and apparel goods, including a "safeguard" provision, special rules of origin, and customs cooperation provisions aimed at preventing circumvention.

Safeguard Actions. Under Chapter Two (National Treatment and Market Access for Goods), duties on all "originating" textile and apparel goods traded between the two countries will be eliminated either immediately or progressively, once the Agreement takes effect. To deal with emergency conditions resulting from such duty elimination or reduction, the Agreement includes a "safeguard" provision that permits the importing country temporarily to re-impose normal trade relations/most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Safeguard measures may be imposed for up to two years (with the possibility of a two-year extension) for a period of ten years after duties on a good are eliminated under the Agreement.

While a Party may normally impose a safeguard action only after its authorities have determined that there is serious damage (or a threat of serious damage), in circumstances where delay would cause damage to a domestic industry that would be difficult to repair, a Party temporarily may impose a safeguard action, based on a preliminary determination that there is clear evidence that imports from the exporting Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports are causing serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good. Temporary relief may remain in effect for a maximum of 200 days. The duration of temporary relief is counted as part of the duration of any safeguard resulting from an investigation under this Chapter. A Party imposing a safeguard action must provide the other Party with mutually agreed compensation in the form of trade concessions that have substantially equivalent value to the increased duties caused by the action. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has substantially equivalent value to the increased duties resulting from the action.

Rules of Origin and Related Matters. Chapter Four includes special rules for determining whether a textile or apparel good is an "originating good," including a *de minimis* exception for non-originating yarns or fibers, a rule for treatment of sets, and consultation provisions. The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute seven percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

The annex to Chapter Four includes specific rules of origin for textile and apparel goods. A textile or apparel good will generally qualify as an "originating good" only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties, or if there is an applicable change in tariff classification under Annex 4-A.

Customs Cooperation. Chapter Four also includes a customs cooperation article that sets out detailed commitments designed to prevent circumvention of the Agreement's rules governing textiles and apparel. The Parties will cooperate in enforcing relevant laws, in ensuring the accuracy of claims of origin, and in preventing circumvention of relevant international agreements. A Party may conduct site visits under certain conditions to verify that circumvention is not occurring, and the other Party must provide information necessary for the visits. A Party may respond to circumvention and actions that impede a Party from detecting circumvention, including by denying preferential tariff treatment under the Agreement to imports of specific textile or apparel goods, or to all imports of textile or apparel goods from particular enterprises. Either Party may convene bilateral consultations to resolve technical or interpretive issues that arise under the article.

Chapter Five: Rules of Origin

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating good" under the rules of origin set out in Chapters Four (Textiles and Apparel) and Five and Annexes 4-A and 5-A. These rules ensure that the tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the two Parties' territories.

Key Concepts. Chapter Five provides general criteria under which a good may qualify as an "originating good:"

- When the good is wholly obtained or produced in the territory of one or both of the Parties (*e.g.*, crops grown or minerals extracted in the United States); or

- When the good: (1) is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or both of the Parties; (2) meets any applicable "regional value content" requirement (see below); and (3) satisfies all other requirements of Chapters Four and Five, including their annexes; or

- When the good is produced in one or both countries entirely from "originating" materials.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Chapter. This *de minimis* requirement does not apply to certain agricultural and textile goods.

Regional Value Content. Some origin rules under the Agreement require that certain goods meet a regional value content test in order to qualify as "originating," meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calculating that percentage: (1) the "build-down method" (based on the value of non-originating materials used); and (2) the "build-up method" (based on the value of originating materials used). The regional value content of certain automotive goods

specified in Annex 5-A, however, must be calculated on the basis of the net cost of the good. Finally, accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

Claims for Preferential Treatment. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must be prepared to submit, on the request of the importing Party's customs authority, a statement explaining why the good qualifies as an originating good. A Party may only deny preferential treatment in writing, and must provide legal and factual findings. Chapter Five also provides that a Party will not penalize an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed within one year of submission of the claim.

Consultations. Chapter Five calls for the Parties to work together to ensure the effective and uniform application of the Chapter. The Parties must meet within six months of the Agreement's entry into force to discuss the Chapter's implementation and application. They also must consult regularly to discuss possible amendments to the Chapter and Annex 5-A.

Chapter Six: Customs Administration

Chapter Six establishes rules designed to encourage transparency, predictability, and efficiency in each Party's customs procedures. It also provides for cooperation between the Parties on customs matters.

General Principles. The United States and Australia will observe certain transparency requirements. The Parties must promptly publish their customs measures on the Internet or in print form and, where possible, solicit public comments before amending their customs regulations. Each Party also must provide written advance rulings, upon request, to its importers and to exporters of the other Party, regarding whether a good qualifies as an "originating good" under the Agreement, as well as on other customs matters. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties must release goods from customs promptly and expeditiously clear express shipments.

Cooperation. Chapter Six also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement and to import and export restrictions. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries.

Chapter Seven: Sanitary and Phytosanitary Measures

Chapter Seven defines the Parties' obligations to one another regarding sanitary and phytosanitary (SPS) matters. It reflects the Parties' understanding that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is a shared objective.

Key Concepts. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Cooperation. Under Chapter Seven, the Parties will establish an SPS Committee consisting of relevant trade and regulatory officials. The Committee's mandate includes: (1) enhancing each Party's implementation of the SPS Agreement; (2) consulting on SPS matters that may affect trade between the Parties; and (3) consulting on issues, agendas and positions for meetings of certain international organizations. The Parties also will establish a standing working group on animal and plant health measures to facilitate trade by resolving specific SPS issues. Upon the request of a Party, the working group will develop "work plans" for technical and scientific matters relating to animal and plant health and the Parties' trade and regulatory objectives.

Dispute Settlement. Neither Party may invoke the Agreement's dispute settlement procedures for a matter arising under Chapter Seven. Instead, any SPS dispute between the Parties must be resolved under the applicable agreement(s) and rules of the WTO.

Chapter Eight: Technical Barriers to Trade

Under Chapter Eight, the Parties will build on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards ("technical regulations"), and procedures used to determine whether a particular good meets such standards, *i.e.*, "conformity assessment" procedures.

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Under Chapter Eight, the Parties will apply these principles and consult on pertinent matters under consideration by international or regional bodies.

Cooperation. Chapter Eight sets out multiple means for cooperation between the Parties to reduce barriers and improve market access, and provides for Chapter Coordinators responsible for facilitating this cooperation.

Conformity Assessment. Chapter Eight provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Chapter Eight further provides that, where a Party recognizes conformity assessment bodies in its own territory, it should recognize bodies in the territory of the other Party on the same terms.

Transparency. Chapter Eight contains various transparency obligations, including obligations to: (1) permit persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (2) transmit regulatory proposals notified under the TBT Agreement directly to the other Party; (3) describe in writing the objectives of and reasons for regulatory proposals; (4) accept and respond in writing to comments on regulatory proposals; and (5) provide information to regional (*i.e.,* state governments) to encourage their adherence to the Chapter, as appropriate.

Chapter Nine: Safeguards

Chapter Nine establishes a bilateral safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The Chapter does not affect either government's rights or obligations under the WTO's safeguard provisions (global safeguards) or under other WTO trade remedy rules.

Chapter Nine authorizes each Party to impose temporary duties on a good imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good.

Absent agreement by the other Party, a safeguard measure may be applied only during the Agreement's "transition period" (or as provided in Annex 2-B) for phasing out duties on bilateral trade. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement. For customs duties that are applied to a good on a seasonal basis, the increase in the duty may not exceed the lesser of: (1) the level of the MFN/NTR duty rate in effect on the day immediately before the Agreement enters into effect; or (2) the MFN/NTR duty in effect for the immediately preceding season. In "critical circumstances," the importing Party may impose provisional relief for up to 200 days, based on a preliminary determination, while its investigation of the matter is underway. The duration of provisional relief is counted as part of the duration of any safeguard resulting from an investigation under this Chapter.

A bilateral safeguard measure may last for an initial period of two years. A Party may extend it for two more years if the Party determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals. Chapter Nine incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter Nine requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on the amount or nature of the compensation, the Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the other Party.

Global Safeguards. Chapter Nine maintains each Party's right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A Party may exclude imports of an originating good from the other Party from a global safeguard measure if such imports are not a substantial cause of serious injury or threat thereof. A Party may not impose a safeguard measure under Chapter Nine more than once on any good. Special safeguard provisions for certain agricultural goods are set out in Chapter Three (Agriculture) and for textile and apparel goods in Chapter Four (Textiles and Apparel).

Chapter Ten: Cross-Border Trade in Services

Chapter Ten governs measures affecting cross-border trade in services between the United States and Australia. Certain of its provisions also apply to measures affecting investments to supply services. Chapter provisions are drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

Key Concepts. Under the Agreement, cross-border trade in services covers the supply of a service:

- from the territory of one Party into the territory of the other (*e.g.*, electronic delivery of services from the United States to Australia);

- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, an Australian company provides services to U.S. visitors in Australia); and

- by a national of a Party in the territory of the other Party (*e.g.*, a U.S. lawyer provides legal services in Australia).

Chapter Ten should be read together with Chapter Eleven (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border.

General Principles. Among Chapter Ten's core obligations are requirements to provide national treatment and most-favored-nation (MFN) treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. Chapter provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The Chapter also includes a provision prohibiting the Parties from

requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (*e.g.*, that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter Ten applies across virtually all services sectors. The Chapter excludes financial services, except that certain provisions of Chapter Ten apply to investments in unregulated financial services that are covered by Chapter Eleven (Investment). In addition, Chapter Ten does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the Chapter's core obligations. All existing state and local laws and regulations are exempted from these core obligations. Once a Party, including a state or local government, liberalizes a measure that it has exempted, however, it must, in most cases, maintain the measure at least at that level of openness.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Ten. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

Exclusions. Chapter Ten excludes any service supplied "in the exercise of governmental authority," that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Ten also does not generally apply to government subsidies, although the Parties have undertaken a commitment relating to cross-subsidization of express delivery services.

Chapter Eleven: Investment

Chapter Eleven establishes rules to protect investors from one Party against discriminatory and certain other restrictive government actions when they make or attempt to make investments in the other Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment treaties) and in customary international law, and contains several innovations that were incorporated in the free trade agreements (FTAs) with Chile and Singapore.

Key Concepts. Under Chapter Eleven, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, concessions, and contracts. It includes both existing and future investments. The term "investor of a Party" encompasses both

U.S. and Australian nationals as well as firms (including branches) established in one of the Parties.

General Principles. Chapter Eleven provides six basic protections: (1) non-discriminatory treatment relative to domestic investors as well as investors of non-Parties (including where a Party takes measures to deal with armed conflict or civil strife in its territory); (2) a "minimum standard of treatment" in conformity with customary international law; (3) protection from expropriation other than in conformity with customary international law; (4) free transfer of funds related to an investment; (5) freedom from "performance requirements"; and (6) the ability to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority or less of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Thirteen), Chapter Eleven generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the Chapter particular sectors or measures for which it negotiated an exemption from the Chapter's rules relating to national treatment, MFN status, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. A Party may liberalize a measure that it has exempted, but it may not make measures more restrictive.

Investor-State Disputes. In light of the unique circumstances of the Australian legal system, Chapter Eleven does not provide a separate dispute settlement mechanism for an investor of a Party to pursue a claim against the other Party. Among other things, Australia has an open economic environment and a legal system similar to that of the United States, U.S. investors have confidence in the fairness and integrity of Australia's legal system, and the United States has a long history of close commercial relations with Australia that has flourished largely without disputes of the type addressed by international investment provisions. There are few other countries in the world that are in similar circumstances.

If a Party believes, however, that there has been a change in circumstances such that one of its investors should be allowed to bring a claim against the other Party, the Party may request consultations with the other Party with a view towards establishing arbitral or other means of resolving the dispute. In addition, nothing precludes an aggrieved Party from using the dispute settlement procedures provided under Chapter Twenty-One (Institutional Arrangements and Dispute Settlement). Finally, an investor or an investment of a Party may submit to arbitration a claim against the other Party, to the extent allowed by the other Party's law.

Chapter Twelve: Telecommunications

Chapter Twelve includes disciplines beyond those imposed under Chapters Ten (Cross-Border Trade in Services) and Eleven (Investment) on regulatory measures affecting telecommunications trade and investment between the United States and Australia. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public

telecommunications networks in the other country. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party. Chapter Twelve also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Twelve, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of what are commonly known as "information services" (*e.g.*, services that enable users to create, store, or process information over a network).

Competition. Both the U.S. and Australian regulatory systems provide for open, competitive domestic and cross-border telecommunications markets. Chapter Twelve establishes rules that reflect the common elements of these systems. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Australia must ensure that its public phone companies do not provide preferential access to Australian banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities, such as buildings, where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers," *i.e.*, companies that, by virtue of their market position or control over certain facilities, can materially affect the terms of participation in the market.

Regulation. The Chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and

- will endeavor to avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Consultative Mechanisms. The Parties will establish a consultative process for discussing telecommunications and information technology issues.

Chapter Thirteen: Financial Services

Chapter Thirteen provides rules governing each Party's treatment of: (1) financial institutions of the other Party; (2) investors of the other Party, and their investments, in financial institutions; and (3) cross-border trade in financial services.

Key Concepts. The Chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Thirteen's core obligations parallel those in Chapters Ten (Cross-Border Trade in Services) and Eleven (Investment). Specifically, Chapter Thirteen imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis.

Non-Conforming Measures. Similar to Chapters Ten and Eleven, each Party has listed in an annex to Chapter Thirteen particular financial services measures for which it negotiated exemptions from the Chapter's core obligations. All existing U.S. state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes a measure that it has exempted, however, it must, in most cases, maintain the measure at least at that level of openness.

Other Provisions. Chapter Thirteen also includes provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to other Chapters. Measures that a Party applies to financial services suppliers of the other Party, other than regulated financial institutions, that make or operate investments in the Party's territory are covered principally by Chapter Eleven and certain provisions of Chapter Ten. In particular, the core obligations of the investment Chapter apply to such measures, as do the market access, transparency, and domestic regulation provisions of the services Chapter. Chapter Twelve incorporates by reference certain provisions of Chapter Eleven, such as those relating to transfers and expropriation.

Chapter Fourteen: Competition-Related Matters

Recognizing that anticompetitive business conduct has the potential to restrict bilateral trade and investment, Chapter Fourteen calls for each government to proscribe such conduct. The Chapter also sets out basic procedural safeguards and rules ensuring against harmful conduct by government-designated monopolies as well as special rules covering state enterprises. Chapter Fourteen also contains provisions facilitating cooperation on cross-border consumer protection and the recognition and enforcement of certain monetary judgments obtained by each Party's relevant enforcement agencies.

Competition Laws. Chapter Fourteen requires each Party to adopt or maintain measures prohibiting anticompetitive business conduct and to take appropriate action with respect to such conduct. It also requires each Party to maintain authorities responsible for enforcing their national competition laws. Chapter Fourteen affirms that the enforcement policy of each Party's national competition authority does not discriminate on the basis of nationality. It also obligates the Parties to provide certain procedural protections for persons facing enforcement actions. Each Party will ensure that persons subject to sanctions or remedies for competition law violations will be provided a right to be heard and to present evidence, and to seek review by a court or independent tribunal.

Designated Monopolies. There are specific rules governing instances in which a Party gives a private or national government-owned entity the monopoly right to provide or purchase a good or service. In particular, the Party must ensure that the entity: (1) abides by the Party's obligations under the Agreement wherever it exercises authority delegated to it by the government in connection with the monopoly good or service; (2) purchases or sells the monopoly product in a manner consistent with commercial considerations; (3) does not discriminate against the other Party's investments, goods or service suppliers in the purchase or sale of the monopoly product; and (4) does not engage in anticompetitive practices in markets outside its monopoly mandate that harm the other Party's investments.

State Enterprises. Chapter Fourteen sets forth obligations regarding the Parties' responsibilities for "state enterprises," *i.e.*, enterprises owned or controlled by any level of government of a Party. Each Party must ensure that its state enterprises accord non-discriminatory treatment in

the sale of their products to the other Party's companies. In addition, the United States will ensure that sub-federal state enterprises are not exempt from U.S. antitrust laws solely by virtue of their status as sub-federal enterprises, unless protected by the State Action Doctrine. For its part, Australia will take reasonable measures to ensure that its sub-federal governments do not provide a competitive advantage to government businesses simply because they are government-owned.

Cooperation and Consultations. Chapter Fourteen provides for bilateral cooperation in relation to the enforcement of competition laws and policy. In addition, the Parties will strengthen their cooperation and coordination among their respective consumer protection agencies.

Recognition of Monetary Judgments. Chapter Fourteen contains provisions supporting the mutual recognition and enforcement of monetary judgments obtained by the Federal Trade Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and Australia's Securities and Investments Commission and Competition and Consumer Commission to provide restitution to consumers, investors or customers who suffered economic harm as a result of being deceived, defrauded or misled.

Dispute Settlement. Many of the Chapter's provisions are not subject to the Agreement's dispute settlement procedures, including the provisions requiring a Party to adopt and enforce measures prohibiting anticompetitive business conduct and the provisions governing cooperation and consultations. The Chapter's rules addressing designated monopolies and state enterprises, however, may be enforced through the Agreement's State-to-State dispute settlement mechanism.

Chapter Fifteen: Government Procurement

Chapter Fifteen provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other country. While Australia is not a party to the WTO Agreement on Government Procurement, the rules of Chapter Fifteen are broadly based on WTO procurement rules.

General Principles. Chapter Fifteen establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other country in a manner that is "no less favorable" than the domestic counterparts. The Chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Fifteen also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Fifteen applies to purchases and other means of obtaining goods and services valued above certain dollar thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. The Chapter applies to procurements by listed "central" (*i.e.*, Australian Commonwealth or U.S. Federal) government agencies of goods and services valued at US$58,550 or more and construction services valued at

US$6,725,000 or more. The equivalent thresholds for purchases by "sub-central" government entities (*i.e.*, Australian state and territory government agencies and U.S. state government agencies) are US$477,000 and US$6,725,000, for goods and services and construction services, respectively. The Chapter's thresholds for listed "government enterprises" are either US$292,751 or US$538,000 for goods and services, and US$6,725,000 for construction services. All thresholds are subject to adjustment for inflation.

Transparency. Chapter Fifteen establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

Tendering Rules. Chapter Fifteen provides rules for setting deadlines on "tendering" (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Fifteen provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service. It also sets out rules that procuring entities must follow when they use limited tendering, *i.e.*, limit the set of suppliers that may participate in a procurement.

Award Rules. Chapter Fifteen requires that to be considered for an award, a tender must be submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Fifteen also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

Additional Provisions. Chapter Fifteen is designed to provide integrity in each Party's procurement practices, including by requiring the Parties to maintain laws that make bribery of procurement officials a criminal or administrative offense. It establishes procedures under which a Party may change the extent to which the Chapter applies to its government entities, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor. Finally, the Parties agree to jointly promote liberalization of government procurement markets in the context of the WTO and Asia Pacific Economic Cooperation (APEC) forum.

Chapter Sixteen: Electronic Commerce

Chapter Sixteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The Chapter represents a major advance over previous international understandings on this subject.

Customs Duties. Chapter Sixteen provides that a Party may not impose customs duties on digital products of the other Party regardless of whether they are fixed on a carrier medium or transmitted electronically.

Non-Discrimination. Chapter Sixteen requires the Parties to apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products. Thus, a Party may not discriminate against electronically transmitted digital products on the grounds that they have a nexus to another country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of the other Party or a non-Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like products that have a nexus to a third country. The non-discrimination rules do not apply to non-conforming measures adopted under Chapters Ten and Eleven or to the extent they are inconsistent with Chapter Seventeen.

Additional Provisions. Chapter Sixteen contains additional provisions relating to authentication and digital certificates, online consumer protection, and paperless trade administration. This Chapter is the first to contain these new initiatives related to electronic commerce.

Chapter Seventeen: Intellectual Property

Chapter Seventeen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. The Parties affirm that they have ratified or acceded to several agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. Australia will also ratify or accede to the WIPO Internet treaties (consisting of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty). The United States is already a Party to these Agreements. National treatment requirements apply broadly.

Trademarks and Geographical Indications. Chapter Seventeen establishes that marks include marks in respect of goods and services, collective marks, and certification marks, and that geographical indications are eligible for protection as marks. It sets out rules with respect to the registration of marks and geographical indications. Each Party must provide protection for marks and geographical indications, including protecting preexisting trademarks against

infringement by later geographical indications. Furthermore, the Chapter requires that the Parties provide efficient and transparent procedures governing the application for protection of marks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights. Chapter Seventeen provides broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically protects the rights of performers and producers of phonograms.

To curb copyright piracy, Chapter Seventeen requires the governments to use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Seventeen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Seventeen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Seventeen also includes a variety of provisions for the protection of patents. The Parties agree to make patents available for any invention, subject to limited exclusions, and confirm the availability of patents for new uses or methods of using a known product. The Chapter provides for protection to stop imports of patented products when the patent owner has placed restrictions on import by contract or other means. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The Chapter requires patent term adjustments to compensate for unreasonable delays that occur while granting the patent, as well as unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products. Chapter Seventeen includes specific measures relating to certain regulated products, including pharmaceuticals and agricultural chemicals. Among other things, it protects test data that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection – five years for pharmaceuticals and ten years for agricultural chemicals. It also requires measures to prevent the marketing of pharmaceutical products that infringe patents.

Enforcement Provisions. Chapter Seventeen also creates obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining

damages, to take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for damages based on a fixed range (*i.e.*, "statutory damages"), at the option of the right holder or alternatively additional damages in cases involving copyright infringement

Chapter Seventeen provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Seventeen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint. Chapter Seventeen provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

Transition Periods. All obligations in the Chapter take effect upon the Agreement's entry into force, with the exception of copyright anti-circumvention provisions that are subject to a two-year transition.

Chapter Eighteen: Labor

Chapter Eighteen sets out the Parties' commitments and undertakings regarding trade-related labor rights. As with our other recent FTAs, this Chapter draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the United States-Jordan Free Trade Agreement, the United States-Singapore Free Trade Agreement, and the United States-Chile Free Trade Agreement.

General Principles. Under Chapter Eighteen, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its law recognizes and protects the fundamental labor principles spelled out in the ILO declaration and listed in the Chapter. Each Party also must strive to ensure it does not derogate from or waive the protections of its labor laws to encourage trade with or investment from the other Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. While committing each Party to effective labor law enforcement, the Chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Effective Enforcement. In Chapter Eighteen each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting bilateral trade. The Chapter defines labor laws to include those related to: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition of forced or compulsory labor; (4) a minimum age for the employment of children and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to wages, hours, and occupational safety and health.

The U.S. commitment includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws. Since Australia's states and territories share responsibility with the Commonwealth government with respect to the rights and principles set out in the Chapter, Australia's commitment covers laws enacted by the Commonwealth and the states and territories.

Dispute Settlement. Chapter Eighteen provides for consultations if a Party believes that the other Party is not complying with the commitments in this Chapter. If the matter concerns a Party's compliance with the Chapter's labor law enforcement provision, the complaining Party may choose to pursue consultations under this Chapter or Chapter Twenty-One (Institutional Arrangements and Dispute Settlement). If a Party chooses to request consultations under Article 21.5, consultations under Chapter Eighteen on the same matter cease. In addition, after 60 days of consultations under Chapter Eighteen, the Parties may agree to refer the matter directly to the Agreement's ministerial-level Joint Committee for resolution under the dispute settlement Chapter.

Cooperation. The Joint Committee may establish a subcommittee to oversee the Chapter's operation. Each Party will designate a contact point for communications with the other Party and the public regarding operation of the Chapter. Additionally, the Parties agree to cooperate on labor matters of mutual interest and explore ways to further advance labor standards on a bilateral, regional, and multilateral basis.

Chapter Nineteen: Environment

Chapter Nineteen sets out the Parties' commitments and undertakings regarding environmental protection. Chapter Nineteen draws on, but does not replicate, the North American Agreement on Environmental Cooperation and the environmental provisions of the United States-Chile Free Trade Agreement, the United States-Singapore Free Trade Agreement, and the United States-Jordan Free Trade Agreement.

General Principles. In Chapter Nineteen each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage bilateral trade or investment. Chapter Nineteen further includes commitments to enhance bilateral cooperation in environmental matters and to provide certain procedural and public awareness guarantees and encourages the Parties to develop voluntary, market-based mechanisms for sustaining high levels of environmental protection.

Effective Enforcement. The U.S. commitment on enforcement of environmental laws applies to federal environmental statutes and regulations enforceable by the federal government. The Australian commitment applies to Commonwealth, state and territory environmental statutes and regulations. At the same time, the Chapter recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources.

Dispute Settlement. If a Party believes that the other Party is not complying with its obligations, Chapter Nineteen provides for consultations to resolve disputes. If the matter concerns a Party's compliance with the Chapter's environmental law enforcement provision, the complaining Party may choose to pursue consultations under this Chapter or Chapter Twenty-One (Institutional Arrangements and Dispute Settlement). If a Party chooses to request consultations under Article 21.5, consultations under Chapter Nineteen on the same matter cease. In addition, after 60 days of consultations under Chapter Nineteen, the Parties may agree to refer the matter directly to the Joint Committee for resolution under the dispute settlement Chapter.

Cooperation. Chapter Nineteen includes a commitment by the Parties to cooperate on environmental issues through a joint statement on environmental cooperation. The Joint Committee also may establish a subcommittee to oversee the Chapter's operation. In addition, the Parties will consult on negotiations in the WTO regarding multilateral environmental agreements.

Chapter Twenty: Transparency

Chapter Twenty sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected by an agency process, including an adjudication, rulemaking, licensing, determination, and approval process. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit.

Chapter Twenty also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter Twenty-One: Institutional Arrangements and Dispute Settlement

Chapter Twenty-One creates a Joint Committee to supervise implementation and the overall operation of the Agreement, assist in the resolution of any disputes that may arise under the Agreement, and consider and adopt amendments to the Agreement. The Committee will be chaired by each government's trade minister and will convene at least once a year.

Chapter Twenty-One also sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.*, the WTO agreements), the

complaining government may choose the forum for resolving the matter. The selected forum is the exclusive venue for resolving that dispute.

Consultations. Either Party may request consultations on any matter that it believes might affect the operation of the Agreement. After requesting or receiving a request for consultations, each Party must solicit the views of the public on the matter. If the Parties cannot resolve the matter through consultations within 60 days, a Party may refer the matter to the Joint Committee, which shall attempt to resolve the dispute.

Panel Procedures. If the Joint Committee cannot resolve the dispute within 60 days after delivery of the request, the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 180 days after the chair is selected. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform with the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of

the assessment will be established by agreement of the Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for appropriate labor or environmental initiatives. If the defending Party fails to pay an assessment or to establish an escrow for paying such an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, which ever occurs first.

Chapter Twenty-Two: General Provisions and Exceptions

Chapter Twenty-Two sets out general provisions that apply to the entire Agreement with the following exception. Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis,* and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Ten (Cross Border Trade in Services), Twelve (Telecommunications), and Sixteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of this Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

Essential Security. Chapter Twenty-Two allows each Party to take actions it considers necessary to protect its essential security interests.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect either Party's

rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: (1) national treatment obligation for goods; (2) national treatment and MFN obligations for services; (3) prohibitions on performance requirements; and (4) expropriation rules.

Disclosure of Information. The Chapter also provides that a Party may withhold information from the other Party where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises. In cases where a Party provides written information, pursuant to a request or requirement of the Agreement, that the Party believes it could have withheld from disclosure, use of that information is limited.

Corrupt Practices. Under Chapter Twenty-Two, the Parties pledge to continue to combat bribery and corruption in international business transactions, to work together on anti-corruption issues, and to support relevant initiatives in international fora.

Chapter Twenty-Three: Final Provisions

Chapter Twenty-Three provides that the annexes are part of the Agreement and that the Parties may amend the Agreement subject to applicable domestic procedures. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Three establishes that any other country or group of countries may accede to this agreement on terms and conditions that are agreed with the Parties and approved according to each Party's domestic procedures. The Chapter also permits non-application of the agreement between a Party and a newly acceding country or group of countries. Finally, the Chapter provides for the entry into force of the Agreement and for its termination six months after a Party provides written notice that it intends to withdraw.

UNITED STATES – SINGAPORE FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States – Singapore Free Trade Agreement.

Chapter 1: Establishment of the Free Trade Area and Definitions

Chapter 1 sets out provisions establishing a free trade area, describing the objectives of the Agreement, and providing that the Parties will interpret and apply the Agreement in light of these objectives. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which both the United States and Singapore are party. Chapter 1 also defines certain terms that recur in various chapters of the Agreement.

Chapter 2: National Treatment and Market Access for Goods

Chapter 2 sets out the Agreement's principal rules governing trade in goods. It requires each Party to treat products from the other Party in a non-discriminatory manner, provides for the phase-out of tariffs on "originating goods" (as defined in Chapter 3) traded between the two Parties, and requires the elimination of a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Tariff Elimination. Chapter 2 provides for the elimination of all tariffs on originating goods traded between the Parties. Most tariffs will be eliminated as soon as the Agreement enters into force. The remaining tariffs will be phased out over periods of up to 10 years. The United States has also agreed not to apply its merchandise processing fee on imports of originating goods from Singapore. The chapter also provides that the two Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Temporary Admission. Chapter 2 requires the Parties to provide duty-free temporary admission for certain products without the usual bonding requirement that applies to imports. Such items include professional equipment, goods for display or demonstration, and commercial samples.

Import/Export Restrictions, Fees, and Formalities. Chapter 2 also prohibits the Parties from imposing export and import price requirements, import licensing conditioned on performance requirements, and voluntary export restraints inconsistent with the WTO General Agreement on Tariffs and Trade 1994 (GATT). In addition, it limits all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered.

Specific Barriers. Singapore will: 1) harmonize its excise taxes on imports of distilled spirits by 2005; 2) allow imports of chewing gum with therapeutic value; and 3) eliminate its ban on imports of satellite dishes.

Apparel. Chapter 2 calls for the United States to provide tariff preferences during the first nine years that the Agreement is in force for specific amounts of certain non-originating apparel from Singapore. These "tariff preference levels" (TPLs) will apply to a limited quantity of cotton and man-made fiber goods cut and sewn in Singapore using fabric or yarn imported from third countries. In the first year after the TPL provisions take effect, TPL status will apply to 25 million square meters of apparel. This quantity will be reduced each year thereafter. The TPL program will terminate nine years after it first takes effect. The United States will phase out duties on TPL imports in five equal annual increments once the TPL program takes effect, with the U.S. duty rate reduced to zero beginning on the first day of the fifth year.

Chapter 3: Rules of Origin

To benefit from various trade preferences provided under the Agreement, including reduced duties, goods must qualify as "originating goods" under the rules of origin set out in Chapter 3 and three related annexes. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties' territories.

Key Concepts. Chapter 3 provides four alternative sets of criteria under which a product will generally qualify as an "originating good:"

- when the good is wholly obtained or produced in the territory of one or both of the Parties (for example, crops grown or minerals extracted in the United States);

- when the good is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or both Parties, the good meets any applicable "regional value content" requirement (see below), and the good satisfies all other requirements of Chapter 3;

- when the good is produced in one or both countries entirely from "originating" materials; or

- for certain medical equipment and information technology products listed in Annex 3B (all of which currently enjoy duty-free access to the U.S. market), when the good is shipped from one Party to the other, regardless of where the good was produced.

Chapter 3 and Annex 3A further clarify that simple combining or packaging operations, or mere dilution with water or another substance that does not change the characteristics of the good, will not confer origin.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the chapter.

Regional Value Content. Some origin rules under the Agreement require that certain goods must meet a regional value content test in order to qualify as "originating," meaning that a specified percentage of the value of the good must be attributable to originating materials. The Agreement provides two methods for calculating that percentage: the "build-down method" based on the value of non-originating materials used, and the "build-up method" based on the value of originating materials used. Under the Agreement, accessories, spare parts, and tools delivered with a good will be considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

Denial and Correction of Claims. A Party must issue any denials of preferential treatment in writing accompanied by legal and factual findings. Chapter 3 also provides that a Party will not penalize an importer where the importer promptly and voluntarily corrects a claim and pays any duties owed within one year of submission of the claim.

Textile and Apparel Rules of Origin. A textile or apparel product will generally qualify as an "originating good" only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties or if there is an applicable change in tariff classification as specified in Annex 3A.

A special de minimis rule applies to certain textile and apparel products. Such products would not ordinarily be considered originating goods because fibers or yarns in their origin-determining components do not undergo an applicable change in tariff classification. Under the special rule, however, the Parties will consider these products to be originating goods if the fibers or yarns in question constitute seven percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Consultations. Chapter 3 calls for the Parties to work together to ensure the effective and uniform application of the chapter and the two governments may consider modifying Annexes 3A, 3B, and 3C. Either Party may request consultations in which the Parties will consider whether to modify the chapter's textile and apparel rules of origin.

Chapter 4: Customs Administration

Chapter 4 establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

General Principles. Chapter 4 commits each Party to observe certain transparency obligations. Each Party must promptly publish its customs measures on the Internet or in print form and, where possible, will solicit public comments before amending its customs regulations. Each Party will also provide written advance rulings, on request, to its importers and to exporters of the other Party, regarding whether a product qualifies as an "originating good" under the Agreement as well as on other customs matters. Each Party will also guarantee importers access to both administrative and judicial review of customs decisions. The Parties will also release

goods from customs promptly and apply expedited procedures for clearing express shipments through customs.

Cooperation. Chapter 4 is also designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement and to import and export restrictions. It includes specific provisions calling for the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries.

Chapter 5: Textiles and Apparel

Chapter 5 sets out detailed commitments designed to prevent circumvention of the Agreement's rules governing trade in textile and apparel goods. Chapter 5 seeks to ensure that customs officials will have ample authority to detect, deter, and penalize fraudulent claims for preferential tariff treatment in this sector.

Anti-circumvention. The chapter commits each Party to take necessary and appropriate measures to aggressively enforce its laws related to circumvention of textile and apparel import rules, cooperate in the enforcement of the other Party's laws related to circumvention, and prevent circumvention.

Monitoring. Singapore will establish and maintain monitoring programs designed to enhance the enforcement of its laws relating to trade in textile and apparel goods. In particular, Singapore will:

- monitor imports, exports, and production of textile and apparel goods in its "free trade zones" (special areas designated for favorable treatment under Singapore law);

- institute a comprehensive system of registration, inspection, recordkeeping, and reporting covering all enterprises that produce textile or apparel goods claimed to be "originating goods" under the Agreement or marked as "products of Singapore," and all enterprises that export such goods to the United States; and

- establish and maintain a program to ensure that goods en route to the United States bear accurate country of origin marking and that the documents accompanying the goods accurately describe the goods.

Cooperation. The Parties will share documents and information relevant to circumvention of their rules governing textile and apparel imports. Each Party will also facilitate efforts by the other Party's law enforcement authorities to gather relevant information, including through site visits under specified conditions.

Enforcement. Chapter 5 commits each Party to investigate vigorously claims of circumvention and, where appropriate, take enforcement action. The chapter commits Singapore to take effective action against enterprises in Singapore that engage in intentional circumvention, including by denying particular exporters or producers permission to ship textile and apparel goods to the United States. If the United States discovers that an enterprise in Singapore is engaged in intentional circumvention, it may temporarily bar imports from the enterprise.

Consultations. Either Party may convene bilateral consultations on circumvention issues. If the United States gives Singapore clear evidence of circumvention and consultations do not yield a mutually satisfactory outcome, the United States may reduce imports from Singapore by up to three times the quantity of the goods involved in the circumvention. The United States may also revoke any preferential treatment afforded the goods involved in the circumvention and temporarily deny entry to goods from the enterprise in question.

Textile Safeguard Actions. Chapter 5 includes a "safeguard" provision to deal with emergency conditions that might result from eliminating tariffs on bilateral trade in textile and apparel goods under the Agreement. The chapter permits the importing country temporarily to suspend duty reductions or to reimpose normal trade relations/most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Safeguard measures may be imposed for up to four years during the first ten years that the Agreement's textile and apparel provisions are in effect.

Effective Date. Chapter 5 provides that the Agreement's textile and apparel provisions, *i.e.*, Chapter 5 and pertinent provisions of other chapters, including Chapters Two (National Treatment and Market Access for Goods) and Three (Rules of Origin), will take effect after the Parties consult and exchange written notices that legislation needed to implement the chapter is in place.

Chapter 6: Technical Barriers to Trade

Chapter 6 seeks to enhance the Parties' implementation of existing WTO rules on technical barriers to trade. It builds on WTO rules to promote bilateral cooperation in the area of technical regulations, standards, and conformity assessment procedures, with a view towards deepening the understanding of each Party's systems.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may occur in the context of development, adoption, and application of voluntary product standards, mandatory product standards, and procedures used to determine whether a particular product meets such standards. The chapter also addresses "conformity assessment," namely the process for determining whether products fulfill the relevant requirements in a Party's technical regulations or standards.

Cooperation and Recognition. Chapter 6 encourages the Parties to exchange information on TBT issues, hold consultations to resolve issues, and use international standards as a basis for technical regulations, standards, and conformity assessment procedures. It also encourages the

Parties to enhance their cooperation in the context of other agreements, including by implementing with respect to each other the first two phases of the Asia Pacific Economic Cooperation (APEC) mutual recognition arrangement for conformity assessment of telecommunications equipment. Each Party will designate a TBT coordinator to work with domestic firms and groups and the other Party's coordinator on enhancing bilateral cooperation.

Working Group on Medical Products. Annex 6A establishes a bilateral medical products working group that will be jointly chaired by the U.S. Food and Drug Administration and Singapore's Health Sciences Authority. The group will provide a forum for cooperation on medical product regulation issues.

Chapter 7: Safeguards

Chapter 7 establishes a bilateral safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The chapter does not affect either government's rights or obligations under the WTO's global safeguard provisions or under other WTO trade remedy rules.

Key Concepts. Chapter 7 authorizes each Party to impose temporary duties on a product imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the product is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" product.

Specifics. A safeguard measure may be applied only during the Agreement's ten-year "transition period" for phasing out duties on bilateral trade. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement. In "critical circumstances," the importing Party may impose provisional relief for up to 200 days while its investigation of the matter is underway.

A bilateral safeguard measure may last for an initial period of two years. A Party may extend it for two more years if the Party determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals. Chapter 7 incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter 7 requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on compensation, the Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the other Party.

Global Safeguards. Chapter 7 maintains each country's right to take remedial action against imports from all sources under GATT Article XIX and the WTO Agreement on Safeguards,

without providing additional rights or obligations. A Party may not impose a safeguard measure under Chapter 7 more than once on any product, nor may a Party apply Chapter 7 measure to a product that the Party has made subject to a safeguard measure under another provision of the Agreement or under a separate agreement. Special safeguard provisions for textile and apparel products appear in Chapter 5 (Textiles and Apparel).

Chapter 8: Cross-Border Trade in Services

Chapter 8 governs measures affecting cross-border trade in services between the United States and Singapore. Certain of its provisions also apply to measures affecting services investments. The chapter is drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

Key Concepts. Under the Agreement, cross-border trade in services covers supply of a service:

- from the territory of one Party into the territory of another (*e.g.*, electronic delivery of services from the United States to Singapore);

- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, a Singaporean company provides services to U.S. visitors in Singapore); and

- by a national of a Party in the territory of another Party (*e.g.*, a U.S. lawyer provides legal services in Singapore).

Chapter 8 should be read together with Chapter 15 (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter 8 applies where, for example, a service supplier is temporarily present in the United States or Singapore and does not operate through a local investment.

Core Principles. Among the core obligations in Chapter 8 are requirements to provide national treatment and most-favored-nation treatment to service suppliers of the other Party. Thus, the chapter requires each Party to treat service suppliers of the other Party no less favorably than its own suppliers. The chapter protects the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The chapter also includes a rule prohibiting the Parties from requiring firms to establish a local presence before they can supply a service. In addition, the chapter seeks to remove market access barriers by barring certain types of restrictions on the supply of services (*e.g.*, rules limiting the number of firms that may offer a particular service or restricting or requiring specific types of legal structures or joint ventures with local companies in order to supply a service). The chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter 8 applies across virtually all services sectors. The chapter excludes financial services except that certain provisions of

Chapter 8 apply to investments in unregulated financial services that are covered by Chapter 15 (Investment). In addition, Chapter 8 does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the chapter's core obligations. All existing state and local laws and regulations are exempted from these obligations. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter 8. The transparency rules apply to the development and application of regulations governing services. The chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

Exclusions. Chapter 8 excludes any service supplied "in the exercise of governmental authority" – that is, a service that is provided on a non-commercial and non-competitive basis. Chapter 8 also does not generally apply to government subsidies, although Singapore has undertaken a commitment relating to cross-subsidization of certain express delivery services.

Chapter 9: Telecommunications

Chapter 9 creates disciplines beyond those imposed under Chapters 8 (Cross-Border Trade in Services) and 15 (Investment) on regulatory measures affecting telecommunications trade and investment between the United States and Singapore. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the other country. In addition, the chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party.

Chapter 9 also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality. Finally, the Chapter 9 improves on work undertaken in the WTO on trade in telecommunications services, where Singapore has committed only to allow only three foreign suppliers to participate in a limited set of its telecommunications markets.

Key Concepts. Under Chapter 9, the term "public telecommunications network" covers the infrastructure used to provide public telecommunications services between defined endpoints. A "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "information services" (*e.g.*, services that enable users to create, store, or process information over a network).

Competition. Both the U.S. and Singapore regulatory systems provide for open, competitive domestic and cross-border telecommunications markets. Chapter 9 establishes rules that reflect the common elements of these systems. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.,* Singapore must ensure that its public phone companies do not provide preferential access to Singapore banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities, such as buildings, where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers" – *i.e.,* companies that, by virtue of their market position or control over certain facilities, can materially affect the terms of participation in the market.

Regulation. The chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and

- will endeavor to avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Privatization. In a letter from Singapore's trade minister signed along with the Agreement, Singapore has committed to establish a plan to divest its majority interest in Singapore's two leading telecommunications firms.

Chapter 10: Financial Services

Chapter 10 provides rules governing each Party's treatment of: 1) financial institutions of the other Party, 2) investors of the other Party, and their investments, in financial institutions, and 3) cross-border trade in financial services.

Key Concepts. The chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter 10's core obligations parallel those in Chapter 8 (Cross-Border Trade in Services) and 15 (Investment). Thus, Chapter 10 imposes rules requiring national treatment and most-favored-nation treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and to services companies that are currently supplying and that seek to supply financial services from one Party's territory to the other's.

Non-Conforming Measures. Similar to Chapters 8 and 15, each Party has listed in an annex to Chapter 10 particular financial services measures for which it negotiated exemptions from the chapter's core obligations. All existing U.S. state and local laws and regulations are exempted from these obligations. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Other Provisions. Chapter 10 also includes provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to other Chapters. Measures that a Party applies to financial services suppliers of the other Party – other than regulated financial institutions – that make or operate investments in the Party's territory are covered principally by Chapter 8 and certain provisions of Chapter 15. In particular, the core obligations of the investment chapter apply to such measures, as do the market access, transparency, and domestic regulation provisions of the services chapter. Chapter 10 incorporates by reference certain provisions of Chapter 15, such as those relating to transfers and expropriation.

Chapter 11: Temporary Entry of Business Persons

Chapter 11 calls for each government to facilitate the temporary entry into its territory of business persons of the other Party. The Agreement requires each Party to use transparent criteria and procedures in carrying out its temporary entry rules. At the same time, the rules set out in Chapter 11 respect each Party's need to ensure border security and protect its domestic labor force and permanent employment.

Key Concepts. Chapter 11 covers temporary entry only. Its provisions do not apply to measures regarding citizenship, permanent residence, or employment on a permanent basis. An annex to Chapter 11 groups business persons into four categories (business visitors, traders and investors, intra-company transferees, and professionals) and identifies the criteria under which the Parties must grant them temporary entry. Each business person meeting these criteria must also be qualified for entry under the Party's general requirements relating to public health and safety and national security. An annex permits the United States to limit the number of Singaporean professionals entering the United States under the chapter to 5,400 per year. The Parties may require attestations for professionals similar to those required by the United States under the "H-1B" visa program.

General Provisions. To avoid unduly impairing or delaying trade in goods or services or investment activities under the Agreement, the chapter calls on each Party to apply its measures relating to temporary entry expeditiously. Chapter 11 clarifies that merely requiring a visa for admission does not violate this rule. Further, a Party may refuse admission if the temporary entry of the business person might affect adversely the settlement of a labor dispute or the employment of a person involved in such a dispute. In such cases, the Party must provide a written statement of the reasons for the refusal and prompt notification to the other Party.

Other Provisions. Chapter 11 permits recourse to dispute settlement in disputes over a Party's pattern of practice in carrying out its temporary entry commitments, but not for individual denials of entry. Each Party will establish a group of immigration and other pertinent officials, called a "temporary entry coordinator." The two coordinators will exchange information and work together on temporary entry issues of mutual interest. Chapter 11 makes clear that it contains all of the substantive obligations the two Parties have assumed under the Agreement with respect to temporary entry. The chapter does not impose obligations or commitments with respect to subjects covered under other chapters of the Agreement.

Chapter 12: Anticompetitive Business Conduct, Designated Monopolies, and Government Enterprises

Recognizing that anticompetitive practices can restrict bilateral trade and investment, Chapter 12 calls for each government to enact and enforce competition laws and to cooperate on antitrust matters. The chapter also sets out basic procedural safeguards and rules ensuring against harmful conduct by government-designated monopolies as well as special rules covering "government enterprises."

Antitrust Laws. Chapter 12 requires each Party to adopt or maintain laws prohibiting anticompetitive business conduct and an agency to enforce them. In particular, Singapore has committed to enact general antitrust legislation by January 2005. Each Party will take appropriate enforcement action to address anticompetitive business conduct. Chapter 12 also affirms that each Party's antitrust enforcement policy is not to discriminate on the basis of nationality.

Procedural Rights. Chapter 12 guarantees basic procedural rights for firms facing antitrust enforcement actions. Each Party will provide such firms a right to be heard and to present evidence before imposing a sanction or remedy, and will ensure that any sanctions or remedies are subject to review by a court or independent tribunal.

Designated Monopolies. Under Chapter 12, whenever a Party gives a private or government-owned entity the sole right to provide or purchase a good or service, the Party must ensure that the entity conducts itself in a manner consistent with commercial considerations, does not discriminate against the other Party's goods or service suppliers, and does not use its monopoly position to engage in anticompetitive practices in markets outside its monopoly mandate.

Government Enterprises. Chapter 12 sets out obligations regarding each Party's responsibilities for "government enterprises." For the United States, this term means companies that the government owns or controls. For Singapore, the term encompasses firms in which the government of Singapore has "effective influence."

Singapore will ensure that its government enterprises act in accordance with commercial considerations, provide non-discriminatory treatment to U.S. goods and services suppliers, and refrain from entering into anticompetitive agreements among competitors or engaging in exclusionary practices that reduce competition to the detriment of consumers.
Singapore will publish an annual report detailing its ownership and control of larger government enterprises, and will provide the same information for enterprises of any size upon U.S. request. Singapore will not exercise influence over its government enterprises except in a manner consistent with the Agreement, and will continue to reduce its aggregate ownership and other interests in these enterprises.

For its part, the United States will ensure that its government enterprises accord non-discriminatory treatment in their sales of goods and services to Singaporean companies.

Cooperation and Consultations. Chapter 12 provides for cooperation between the Parties on competition law and policy developments and furthers transparency by providing for the exchange of publicly available information on antitrust enforcement and on designated monopolies and government enterprises. Each Party may also request consultations to discuss specific issues. Where pertinent in such consultations, Singapore will provide information regarding the steps it plans to take or has taken to address anticompetitive conduct by a government enterprise.

Dispute Settlement. The chapter's provisions requiring the Parties to adopt and enforce antitrust laws are not subject to the Agreement's dispute settlement procedures, nor are the provisions governing cooperation and consultations. By contrast, the chapter's rules addressing conduct by designated monopolies and government enterprises can be enforced through the Agreement's dispute settlement mechanism.

Chapter 13: Government Procurement

Chapter 13 establishes obligations with respect to government purchases that extend beyond those the Parties have undertaken under the WTO Agreement on Government Procurement (GPA), in such areas as thresholds, scope and coverage, and procedures for withdrawing entities from coverage under the chapter when a government's control or influence over them has been eliminated. The chapter also includes many of the fundamental disciplines of the GPA, such as comprehensive rules prohibiting each government from discriminating in its purchasing practices against products, services, and suppliers from the other country and requiring each Party to apply fair and transparent procurement procedures.

General Principles. The chapter incorporates by reference major portions of the GPA, including its basic rules on non-discrimination and procedural fairness and transparency. The chapter also commits the Parties to cooperate in the ongoing review of the GPA, on procurement matters in APEC, and in WTO negotiations of an agreement on transparency in government procurement.

Coverage and Thresholds. Chapter 13 covers purchases above certain dollar thresholds by government departments and entities that each Party has listed in its relevant GPA schedules. The chapter applies to central (federal) government procurements of goods and services valued at $56,190 or more and construction services valued at $6,481,000 or more. The chapter also applies to certain purchases by 37 state governments listed in the U.S. GPA schedule, namely, procurements of goods and services valued at $460,000 or more and construction services of $6,481,000 or more. For government enterprises subject to the Parties' commitments under the GPA, the chapter's thresholds are set at either $250,000 or $518,000 for goods and services, and $6,481,000 for construction services.

Nondiscrimination. Chapter 13 incorporates the GPA's basic rule of "national treatment," meaning that each Party's procurement rules must treat goods, services, and suppliers from the other country in a manner that is "no less favorable" than it treats their domestic counterparts. Chapter 13 also applies GPA rules that bar discrimination against locally established suppliers on the basis of foreign affiliation or ownership. The chapter also incorporates the GPA bar against "offsets," such as local content, licensing, investment, or similar requirements, designed to favor domestic production.

Transparency. Chapter 13 also brings in GPA rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance.

Tendering Rules. Chapter 13 incorporates GPA rules for setting deadlines on "tendering" (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. GPA rules incorporated into Chapter 13 also provide that procuring entities may not write technical specifications to favor a particular supplier, good, or service.

Award Rules. The GPA provisions made part of Chapter 13 require that to be considered for award a tender must be made in writing and submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract.

Digital Products. In addition to products that each Party has committed to make subject to the GPA, Chapter 13 covers each government's purchases of electronically transmitted "digital products" of the other Party.

Changes in Coverage. The Chapter 13 includes streamlined procedures under which either Party may remove from the chapter's disciplines government entities that a Party has privatized.

Chapter 14: Electronic Commerce

Chapter 14 establishes rules designed to prohibit duties on, and discriminatory regulation of, electronic trade in digitally encoded products, such as computer programs, video, images, and sound recordings. The chapter represents the first U.S. agreement on this subject with a country in the Asia-Pacific region and a major advance over previous understandings on this subject.

Customs Duties. Chapter 14 provides that a Party may not impose customs duties on digital products that are transmitted electronically. Each Party must assess the customs value (and any applicable tariffs) on the medium rather than the content of any digital products imported on a physical medium, such as a compact disc (*i.e.*, on the value of the disc rather than that of the information it contains)

Non-Discrimination. Chapter 14 requires the Parties to apply principles of non-discrimination to trade in electronically transmitted digital products so that they benefit from the same sorts of principles that govern trade in goods and services. Thus, for example, each Party must refrain from discriminating against electronically transmitted digital products on the ground that they have a nexus to the other country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of the other Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like digital products that have a nexus to a third country.

Chapter 15: Investment

Chapter 15 establishes rules to protect investors from one Party against unfair or discriminatory government actions when they make or attempt to make investments in the other Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment treaties) and in customary international law, and contain several innovative provisions.

Key Concepts. Under Chapter 15, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, concessions, and contracts. It includes both existing and future investments. The term "investor of a Party" encompasses both U.S. and Singaporean nationals as well as firms (including branches) established in one of the Parties.

General Principles. Investors enjoy six basic protections under Part B of Chapter 15: non-discriminatory treatment relative to domestic investors as well as investors of non-Parties; freedom from "performance requirements;" free transfer of funds related to an investment; protection from expropriation other than in conformity with customary international law; a "minimum standard of treatment" in conformity with customary international law; and the ability to hire key managerial and technical personnel without regard to nationality.

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter 10), Chapter 15 generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the chapter particular sectors or measures for which it negotiated an exemption from the chapter's rules relating to national treatment, most favored nation treatment, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Investor-State Disputes. Chapter 15 provides a mechanism for an investor of a Party to pursue a claim against the other Party. The investor may assert that the Party has breached a substantive obligation under Part B of Chapter 15 or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment.

Innovative provisions afford public access to information on Chapter 15 investor-State proceedings and ensure proper application of dispute settlement rules. For example, Chapter 15 requires the Parties to make public all documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The chapter also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims. A special annex addressing investor-State procedures provides Singapore limited policy flexibility with respect to certain capital flows it may consider disruptive.

Chapter 16: Intellectual Property Rights

Chapter 16 complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights.

General Provisions. The chapter will require Singapore to ratify or accede to several agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. The chapter will also require Singapore to give effect to the Trademark Law Treaty. The chapter also includes full national treatment commitments, with no exceptions for digital products. In addition, the chapter requires each Party to publish its laws, regulations, procedures, and decisions concerning the protection or enforcement of intellectual property rights.

Trademarks and Geographical Indications. Chapter 16 imposes rules with respect to the registration of collective, certification, and sound marks, as well as geographical indications and scent marks. The chapter also imposes rules for domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy. Each Party must provide full protection for trademarks with respect to later geographical indications by providing a "first-in-time, first-in-right" rule for trademarks.

Copyrights and Related Rights. Chapter 16 articulates rights that are unique to the digital age, affirming and building on rights set out in several international agreements, including the WIPO Internet Treaties. For instance, the chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies — an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will ensure that authors have the exclusive right to make their works available online. To curb copyright piracy, Chapter 16 requires the two governments to use only legitimate computer software, setting an example for the private sector. The chapter also includes provisions on anti-circumvention under which the Parties commit to prohibit tampering with technology used by authors to protect copyrighted works. In addition, Chapter 16 sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Each Party must also provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works).

Recognizing the importance of satellite broadcasts, Chapter 16 ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, rather than solely to the content contained in the signals.

Patents and Trade Secrets. Chapter 16 requires patent term extensions to compensate for unreasonable administrative or regulatory delays (including for marketing approval) that occur while granting the patent. The chapter also protects against imports of pharmaceutical products without the patent-holder's consent by allowing lawsuits when contracts are breached. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to

the grounds that would have justified a refusal to grant the patent. The chapter also limits the exceptions to patent protection. In addition, Chapter 16 offers protection against unfair commercial use of test data that a company submits in seeking marketing approval for certain regulated products. It precludes other firms from relying on the data for specific periods – five years for pharmaceuticals and ten years for agricultural chemicals.

Enforcement Provisions. Chapter 16 imposes obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The chapter also provides for damages fixed in advance (i.e., "statutory damages"), at the option of the right holder. Such pre-established damages help to deter piracy by ensuring an appropriate remedy in cases where, for instance, information on actual damages is inadequate.

Chapter 16 provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter 16 also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods – including those in transit – without waiting for a formal complaint. Chapter 16 provides that each Party must make counterfeiting and piracy subject to criminal penalties. In addition, the chapter specifically requires Singapore to implement rules that will prohibit the production of optical discs (*e.g.*, CDs, DVDs, or software) without source identification codes, unless the copyright holder authorizes the production.

Transition Periods. The chapter takes effect six months after the Agreement enters into force, with short additional transition periods for certain provisions.

Chapter 17: Labor

Chapter 17 sets out the Parties' commitments and undertakings regarding trade-related labor rights. It draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the United States-Jordan Free Trade Agreement.

General Principles. Under Chapter 17, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its domestic law recognizes and protects the fundamental labor principles spelled out in the ILO declaration and listed in the chapter. Each Party must also strive to ensure it does not derogate from or waive the protections of its domestic labor laws to encourage trade with or investment from the other Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws.

Effective Enforcement. Chapter 17 commits each Party not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting bilateral trade. The chapter defines

labor laws to include those related to: 1) the right of association; 2) the right to organize and bargain collectively; 3) a prohibition of forced or compulsory labor; 4) a minimum age for the employment of children and elimination of the worst forms of child labor; and 5) acceptable conditions of work with respect to wages, hours and occupational safety and health. The U.S. commitment includes federal statutes and regulations addressing these areas, but not state or local labor laws. While committing each Party to effective labor law enforcement, the chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Dispute Settlement. Chapter 17 provides for cooperative consultations if a Party believes that the other Party has violated its labor commitments. If the matter concerns a Party's compliance with the chapter's labor law enforcement provision, the complaining Party may choose to pursue consultations under the labor chapter or Chapter 20 (Administration and Dispute Settlement). After 60 days of consultations under the labor chapter, the Parties may agree to refer the matter directly to the Agreement's ministerial-level Joint Committee for resolution under the dispute settlement chapter.

Cooperation. The Joint Committee may establish a subcommittee to oversee the chapter's implementation. Each Party will designate a contact point for communications with the other Party and the public regarding the chapter. An annex creates a mechanism for ongoing labor cooperation focusing on the improvement of labor standards, particularly those in the 1998 ILO declaration, and the elimination of the worst forms of child labor.

Chapter 18: Environment

Chapter 18 establishes the Parties' commitments and undertakings regarding environmental protection, and includes several key provisions that parallel those in the Agreement's labor chapter. Chapter 18 draws on, but does not replicate, the North American Agreement on Environmental Cooperation and the environmental provisions United States-Jordan Free Trade Agreement.

Like the labor chapter, Chapter 18 includes a commitment on effective law enforcement. It also includes commitments to establish high levels of environmental protection and to strive not to weaken or reduce environmental laws to encourage bilateral trade or investment. It also includes commitments to enhance bilateral cooperation in environmental matters.

General Principles. The Parties must ensure that their laws provide for high levels of environmental protection and strive to improve those levels. They must also strive to ensure they do not waive or derogate from their environmental laws to encourage trade with or investment from the other Party.

Effective Enforcement. Chapter 18 commits each Party not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The U.S. commitments apply to federal environmental statutes and regulations enforceable in the first

instance by the federal government. At the same time, the chapter recognizes the right of each Party to establish its own environmental laws, exercise discretion in regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Dispute Settlement. If a Party believes that the other Party is not complying with its obligations, Chapter 18 provides for cooperative consultations. If the matter concerns a Party's compliance with the chapter's environmental law enforcement provision, the complaining Party may choose to pursue consultations under the environment chapter or Chapter 20 (Administration and Dispute Settlement). After 60 days of consultations under the environment chapter, the Parties may agree to refer the matter directly to the Joint Committee for resolution under the dispute settlement chapter.

Cooperation. The Joint Committee may establish a subcommittee to oversee the chapter's implementation. Chapter 18 also includes a commitment to pursue cooperative environmental activities under a bilateral memorandum of intent and includes a recognition of the importance of ongoing environmental cooperation outside the Agreement. The Parties will consult on the outcome of the current WTO negotiations regarding the relationship between the WTO and multilateral environmental agreements.

Chapter 19: Transparency

Chapter 19 sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that to the extent possible each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must ensure reasonable notice of regulatory proceedings and the opportunity to present facts and arguments. Chapter 19 also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter 20: Administration and Dispute Settlement

Chapter 20 creates a Joint Committee to supervise implementation of the Agreement, assist in the resolution of any disputes that may arise under the Agreement, and consider and adopt amendments to the Agreement. The Committee will be chaired by each government's trade minister and will convene at least once a year.

Chapter 20 also sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other trade agreements (*e.g.*, the WTO agreements), the complaining government may choose the forum for resolving the matter.

Consultations. Either Party may request consultations on any matter that it believes might affect the operation of the Agreement. If the Parties cannot resolve the matter through consultations within 60 days, a Party may request a meeting of the Joint Committee.

Panel Procedures. If the Joint Committee cannot resolve the dispute within 60 days, the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform with the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the Parties or, failing that, will be set at 50% of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending

Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for labor and environmental initiatives. If the defending Party fails to pay an assessment or to establish an escrow for paying such an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

Chapter 21: General and Final Provisions

Chapter 21 sets out general provisions that apply to all or large portions of the Agreement. For example, it incorporates the general exceptions set forth in Article XX of the GATT and Article XIV of the GATS for various chapters. It also sets the terms for the Agreement's entry into force and termination.

Essential Security. Chapter 21 allows each Party to take actions it considers necessary to protect its essential security interests.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides the Agreement does not affect either Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's 1) national treatment obligation for goods, 2) national treatment and most-favored-nation obligations for services, 3) prohibitions on performance requirements, and 4) expropriation rules.

Disclosure of Information. The chapter also provides that a Party may withhold information from the other where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises.

Corrupt Practices. Under Chapter 21, the Parties pledge to continue to combat bribery and corruption in international business transactions, to work together on anti-corruption issues, and to support relevant initiatives in international fora.

General Provisions. Chapter 21 provides that the annexes are part of the Agreement and that the Parties may amend the Agreement subject to applicable domestic procedures. The chapter also provides for the entry into force of the Agreement and for its termination six months after a Party provides written notice that it intends to withdraw.

UNITED STATES – MOROCCO FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States-Morocco Free Trade Agreement.

Preamble and Chapter One: Establishment of a Free Trade Area and Definitions

The Preamble to the agreement provides the Parties' underlying objectives in entering into the Agreement and provides context to the provisions that follow. Chapter One sets out provisions establishing a free trade area. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which both the United States and Morocco are party. They also provide that, with certain exceptions, the dispute settlement provisions of the *Treaty Between the United States of America and the Kingdom of Morocco Concerning the Encouragement and Reciprocal Protection of Investments*, signed by the Parties in 1985, will be suspended on the date of entry into force of the Agreement. Chapter One also includes definitions of certain terms that recur in various Chapters of the Agreement.

Chapter Two: National Treatment and Market Access for Goods

Chapter Two sets out the Agreement's principal rules governing trade in goods. It requires each Party to treat goods from the other Party in a non-discriminatory manner, provides for the phase-out of tariffs on "originating goods" (as defined in Chapter Five (Rules of Origin)) traded between the two Parties, and requires the elimination of a wide variety of non-tariff barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Two provides rules for the elimination of customs duties on originating goods traded between the Parties. The Agreement is comprehensive, containing U.S. and Moroccan commitments on all tariffs. Duties on 95 percent of bilateral trade in industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other such goods will be phased out over periods of up to 10 years. Some sensitive agricultural products will have longer periods for duty elimination or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). Annex IV of the Agreement includes detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods.

Annex IV also contains a provision that ensures that U.S. exporters of products such as wheat, beef, poultry, corn, soybeans, and corn and soybean products will enjoy a degree of access to Morocco's market that is at least as favorable as that Morocco affords other of its trading partners. This provision will ensure that U.S. exporters of agricultural products will be able to compete with European and other countries in Morocco's market. Chapter Two also provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Temporary Admission. Chapter Two requires the Parties to provide duty-free temporary admission for certain goods without the usual bonding requirement that applies to imports. Such items include professional equipment, goods for display or demonstration, and commercial samples.

Import/Export Restrictions, Fees, and Formalities. The Agreement incorporates the prohibition on import and export restrictions set out in Article XI of the General Agreement on Tariffs and Trade (GATT) 1994 and specifies that these include: (1) export and import price requirements (except under antidumping and countervailing duty orders); (2) import licensing conditioned on the fulfillment of a performance requirement; and (3) voluntary export restraints inconsistent with Article VI of GATT 1994. In addition, a Party must limit fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered, in accordance with Article VIII of GATT 1994.

Chapter Three: Agriculture and Sanitary and Phytosanitary Measures

Chapter Three sets out various provisions governing trade in agricultural goods and the Parties' observance of WTO rules on sanitary and phytosanitary (SPS) measures.

Tariff-Rate Quotas. Chapter Three contains disciplines regarding the administration and implementation of TRQs for agricultural goods. Those disciplines require the Parties to implement and administer the TRQs in accordance with Article XIII of GATT 1994 and the WTO Agreement on Import Licensing Procedures. They must also ensure that: (1) administration procedures are transparent, publicly available, timely, non-discriminatory, responsive to market conditions, and minimally burdensome to trade; (2) anyone who fulfills a Party's requirements is eligible to apply and be considered for an allocation under that Party's TRQs; (3) no portion of an in-quota quantity is allocated to producer groups or other non-governmental organizations (NGOs) (with certain exceptions for Morocco's wheat TRQ); (4) only government entities administer each Party's TRQs and the Parties do not delegate TRQ administration to producer groups or other NGOs; and (5) in-quota quantities are allocated in commercially viable shipping quantities. Furthermore, a Party must make every effort to administer its TRQs in a manner that allows importers to fully utilize them; may not condition application for, or use of, an import license or allocation under a TRQ on the re-exportation of an agricultural good; and may not count food aid or other non-commercial shipments in determining whether a TRQ in-quota quantity has been filled. Finally, the Agreement provides for consultation, on request of either Party, on administration of TRQs.

Export Subsidies. Chapter Three provides for the Parties to work together toward an agreement in the WTO to eliminate agricultural export subsidies and prevent their reintroduction in any form. The Chapter further provides that neither Party may introduce or maintain export subsidies on agricultural goods destined for the other country, except as provided for in Article 3.3. Under Article 3.3., if the exporting Party believes that a third country is subsidizing its exports to the other Party, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the

importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

Export State Trading Enterprises. The Chapter also contains an article regarding export state trading enterprises. The article commits the Parties to work together in WTO negotiations to secure an agreement on export state trading enterprises that: (1) eliminates restrictions on the right to export; (2) eliminates special financing granted directly or indirectly to state trading enterprises that export for sale a significant share of that country's exports of an agricultural good; and (3) ensures greater transparency in the operation and maintenance of export state trading enterprises.

Agricultural Safeguards. Chapter Three establishes safeguard procedures to aid U.S. industries that are facing low-priced imports of certain horticulture products. The United States will apply safeguard measures (in the form of additional duties) according to Annex 3-A. Annex 3-A sets out a schedule (the "U.S. Agricultural Safeguard List") of eligible horticulture products and their respective "trigger" prices, as well as a methodology for determining the amount of the additional safeguard duty. The U.S. Agricultural Safeguard List includes goods such as canned olives, dried onion and garlic, canned fruit, processed tomato products, and orange juice. Morocco has recourse to other agricultural safeguard mechanisms as set forth in Annex 3-A ("Schedule of Morocco").

Neither government may apply an agriculture safeguard measure to a good that is already the subject of a safeguard under either Chapter Eight (Safeguards) of this Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. Neither Party may subject imports of originating goods from the other Party to any duties applied pursuant to Article 5 of the WTO Agreement on Agriculture.

All safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must notify the Party whose good is subject to the measure and, upon request, consult with the other Party concerning the application of the measure.

Additional Provisions. Chapter Three contains certain additional provisions designed to facilitate trade in agricultural goods. One such provision concerns the Parties' desire to establish an Agricultural Trade Forum through the Joint Committee for addressing agricultural trade matters arising under the agriculture section of Chapter Three.

Other provisions in Chapter Three concern SPS measures. In this regard, the Parties: (1) affirm their existing rights and obligations under the WTO SPS Agreement; (2) forego recourse to the Agreement's dispute settlement procedures for any SPS issues arising under the SPS Section of Chapter Three; and (3) affirm their desire to create a forum through the Joint Committee on SPS matters.

Two annexes to Chapter Three contain provisions relating to trade in specific agricultural products. Annex 3-B permits Morocco to establish an import licensing program for high-quality beef from the United States, and establishes disciplines to govern such a program. Annex 3-C

permits Morocco to implement and administer a wheat auction system for in-quota quantities of the TRQs on U.S. wheat, subject to certain disciplines.

Annex 1 to Morocco's General Notes to its tariff schedule provides that in year four of the implementation period, the United States and Morocco will decide whether the in-quota quantities in Morocco's wheat TRQs will be administered after year 5 through an auction or first-come, first served system.

Finally, pursuant to side letters that are part of the Agreement, Morocco: (1) will eliminate its variable tariff system on oilseeds by the date of entry into force of the Agreement; and, (2) with respect to U.S. exports of beef, poultry, and beef and poultry products, will accept FSIS export certificates as the means for certifying compliance with standards on hormones, antibiotics, and other residues.

Chapter Four: Textiles and Apparel

Chapter Four sets out provisions addressing trade in textile and apparel goods, including a "safeguard" provision, special rules of origin, and customs cooperation provisions aimed at preventing circumvention.

Tariff Elimination. Under Chapter Four, duties on all "originating" textile and apparel goods traded between the two countries will be eliminated after nine years. Tariffs will be eliminated immediately on some goods and, except for certain specific textile and apparel articles, tariffs on the remainder of textile and apparel goods will be phased out progressively. As in Chapter Two (National Treatment and Market Access for Goods), Chapter Four provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Safeguard Actions. To deal with emergency conditions resulting from such duty elimination or reduction, the Agreement includes a "safeguard" provision that permits the importing country temporarily to re-impose normal trade relations (most-favored-nation) (NTR (MFN)) duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Safeguard measures may be applied for up to three years (with the possibility of a two-year extension). A Party may not apply a safeguard measure on a good beyond ten years after the Party must eliminate duties on that good under the Agreement.

A Party applying a safeguard action must provide the other Party with mutually agreed compensation in the form of trade concessions that are substantially equivalent to the increased duties. If the Parties cannot agree on compensation, the exporting Party may raise duties up to NTR (MFN) levels on any goods from the importing Party to achieve trade effects substantially equivalent to the safeguard action.

Rules of Origin and Related Matters. Chapter Four includes special rules for determining whether a textile or apparel good is an "originating good," including a *de minimis* exception for non-originating yarns or fibers, a rule for treatment of sets, and consultation provisions. The *de*

minimis rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute seven percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Chapter Four also calls for the United States and Morocco to provide "tariff preference levels" (TPLs) for a limited quantity of specific fabric and apparel goods and certain cotton goods from non-Party sources. TPL goods will be accorded preferential tariff treatment as if they were originating goods. For certain fabric and apparel goods, TPL status will apply to 30 million square meters for the first four years of the Agreement, falling to just over four million square meters in the tenth year of the Agreement, after which time TPL status for these goods will not be available. For certain cotton goods, TPL status will apply to slightly more than one million kilograms annually.

The annex to Chapter Four includes specific rules of origin for textile and apparel goods. A textile or apparel good will generally qualify as an "originating good" only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties, or if there is an applicable change in tariff classification under Annex 4-A.

Customs Cooperation. Chapter Four also includes a customs cooperation article that sets out detailed commitments designed to prevent circumvention of the Agreement's rules governing textiles and apparel. The Parties will cooperate in enforcing relevant laws, in ensuring the accuracy of claims of origin, and in preventing circumvention of relevant international agreements. A Party may conduct site visits under certain conditions to verify that circumvention is not occurring, and the other Party must provide information necessary for the visits. An importing Party may respond to circumvention and actions that impede it from detecting circumvention, including by denying preferential tariff treatment under the Agreement to imports of specific textile or apparel goods, or to all imports of textile or apparel goods from particular enterprises. Either Party may convene bilateral consultations to resolve technical or interpretive issues that arise under the chapter's customs cooperation article.

Chapter Five: Rules of Origin

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating good" under the rules of origin set out in Chapters Four (Textiles and Apparel) and Five and Annexes 4-A and 5-A. These rules ensure that the tariff and other benefits of the Agreement accrue primarily to firms that produce or manufacture goods in the two Parties' territories. They are similar in approach to those included in the U.S.-Israel and U.S.-Jordan free trade agreements.

Key Concepts. Chapter Five provides general criteria under which a good that has been imported directly from the territory of one Party into the territory of the other Party may qualify as an "originating good:"

- When the good is wholly grown, produced, or manufactured in the territory of one or both of the Parties (*e.g.*, crops grown or minerals extracted in the United States);

- When the good: (1) is not covered by the rules in Annex 4-A or Annex 5-A; (2) is a "new or different article of commerce" that has been grown, produced, or manufactured in the territory of one or both of the Parties; and (3) the sum of the value of materials produced in the territory of one or both of the Parties and the "direct costs of processing operations" performed in the territory of one or both of the Parties is at least 35 percent of the appraised value of the good at the time it is imported into the territory of a Party; or

- When the good is covered by the rules in Annex 4-A or Annex 5-A and meets the requirements of the applicable Annex. (Annex 4-A contains specific rules of origin for textile and apparel goods. Annex 5-A contains specific rules of origin on goods such as citrus juices, processed fruits and vegetables including canned olives, dairy products, plastics, ignition wiring sets, and motor vehicle parts.)

The Chapter defines "new or different article of commerce" as "a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed." It defines "direct costs of processing operations" as "those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good." Such costs typically include labor costs, depreciation on machinery or equipment, research and development, inspection costs, and packaging costs, among others. They typically do not include profit and general business expenses, such as salaries, insurance, and advertising.

Chapter Five clarifies that a good will not be considered a "new or different article of commerce" merely by virtue of simple combining or packaging operations or mere dilution with water or another substance that does not change the characteristics of the good.

Declarations of Origin. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must submit, on the request of the importing Party's customs authority, a "declaration" providing all pertinent information concerning the growth, production, or manufacture of the good. The Agreement provides that a Party should request a declaration only when it has reason to question whether a claim that particular goods meet the Agreement's origin rules or the Party is conducting a random verification. A Party may only deny preferential treatment in writing, and must provide legal and factual findings.

Consultations. Chapter Five calls for the Parties to work together to ensure the effective and uniform application of the Chapter. The Chapter permits the creation of *ad hoc* working groups or subcommittees of the Joint Committee to discuss necessary amendments or revisions. In addition, Article 5.13 provides that, at an appropriate time, "the United States and Morocco will enter into discussions with a view to deciding the extent to which materials that are products of countries in the Middle East or North Africa may be counted for purposes of satisfying the Agreement's origin requirement."

Finally, in a separate agreement set out in a side letter regarding Chapter Five of the FTA, the two governments provide that, for purposes of determining whether a good is a "new or different article of commerce that has been grown, produced, or manufactured" for purposes of Chapter Five, each country is to be guided by the specific rules of tariff classification set forth in section 102.20 of the United States Customs Regulations (19 CFR 102.20).

Chapter Six: Customs Administration

Chapter Six establishes rules designed to facilitate trade through increased transparency, predictability, and efficiency in each Party's customs procedures. It also provides for cooperation between the Parties on customs matters.

General Principles. The United States and Morocco will observe certain transparency requirements. The Parties must promptly publish their customs measures on the Internet and, where possible, solicit public comments before introducing or amending their customs regulations. Each Party also must provide written advance rulings, upon request, to its importers and to exporters of the other Party, regarding whether a good qualifies as an "originating good" under the Agreement, as well as on other customs matters. Certain provisions relating to customs administration become effective with respect to Morocco no later than two years after the Agreement's entry into force. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties also must release goods from customs promptly and expeditiously clear express shipments.

Cooperation. Chapter Six also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement and to import and export restrictions. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries.

Chapter Seven: Technical Barriers to Trade

Under Chapter Seven, the Parties will build on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on standards issues.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards ("technical regulations"), and procedures used to determine whether a particular good meets such standards ("conformity assessment" procedures).

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Chapter Seven requires the Parties to apply these principles.

Cooperation. Chapter Seven sets out multiple means for cooperation between the Parties to reduce barriers and improve market access, and specifies that the Office of the U.S. Trade Representative and Morocco's Ministry of Industry will serve as Chapter Coordinators responsible for facilitating this cooperation.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment (*i.e.*, testing to determine whether a product or service meets applicable standards) results. Chapter Seven further provides that, where a Party recognizes conformity assessment bodies in its own territory, it should recognize bodies in the territory of the other Party on the same terms.

Transparency. Chapter Seven contains various transparency obligations, including obligations to: (1) permit persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (2) transmit regulatory proposals notified under the TBT Agreement directly to the other Party; (3) describe in writing the objectives of and reasons for regulatory proposals; and (4) accept and respond in writing to comments on regulatory proposals. These provisions become effective no later than five years after the Agreement's entry into force.

Chapter Eight: Safeguards

Chapter Eight establishes a bilateral safeguard mechanism that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The Chapter does not affect either government's rights or obligations under the WTO's safeguard provisions (global safeguards) or under other WTO trade remedy rules.

Chapter Eight authorizes each Party to impose temporary duties on a good imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good.

Absent agreement by the other Party, a Party may only apply a safeguard measure to a good until the date that is five years after that Party must eliminate customs duties on that good under Annex IV. A safeguard measure may take one of two forms – a temporary increase in duties to NTR (MFN) levels or a temporary suspension of duty reductions called for under the Agreement. For customs duties that are applied to a good on a seasonal basis, the increase in the duty may not exceed the lesser of: (1) the level of the NTR (MFN) duty rate in effect on the day immediately before the Agreement enters into effect; or (2) the NTR (MFN) duty in effect for the immediately preceding season. In "critical circumstances," the importing Party may impose provisional relief for up to 200 days, based on a preliminary determination, while its investigation of the matter is underway. The duration of provisional relief is counted as part of the duration of any safeguard resulting from an investigation under this Chapter.

A bilateral safeguard measure may last for an initial period of three years. A Party may extend it for two additional years if the Party determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must liberalize it at regular intervals. Chapter Eight incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter Eight requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on the amount or nature of the compensation, the Party entitled to compensation may suspend "substantially equivalent" trade concessions that it has made to the other Party.

Global Safeguards. Chapter Eight maintains each Party's right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. Special safeguard provisions for certain agricultural goods are set out in Chapter Three (Agriculture and Sanitary and Phytosanitary Measures) and for textile and apparel goods in Chapter Four (Textiles and Apparel).

Chapter Nine: Government Procurement

Chapter Nine provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other country. The rules of Chapter Nine are broadly based on WTO procurement rules. (Morocco is not a party to the WTO Agreement on Government Procurement.)

General Principles. Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Party in a manner that is "no less favorable" than their domestic counterparts. The Chapter similarly bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain monetary thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. Specifically, the Chapter applies to procurements by listed "central" (*i.e.*, Moroccan or U.S. federal) government agencies of goods and services valued at US$175,000 or more and construction services valued at US$6,725,000 or more. The equivalent thresholds for purchases by listed "sub-central" government entities (*i.e.*, Moroccan prefectural and provincial government agencies and U.S. state government agencies) are US$477,000 and US$6,725,000, for goods and services and construction services, respectively. The Chapter's thresholds for listed "other covered entities" are either US$250,000 or US$538,000 for goods and services, depending on the entity, and US$6,725,000 for construction services. All thresholds are subject to adjustment for inflation.

Transparency. Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

Tendering Rules. Chapter Nine provides rules for setting deadlines on "tendering" (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service. It also sets out rules that procuring entities must follow when they use limited tendering, *i.e.*, limit the set of suppliers that may participate in a procurement.

Award Rules. Chapter Nine requires that to be considered for award a tender must be submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers. (Morocco is required to implement one government procurement rule relating to domestic review of supplier challenges no later than one year after the Agreement enters into force.)

Additional Provisions. Chapter Nine is designed to provide integrity in each Party's procurement practices, including by requiring the Parties to adopt and maintain procedures that disqualify suppliers that a Party has determined to have engaged in fraudulent or illegal action in relation to procurement. It establishes procedures under which a Party may change the extent to which the Chapter applies to its government entities, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor.

Chapter Ten: Investment

Chapter Ten establishes rules to protect investors from one Party against discriminatory and certain other restrictive government actions when they make or attempt to make investments in the other Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement (NAFTA) and U.S. bilateral investment treaties) and in customary international law. It also contains several innovations that were incorporated in the free trade agreements the United States has

negotiated with Australia, the countries of the Central American Free Trade Agreement (CAFTA), Chile, and Singapore.

Key Concepts. Under Chapter Ten, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, concessions, and contracts. It includes both existing and future investments. The term "investor of a Party" encompasses both U.S. and Moroccan nationals as well as firms (including branches) established in one of the Parties.

General Principles. Chapter Ten provides six basic protections: (1) non-discriminatory treatment relative to domestic investors as well as investors of non-Parties (including where a Party takes measures to deal with armed conflict or civil strife in its territory); (2) the "minimum standard of treatment of aliens" in conformity with customary international law; (3) protection from expropriation other than in conformity with customary international law; (4) free transfer of funds related to an investment; (5) freedom from "performance requirements"; and (6) the ability to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority or less of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the Chapter particular sectors or measures for which it negotiated an exemption from the Chapter's rules relating to national treatment, MFN treatment, performance requirements, or senior management and boards of directors. All current U.S. state and local laws and regulations are exempted from these rules. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

Investor-State Disputes. Chapter Ten provides a mechanism for an investor of a Party to pursue a claim against the other Party. The investor may assert that the Party has breached a substantive obligation under Section A of Chapter Ten or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Innovative provisions afford public access to information on Chapter Ten investor-State proceedings and ensure proper application of dispute settlement rules. For example, Chapter Ten requires the Parties to make public all documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept amicus submissions from the public. The Chapter also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

As noted in connection with summary of Chapter One, with certain exceptions, the dispute settlement provisions of the 1985 bilateral investment treaty between the United States and Morocco will be suspended when the free trade agreement enters into force.

Chapter Eleven: Cross-Border Trade in Services

Chapter Eleven governs measures affecting cross-border trade in services between the United States and Morocco. Certain of its provisions also apply to measures affecting investments to supply services. Chapter provisions are drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

Key Concepts. Under the Agreement, cross-border trade in services covers the supply of a service:

- from the territory of one Party into the territory of the other (*e.g.*, electronic delivery of services from the United States to Morocco);

- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, a Moroccan company provides services to U.S. visitors in Morocco); and

- by a national of a Party in the territory of the other Party (*e.g.*, a U.S. lawyer provides legal services in Morocco).

Chapter Eleven should be read together with Chapter Ten (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border.

General Principles. Among Chapter Eleven's core obligations are requirements to provide national treatment and MFN treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. The Chapter's provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (*e.g.*, rules that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through local investments.

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The Chapter excludes most financial services and air transportation, although it does apply to specialty air services and aircraft repair and maintenance. Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the Chapter's core obligations. Any non-conforming aspects of all current U.S. state and local laws and regulations are exempted from these core obligations. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Eleven. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through local investments.

Exclusions. Chapter Eleven excludes any service supplied "in the exercise of governmental authority," that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not generally apply to government subsidies, although Morocco has undertaken a commitment relating to cross-subsidization of express delivery services. The Parties have also negotiated an annex regarding the regulation of professional services. Under the annex, the Parties will endeavor to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers. Such standards and criteria may be developed with regard, among other things, to: (1) accreditation of schools or academic programs; (2) qualifying examinations for licensing; (3) standards of professional conduct and the nature of disciplinary action for non-conformity with those standards; (4) requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and (5) consumer protection.

Chapter Twelve: Financial Services

Chapter Twelve provides rules governing each Party's treatment of: (1) financial institutions of the other Party; (2) investors of the other Party, and their investments, in financial institutions; and (3) cross-border trade in financial services.

Key Concepts. The Chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Twelve's core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Specifically, Chapter Twelve imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis.

Non-Conforming Measures. Similar to Chapters Ten and Eleven, each Party has listed in an annex to Chapter Twelve particular financial services measures for which it negotiated exemptions from the Chapter's core obligations. Any non-conforming aspects of all current U.S.

state and local laws and regulations are exempted from these obligations. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

Other Provisions. Chapter Twelve includes provisions on transparency, some of which become effective with respect to Morocco no later than two years after the Agreement's entry into force. It also includes "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to Other Chapters. Measures that a Party applies to financial services suppliers of the other Party, other than regulated financial institutions, that make or operate investments in the Party's territory are covered principally by Chapter Ten and certain provisions of Chapter Eleven. In particular, the core obligations of the investment Chapter apply to such measures, as do the market access, transparency, and domestic regulation provisions of the services Chapter. Chapter Twelve incorporates by reference certain provisions of Chapter Ten, such as those relating to transfers and expropriation.

Chapter Thirteen: Telecommunications

Chapter Thirteen includes disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications trade and investment between the United States and Morocco. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the other country. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party. Chapter Thirteen also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Thirteen, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "value-added services" (e.g., services that enable users to create, store, or process information over a network).

Competition. Chapter Thirteen establishes rules that reflect the common elements of the Parties' laws promoting competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Morocco must ensure that its public phone companies do not provide preferential access to Moroccan banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities, such as buildings, where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers," *i.e.*, companies that, by virtue of their market position or control over certain facilities, can materially affect the terms of participation in the market.

Regulation. The Chapter also addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish licensing requirements and criteria and other government measures relating to public telecommunications services;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and

- will endeavor to avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Chapter Fourteen: Electronic Commerce

Chapter Fourteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products, such as computer programs, video, images, and sound recordings. The Chapter contains provisions on electronic commerce similar to those in recent U.S. free trade agreements with Chile, Singapore, and Australia and represents a major advance over previous international understandings on this subject.

Customs Duties. Chapter Fourteen provides that a Party may not impose customs duties on digital products of the other Party that are transmitted electronically. The Chapter does not preclude a Party from imposing duties on digital products of the other Party that are fixed on a carrier medium, provided that the duty is based on the cost or value of that medium alone, rather than the cost or value of the digital content stored on that medium.

Non-Discrimination. Chapter Fourteen requires the Parties to apply the principles of MFN treatment and national treatment to trade in electronically transmitted digital products. In particular, a Party may not treat digital products less favorably because such digital products: (1) have undergone certain specific activities (*e.g.*, creation, production, first sale) in the territory of the other Party; or (2) are associated with certain categories of persons of the other Party (*e.g.*, authors, performers, producers). Nor may a Party treat digital products that have such a nexus to the other Party less favorably than it treats like digital products with such a nexus to a non-Party. The non-discrimination rules do not apply to actions taken in accordance with the non-conforming measures adopted under Chapter Ten (Investment), Eleven (Cross-Border Trade in Services, or Twelve (Financial Services).

Chapter Fifteen: Intellectual Property Rights

Chapter Fifteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. Chapter Fifteen provides for both governments to ratify or accede to certain agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants (UPOV Convention), the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms, the Patent Cooperation Treaty, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. The United States is already a party to these agreements.

Chapter Fifteen also requires broad application of the principle of national treatment, with only limited exceptions. The general provisions also clarify the coverage of existing subject matter and requirements for publication of all laws, regulations and procedures relating to the protection and enforcement of intellectual property rights.

Trademarks and Geographical Indications. Chapter Fifteen establishes rules concerning the protection of trademarks and geographical indications. For example, it provides that the owner of a registered trademark shall have the exclusive right to prevent its use in the course of trade for related goods and services by any party not having its consent. It also sets out rules with respect to the registration of trademarks. Each Party must provide protection for trademarks, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, the Chapter requires that the Parties provide efficient and transparent procedures governing the application for protection of trademarks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights. Chapter Fifteen provides broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for

works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically protects the rights of performers and producers of phonograms.

To curb copyright piracy, Chapter Fifteen requires the governments to use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Fifteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Fifteen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Fifteen also includes a variety of provisions for the protection of patents. The Parties may only exclude inventions from patentability to protect *ordre public* or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment. The Parties also confirm the availability of patents for new uses or methods of using a known product. The Chapter requires protection for the right of importation. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The Chapter requires patent term adjustments to compensate for unreasonable delays that occur while granting the patent, as well as unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products. Chapter Fifteen includes specific measures relating to certain regulated products, including pharmaceuticals and agricultural chemicals. Among other things, it protects test data regarding safety and efficacy that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection – five years for pharmaceuticals and ten years for agricultural chemicals. It also requires measures to prevent the marketing of pharmaceutical products that infringe patents.

Enforcement Provisions. Chapter Fifteen also creates obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for damages based on a fixed range (*i.e.*, "statutory damages"), on the election of the right holder in cases involving infringement of copyright and related rights and trademark counterfeiting.

Chapter Fifteen provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and

documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Fifteen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint. Chapter Fifteen provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

Transition Periods. All obligations in the Chapter take effect upon the Agreement's entry into force, with the exception of the domain name cyber-piracy provisions, which are subject to a one-year transition period, and the provisions limiting the liability of internet service providers, which become effective on January 1, 2006. Morocco will also have until January 1, 2006 to ratify or accede to: (1) the UPOV Convention; (2) the Trademark Law Treaty; and (3) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms.

Chapter Sixteen: Labor

Chapter Sixteen sets out the Parties' commitments regarding trade-related labor rights. As with other recent free trade agreements, this Chapter draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the United States-Chile Free Trade Agreement, the United States-Singapore Free Trade Agreement, and the United States-Jordan Free Trade Agreement.

General Principles. Under Chapter Sixteen, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its law recognizes and protects the fundamental labor principles spelled out in the ILO declaration and listed in the Chapter. Each Party also must strive to ensure it does not derogate from or waive the protections of its labor laws to encourage bilateral trade or investment. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures for the enforcement of labor laws.

Effective Enforcement. Each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting bilateral trade. The Chapter defines labor laws to include those related to: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition of forced or compulsory labor; (4) a minimum age for the employment of children and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to minimum wages, hours, and occupational safety and health. While committing each Party to effective labor law enforcement, the Chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

The U.S. commitment includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws. Morocco's commitment includes *dahirs*, acts of the Moroccan Parliament, decrees, and administrative regulations.

Cooperation. Each Party may convene a national labor advisory committee, made up of members of its public, including representatives of labor and business organizations, to advise it on the implementation of the Chapter. In addition, each Party will designate a contact point for communications with the other Party and the public regarding operation of the Chapter. As provided for in a side letter, a Subcommittee on Labor Affairs may be established to discuss the operation of Chapter Sixteen and will include the relevant officials from each Party's labor ministries. Meetings of the Subcommittee will normally include a public session.

Finally, the Parties will establish a Labor Cooperation Mechanism to address labor matters of common interest, such as: (1) promoting fundamental rights and their effective application; (2) eliminating the worst forms of child labor; (3) enhancing labor-management relations; (4) improving working conditions; (5) developing unemployment assistance programs and other social safety net programs; (6) encouraging human-resource development and life-long learning; and (7) utilizing labor statistics. The Chapter also includes commitments to provide certain procedural guarantees that ensure fair, equitable and transparent proceedings for the administration and enforcement of a Party's labor laws.

Consultations and Dispute Settlement. If a Party believes that the other Party is not complying with its obligations, Chapter Sixteen provides for consultations regarding any matter arising under the Chapter, including the opportunity to refer a matter to the Subcommittee on Labor Affairs.

If the matter concerns a Party's compliance with the Chapter's effective enforcement obligation, the complaining Party may choose to pursue consultations under Chapter Sixteen or Chapter Twenty (Dispute Settlement). If a Party chooses to request consultations under Chapter Twenty, consultations under Chapter Sixteen on the same matter cease. In addition, after 60 days of consultations under Chapter Sixteen, the Parties may agree to refer the matter concerning compliance with the effective enforcement obligation directly to the Joint Committee for resolution under Chapter Twenty.

Chapter Seventeen: Environment

Chapter Seventeen sets out the Parties' commitments regarding environmental protection. Chapter Seventeen draws on, but does not replicate, the North American Agreement on Environmental Cooperation (the supplemental NAFTA environmental agreement) and the environmental provisions of the United States-Chile Free Trade Agreement, the United States-Singapore Free Trade Agreement, and the United States-Jordan Free Trade Agreement.

General Principles. Each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage bilateral trade or investment. The Chapter also includes commitments to provide certain procedural guarantees that ensure fair, equitable, and transparent proceedings for the administration and enforcement of environmental laws. In addition, the Chapter calls on the Parties to encourage the development of voluntary

measures and market-based mechanisms for achieving and maintaining high levels of environmental protection. The Parties also must ensure that opportunities exist for the public to provide input concerning the implementation of the Chapter.

Cooperation. Chapter Seventeen includes commitments to enhance bilateral cooperation in environmental matters. In particular, the Parties will undertake activities pursuant to a United States-Morocco Joint Statement on Environmental Cooperation and to coordinate and review such activities in a Working Group on Environmental Cooperation. The Parties also commit to continue to seek means to enhance the mutual benefits of multilateral environmental agreements (MEAs) and trade agreements to which they are both party, and to consult regularly with respect to the WTO negotiations regarding MEAs.

As set out in a side letter to the Agreement, a Subcommittee on Environmental Affairs will also be established to discuss the operation of Chapter Seventeen and will include the relevant officials from each Party's trade and environmental agencies. Meetings of the Subcommittee will normally include a public session, and any decisions or reports of the Subcommittee concerning implementation of Chapter Seventeen will normally be made public.

Effective Enforcement. The U.S. commitment on enforcement of environmental laws applies to federal environmental statutes and regulations enforceable by the federal government. Morocco's commitment applies to *dahirs*, acts of the Moroccan Parliament, decrees, and administrative regulations. At the same time, the Chapter recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources.

Consultations and Dispute Settlement. If a Party believes that the other Party is not complying with its obligations under the Chapter, it may convene bilateral consultations and next may refer the matter to the Subcommittee on Environmental Affairs. If the matter concerns a Party's compliance with the Chapter's effective enforcement obligation, the complaining Party may choose to pursue consultations under Chapter Seventeen or Chapter Twenty (Dispute Settlement). If a Party chooses to request consultations under Chapter Twenty, consultations under Chapter Seventeen on the same matter cease. In addition, after 60 days of consultations under Chapter Seventeen, the Parties may agree to refer the matter concerning compliance with the effective enforcement obligation directly to the Joint Committee for resolution under Chapter Twenty.

Chapter Eighteen: Transparency

General Provisions. Chapter Eighteen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all measures concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. (The publication requirement applies to Morocco beginning one year after the Agreement enters into force.) Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected

by an administrative proceeding applying measures to particular person, goods, or services of the other Party. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit. Chapter Eighteen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

In addition, Chapter Eighteen contains innovative provisions on combating bribery and corruption. Each country must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties that take into account the gravity of the offense. In addition, both countries will strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery and will work jointly to encourage and support appropriate regional and multilateral initiatives.

Chapter Nineteen: Administration of the Agreement

Chapter Nineteen requires that each Party designate a contact point to facilitate communication between the Parties on any matter relating to the Agreement. The Chapter also creates a Joint Committee to supervise the implementation and operation of the Agreement and to review the trade relationship between the Parties. Its tasks will be to: (1) facilitate the avoidance and settlement of disputes arising under the Agreement; (2) consider and adopt any amendment or other modification to the Agreement; and (3) issue interpretations of the Agreement. The Joint Committee will convene at least once a year.

Chapter Twenty: Dispute Settlement

Chapter Twenty sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.*, the WTO Agreement), the complaining Party may choose the forum for resolving the matter. The selected forum is the exclusive venue for resolving that dispute.

Consultations. Either Party may request consultations on any matter that it believes might affect the operation of the Agreement. After requesting or receiving a request for consultations, each Party must solicit the views of the public on the matter. If the Parties cannot resolve the matter through consultations within 60 days, a Party may refer the matter to the Joint Committee, which will attempt to resolve the dispute.

Panel Procedures. If the Joint Committee cannot resolve the dispute within 60 days after delivery of the request, the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. A side letter to Chapter Twenty provides that, in disputes related to a Party's enforcement of its labor or environmental laws, panelists other than those chosen by lot from a standing roster that the two governments will appoint, must have expertise or experience relevant to the subject matter that is under dispute. The Parties will set

rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 180 days after the chair is selected. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits of equivalent effect.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform to the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for appropriate labor or environmental initiatives. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the

assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place and the defending government will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, which ever occurs first.

Chapter Twenty-One: Exceptions

Chapter Twenty-One sets out exceptions that apply to the entire Agreement. Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Eleven (Cross Border Trade in Services), Thirteen (Telecommunications), and Fourteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of this Agreement.

Essential Security. Chapter Twenty-One allows each Party to take actions it considers necessary to protect its essential security interests.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect either Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: (1) national treatment obligation for goods; (2) national treatment and MFN obligations for services; (3) prohibition on performance requirements; and (4) expropriation rules.

Disclosure of Information. The Chapter also provides that a Party may withhold information from the other Party where such disclosure would impede domestic law enforcement or otherwise be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Balance of Payments Measures. Finally, if a Party decides to impose measures for balance of payments purposes on trade in goods, it must do so in conformity with GATT 1994, and must immediately consult with the other Party regarding such measures and not impair the relative advantages accorded to the goods of the other Party under the Agreement.

Chapter Twenty-Two: Final Provisions

Chapter Twenty-Two provides that the Parties may amend the Agreement subject to applicable domestic procedures. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Two establishes that any other country or group of countries may accede to the Agreement on terms and conditions that are agreed with the Parties and approved according to each Party's domestic procedures. The Chapter also permits non-application of the agreement between a Party and a newly acceding country or group of countries. It also provides for the entry into force of the Agreement and for its termination 180 days after a Party provides written notice that it intends to withdraw.

UNITED STATES – BAHRAIN FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States-Bahrain Free Trade Agreement ("FTA" or "Agreement").

Preamble and Chapter One: Establishment of a Free Trade Area and Definitions

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the Agreement and provides context to the provisions that follow. Chapter One sets out provisions establishing a free trade area. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization ("WTO") and other agreements to which both the United States and Bahrain are party. Chapter One also includes definitions of certain terms that recur in various Chapters of the Agreement.

Chapter Two: National Treatment and Market Access for Goods

Chapter Two sets out the Agreement's principal rules governing trade in goods. It requires each Party to treat goods from the other Party in a non-discriminatory manner, provides for the phase-out of tariffs on "originating goods" (as defined in Chapter Four (Rules of Origin)) traded between the two Parties, and requires the elimination of a wide variety of non-tariff barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Two provides rules for the elimination of customs duties on originating goods traded between the Parties no later than 10 years after the Agreement enters into force. The Agreement is comprehensive, containing U.S. and Bahraini elimination commitments on all tariffs. For example, 100 percent of bilateral trade in consumer and industrial goods (including textile and apparel goods) will become duty-free immediately upon the Agreement's entry into force. In addition, Bahrain will provide immediate duty-free access for U.S. agricultural exports in 98 percent of agricultural tariff lines. Certain sensitive agricultural goods in Bahrain and the United States will have longer periods for duty elimination (up to 10 years) or will be subject to other provisions, including, in some cases, the application of transitional preferential tariff-rate quotas ("TRQs") by the United States. Annex 2-B of the Agreement includes detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. Chapter Two also provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Temporary Admission. Chapter Two requires the Parties to provide duty-free temporary admission for certain goods without the usual bonding requirement that applies to imports. Such items include professional equipment, goods for display or demonstration, and commercial samples.

Import/Export Restrictions, Fees, and Formalities. The Agreement incorporates the prohibition on import and export restrictions set out in Article XI of the General Agreement on Tariffs and Trade ("GATT") 1994 and specifies that these include: (1) export and import price requirements

(except under antidumping and countervailing duty orders); (2) import licensing conditioned on the fulfillment of a performance requirement; and (3) voluntary export restraints inconsistent with Article VI of GATT 1994. In addition, a Party must limit fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered, in accordance with Article VIII of GATT 1994. Finally, the United States also has agreed not to apply its merchandise processing fee on imports of originating goods from Bahrain.

Agricultural Export Subsidies. Chapter Two provides that the Parties will work together in WTO agriculture negotiations to eliminate all forms of agricultural export subsidies. The Chapter further provides that each Party will eliminate export subsidies on agricultural goods destined for the other country. According to Article 2.11, neither Party may introduce or maintain a subsidy on agricultural goods destined for the other Party unless the exporting Party believes that a third country is subsidizing its exports to the other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

Chapter Three: Textiles and Apparel

Chapter Three sets out provisions addressing trade in textile and apparel goods, including an "emergency action" provision, special rules of origin, and customs cooperation provisions aimed at preventing circumvention.

Emergency Actions. To deal with emergency conditions resulting from the elimination or reduction of customs duties, the Agreement includes an "emergency action" provision that permits the importing country temporarily to re-impose normal trade relations (most-favored-nation) ("NTR" ("MFN")) duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Emergency measures may be applied for a maximum aggregate period of three years, and a Party may not apply an emergency measure on a good beyond 10 years after the Party must eliminate duties on that good under the Agreement.

A Party applying an emergency action must provide the other Party with mutually agreed compensation in the form of trade concessions that are substantially equivalent to the increased duties. If the Parties cannot agree on compensation, the exporting Party may raise duties up to NTR (MFN) levels on any goods from the importing Party to achieve trade effects substantially equivalent to the emergency action.

Rules of Origin and Related Matters. Chapter Three includes special rules for determining whether a textile or apparel good is an "originating good," including a *de minimis* exception for non-originating yarns or fibers, a rule for treatment of sets, and consultation provisions. The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute seven percent or less of the total weight of the component of the good that determines the tariff classification. This special rule does not apply to elastomeric yarns.

Chapter Three also calls for the United States and Bahrain to provide tariff preference levels ("TPLs") for a limited quantity of specific fabric and apparel goods from non-Party sources. TPL goods will be accorded preferential tariff treatment as if they were originating goods. For the specified fabric, apparel, and made-up goods, TPL status will apply to a maximum of 65 million square meter equivalents for each of the first 10 years after the Agreement's entry into force. After 10 years, TPL status will not be available for such goods.

The Annex to Chapter Three includes specific rules of origin for textile and apparel goods. A textile or apparel good will generally qualify as an "originating good" only if all processing after fiber formation (*i.e.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties, or if there is an applicable change in tariff classification under Annex 3-A.

Customs Cooperation. Chapter Three also includes a customs cooperation article that sets out detailed commitments designed to prevent circumvention of the Agreement's rules governing textiles and apparel. The Parties will cooperate in enforcing relevant laws, in ensuring the accuracy of claims of origin, and in preventing circumvention of relevant international agreements. A Party may conduct site visits under certain conditions to verify that circumvention is not occurring, and the other Party must provide information necessary for the visits. An importing Party may respond to circumvention and actions that impede it from detecting circumvention, including by denying preferential tariff treatment under the Agreement to imports of specific textile or apparel goods or to all imports of textile or apparel goods from particular enterprises. Either Party may convene bilateral consultations to resolve technical or interpretive issues that arise under the Chapter's customs cooperation article.

Chapter Four: Rules of Origin

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating good" under the rules of origin set out in Chapters Three (Textiles and Apparel) and Four and Annexes 3-A and 4-A. These rules ensure that the tariff and other benefits of the Agreement accrue primarily to firms that produce or manufacture goods in the two Parties' territories. They are similar in approach to those included in the United States-Morocco, United States-Jordan, and United States-Israel free trade agreements.

Key Concepts. Chapter Four provides general criteria under which a good that has been imported directly from one Party into the other Party may qualify as an "originating good:"

- When the good is wholly grown, produced, or manufactured in one or both of the Parties (*e.g.*, crops grown or minerals extracted in the United States);

- When the good: (1) is not covered by the rules in Annex 3-A or Annex 4-A; (2) is a "new or different article of commerce" that has been grown, produced, or manufactured in the territory of one or both of the Parties; and (3) the sum of (a) the value of materials produced in the territory of one or both of the Parties and (b) the "direct costs of processing operations" performed in the territory of one or both of the Parties is at least

35 percent of the appraised value of the good at the time it is imported into the territory of a Party; or

- When the good is covered by the rules in Annex 3-A or Annex 4-A and meets the requirements of the applicable Annex. (Annex 3-A contains specific rules of origin for textile and apparel goods. Annex 4-A contains specific rules of origin on goods such as citrus juices; dairy products; sugar; sweetened cocoa powder; plastics; ignition wiring sets; and motor vehicle parts.)

Chapter Four defines "new or different article of commerce" as "a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed." It defines "direct costs of processing operations" as "those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good." Such costs typically include labor costs, depreciation on machinery or equipment, research and development, inspection costs, and packaging costs, among others. They typically do not include profit and general business expenses, such as salaries, insurance, and advertising.

Chapter Four clarifies that a good will not be considered a "new or different article of commerce" merely by virtue of simple combining or packaging operations or mere dilution with water or another substance that does not change the characteristics of the good.

Declarations of Origin. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must submit, on the request of the importing Party's customs authorities, a "declaration" providing all pertinent information concerning the production of the good. The Agreement provides that a Party should request a declaration only when it has reason to question the accuracy of a claim of origin or when the Party is conducting a random verification. A Party may only deny preferential treatment in writing and must provide legal and factual findings.

Consultations. Chapter Four calls for the Parties to work together to ensure the effective and uniform application of the Chapter. The Chapter permits the creation of *ad hoc* working groups or a subcommittee of the Joint Committee to discuss necessary amendments or revisions. In addition, Article 4.13 provides that, at an appropriate time, the United States and Bahrain "shall enter into discussions with a view to deciding the extent to which materials that are products of countries in the Middle East or North Africa region may be counted for purposes of satisfying the origin requirement under this Agreement as a step toward achieving regional integration."

Finally, in a separate agreement set out in a side letter regarding Chapter Four, the Parties provide that, for purposes of determining whether a good is a "new or different article of commerce that has been grown, produced, or manufactured" for purposes of Chapter Four, each country is to be guided by the rules of origin set forth in section 102.20 of the United States Customs Regulations (19 CFR 102.20).

Chapter Five: Customs Administration

Chapter Five establishes rules designed to facilitate trade through increased transparency, predictability, and efficiency in each Party's customs procedures. It also provides for cooperation between the Parties on customs matters.

General Principles. The United States and Bahrain will observe certain transparency requirements. The Parties must promptly publish their customs measures on the Internet and, where possible, solicit public comments before introducing or amending their customs regulations. Each Party also must provide written advance rulings, upon request, to its importers and to exporters of the other Party regarding whether a good qualifies as an "originating good" under the Agreement, as well as on other customs matters. The Agreement allows Bahrain up to two years to comply with the provisions relating to advance rulings. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties also must release goods from customs promptly and expeditiously clear express shipments.

Cooperation. Chapter Five also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement and to import and export restrictions. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries.

Chapter Six: Sanitary and Phytosanitary Measures

Chapter Six defines the Parties' obligations to one another regarding sanitary and phytosanitary ("SPS") measures. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Under Chapter Six, the Parties affirm their rights and obligations with respect to each other under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. They also affirm their desire to create a forum through the Joint Committee on SPS matters. However, neither Party may invoke the FTA's dispute settlement procedures for a matter arising under the Chapter. Instead, any SPS dispute between the Parties must be resolved under the applicable WTO agreement(s) and rules.

Chapter Seven: Technical Barriers to Trade

Under Chapter Seven, the Parties will build on WTO rules to promote transparency, accountability, and cooperation between the Parties on standards issues.

Key Concepts. The term "technical barriers to trade" ("TBT") refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards ("technical regulations"), and procedures used to determine whether a particular good meets such standards ("conformity assessment" procedures).

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Chapter Seven requires the Parties to apply these principles.

Cooperation. Chapter Seven sets out multiple means for cooperation between the Parties to reduce barriers and improve market access. The Chapter specifies that the Office of the United States Trade Representative and Bahrain's Ministry of Commerce will serve as TBT Chapter Coordinators responsible for facilitating this cooperation.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment (*i.e.*, testing to determine whether a product or service meets applicable standards) results. Chapter Seven further provides that, where a Party recognizes conformity assessment bodies in its own territory, it should recognize bodies in the territory of the other Party on the same terms.

Transparency. Chapter Seven contains various transparency obligations, including obligations to: (1) permit persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (2) transmit regulatory proposals notified under the TBT Agreement directly to the other Party; (3) describe in writing the objectives of and reasons for regulatory proposals; and (4) accept and respond in writing to comments on regulatory proposals. These provisions become effective no later than five years after the Agreement enters into force.

Chapter Eight: Safeguards

Chapter Eight establishes a bilateral safeguard mechanism that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The Chapter does not affect either government's rights or obligations under the WTO's safeguard provisions (global safeguards) or under other WTO trade remedy rules.

Chapter Eight authorizes each Party to impose temporary duties on a good imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good.

Absent agreement by the other Party, a Party may only apply a safeguard measure to a good during the first 10 years that the FTA is in force. A safeguard measure may take one of two

forms – a temporary increase in duties to NTR (MFN) levels or a temporary suspension of duty reductions called for under the Agreement. A safeguard measure may last for a maximum aggregate period of three years. If a measure lasts more than one year, the Party must liberalize it at regular intervals. Chapter Eight incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter Eight requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on the amount or nature of the compensation, the Party entitled to compensation may suspend "substantially equivalent" trade concessions that it has made to the other Party. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. Special safeguard provisions are set out for textile and apparel goods in Chapter Three (Textiles and Apparel).

Global Safeguards. Chapter Eight maintains each Party's right to take action under Article XIX of GATT 1994 and the WTO Agreement on Safeguards against imports from all sources.

Chapter Nine: Government Procurement

Chapter Nine provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other country. The rules of Chapter Nine are broadly based on WTO procurement rules. (Bahrain is not a party to the WTO Agreement on Government Procurement.)

General Principles. Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Party in a manner that is "no less favorable" than the treatment their domestic counterparts receive. The Chapter similarly bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain monetary thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. Specifically, the Chapter applies to procurements by listed "central" (*i.e.*, Bahraini or U.S. federal) government agencies of goods and services valued at $175,000 or more and construction services valued at $7,611,532 or more.[1] The equivalent thresholds for purchases by "other entities" are $250,000 for goods and services and $9,368,478 for construction services. All thresholds, except the $250,000 threshold, are subject to adjustment for inflation.

[1] These thresholds are subject to adjustment every two years according to a "Threshold Adjustment Formula" set out in the Annex to Chapter Nine. In addition, as stated in that Annex, there are specific required threshold amounts during the first two years of the Agreement's effectiveness.

Transparency. Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures, and must, upon request, provide an explanation regarding any such measure to the other Party. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

Tendering Rules. Chapter Nine provides rules for setting deadlines on "tendering" (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service. It also sets out rules that procuring entities must follow when they use limited tendering, *i.e.*, when they limit the set of suppliers that may bid on a contract.

Award Rules. Chapter Nine requires all tenders for a contract must be considered, unless submitted by an otherwise disqualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

Additional Provisions. Chapter Nine is designed to promote integrity in each Party's procurement practices, including by requiring the Parties to adopt and maintain procedures that disqualify suppliers that a Party has determined to have engaged in fraudulent or illegal action in relation to procurement. It establishes procedures under which a Party may change the extent to which the Chapter applies to its government entities, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to procurement of goods or services of handicapped persons, philanthropic institutions, or prison labor.

Chapter Ten: Cross-Border Trade in Services

Chapter Ten governs measures affecting cross-border trade in services between the United States and Bahrain. Chapter provisions are drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services ("GATS"), as well as priorities that have emerged since those agreements.

Key Concepts. Under the Agreement, cross-border trade in services covers the supply of a service:

- from the territory of one Party into the territory of the other (*e.g.*, electronic delivery of services from the United States to Bahrain);

- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, a Bahraini company provides services to U.S. visitors in Bahrain); and

- by a national of a Party in the territory of the other Party (*e.g.*, a U.S. lawyer provides legal services in Bahrain).

General Principles. Among Chapter Ten's core obligations are requirements to provide national treatment and MFN treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. The Chapter's provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (*e.g.*, rules that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through local investments pursuant to the Parties' bilateral investment treaty, discussed below.

Sectoral Coverage and Non-Conforming Measures. Chapter Ten applies across virtually all services sectors. The Chapter excludes most financial services and air transportation, although it does apply to specialty air services and aircraft repair and maintenance. Each Party has listed in Annexes those measures in particular sectors for which it negotiated exemptions from the Chapter's core obligations. Any non-conforming aspects of all current U.S. state and local laws and regulations are exempted from these core obligations. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive (though certain market access commitments are exempted from this obligation).

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Ten. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through local investments under the Parties' bilateral investment treaty, discussed below.

Exclusions. Chapter Ten excludes any service supplied "in the exercise of governmental authority," that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Ten also does not generally apply to government subsidies, although the Parties have undertaken a commitment relating to cross-subsidization of express delivery services. The

Parties have also negotiated an Annex regarding the regulation of professional services. Under Annex 10-B, the Parties will endeavor to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers. Such standards and criteria may be developed with regard, among other things, to: (1) accreditation of schools or academic programs; (2) qualifying examinations for licensing; (3) standards of professional conduct and the nature of disciplinary action for non-conformity with those standards; (4) requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and (5) consumer protection.

Investment. In 1999, the United States and Bahrain negotiated a comprehensive bilateral investment treaty ("BIT"), the *Treaty Between the Government of the United States of America and the Government of the State of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment (1999)*. The BIT was based on the standard U.S. prototype for investment agreements. The BIT: (1) applies to all forms of U.S. investment in Bahrain; (2) requires that covered U.S. investments receive the better of national treatment or MFN treatment provided by Bahrain; (3) prohibits the imposition of performance requirements on covered U.S. investments by Bahrain; (4) allows expropriation of U.S. investments by Bahrain only in accordance with customary international law; and (5) allows U.S. investors to bring disputes with the Bahraini government to binding international arbitration, among other provisions. Because the BIT provides a full range of investment disciplines, the United States and Bahrain did not include an investment chapter in the FTA. However, as noted above, the market access, domestic regulation, and transparency provisions of Chapter Ten govern the treatment of investors and investments in services sectors pursuant to the BIT.

Side Letters. Finally, in side letters to Chapter Ten that are part of the Agreement, the Parties clarify that: (1) Bahrain may prohibit gambling (and the provision of gambling services) and treat it as a criminal offense, consistent with WTO rules; and (2) no provision of the Agreement imposes obligations on the Parties with respect to immigration or – consistent with Chapter Fifteen – the right to secure employment in the territory of a Party.

Chapter Eleven: Financial Services

Chapter Eleven provides rules governing each Party's treatment of financial institutions of the other Party and cross-border trade in financial services.

Key Concepts. The Chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Eleven's core obligations parallel those in Chapter Ten (Cross-Border Trade in Services). Specifically, Chapter Eleven imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. These rules apply to measures

affecting financial institutions, including pre-establishment, and to financial service suppliers that are currently supplying or seek to supply on a cross-border basis.

Non-Conforming Measures. Similar to Chapter Ten, each Party has listed in an Annex to Chapter Eleven particular financial services measures for which it has negotiated exemptions from the Chapter's core obligations. Any non-conforming aspects of all current U.S. state and local laws and regulations are exempted from these obligations. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive (though certain market access commitments are exempted from this obligation).

Other Provisions. Chapter Eleven includes provisions on transparency, as well as rules regarding "new" financial services, self-regulatory organizations (the Agreement allows Bahrain up to two years to comply with certain such provisions), and the expedited availability of insurance products.

Relationship to Other Chapters/Agreements. The existing BIT provides U.S. investors in financial institutions in Bahrain with certain benefits not included in the FTA, such as compensation against expropriation, the right to free transfers, and a process for investor-state dispute settlement. Chapter Eleven also incorporates by reference certain provisions of Chapter Ten, such as those relating to denial of benefits and transfers and payments as they relate to cross-border trade.

Side Letters. Finally, side letters to Chapter Eleven that are part of the Agreement contain additional obligations with respect to financial services. In particular, the Parties provide that: (1) in reviewing the regulation of its insurance sector, Bahrain will not fail to permit U.S. insurance suppliers to sell their products through independent agents; (2) a Party may impose registration and other administrative requirements on insurance companies of the other Party, to the extent such requirements are consistent with the Agreement; and (3) the Parties may agree to extend Bahrain's six-month exemption from the obligations of Chapter Eleven (*i.e.*, its non-conforming measure) regarding the market for non-life insurance financial services.

Chapter Twelve: Telecommunications

Chapter Twelve includes disciplines beyond those imposed under Chapter Ten (Cross-Border Trade in Services) and under the BIT on regulatory measures affecting telecommunications trade and investment. Chapter Twelve is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications services in the other country. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party. Chapter Twelve also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Twelve, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term

includes voice and data transmission services. It does not include the offering of "value-added services" (*e.g.*, services that enable users to create, store, or process information over a network).

Competition. Chapter Twelve establishes rules that reflect the common elements of the Parties' laws promoting competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications service in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Bahrain must ensure that its public phone companies do not provide preferential access to Bahraini banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in its territory at reasonable rates;

- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities of dominant carriers, such as buildings, where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from dominant domestic suppliers and resell them in order to build a customer base; and

Regulation. The Chapter also addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- ensure that they will maintain open and transparent telecommunications regulatory regimes, including requirements to publish licensing requirements and criteria and other government measures relating to public telecommunications services;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition exists and certain standards are met; and

- may not prevent telecommunications service suppliers from choosing the technologies they consider appropriate for supplying their services, subject to legitimate public policy requirements.

Side Letters. Finally, side letters to Chapter Twelve that are part of the Agreement provide that: (1) the manner through which the Parties expect Bahrain will ensure cost-oriented interconnection levels for international services; and (2) Bahrain's commitment to issue any additional commercial mobile services licenses in a technologically neutral manner.

Chapter Thirteen: Electronic Commerce

Chapter Thirteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products, such as computer programs, video, images, and sound recordings. The Chapter contains state-of-the-art provisions on electronic commerce, similar to those in recent U.S. free trade agreements with Chile, Singapore, Australia, and Morocco.

Customs Duties. Chapter Thirteen provides that a Party may not impose customs duties on digital products of the other Party that are transmitted electronically. The Chapter does not preclude a Party from imposing duties on digital products of the other Party that are fixed on a carrier medium, provided that the duty is based on the cost or value of that medium alone, rather than the cost or value of the digital content stored on that medium.

Non-Discrimination. Chapter Thirteen requires the Parties to apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products. In particular, a Party may not treat digital products less favorably because such digital products: (1) have undergone certain specific activities (*e.g.*, creation, production, first sale) in the territory of the other Party; or (2) are associated with certain categories of persons of the other Party (*e.g.*, authors, performers, producers). Nor may a Party treat digital products that have such a nexus to the other Party less favorably than it treats like digital products with such a nexus to a non-Party. These non-discrimination rules do not apply to actions taken in accordance with the non-conforming measures specifically exempted from the rules set out in Chapter Ten (Cross-Border Trade in Services) or Chapter Eleven (Financial Services).

Chapter Fourteen: Intellectual Property Rights

Chapter Fourteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. Chapter Fourteen calls for the Parties to ratify or accede to certain agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals (the "Brussels Convention"), the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms (the "Budapest Treaty"), the Patent Cooperation Treaty, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. The United States is already a party to these agreements.

Chapter Fourteen also requires broad application of the principle of national treatment, with only limited exceptions. The general provisions further clarify the coverage of existing subject matter and requirements for publication of all laws, regulations, and procedures relating to the protection and enforcement of intellectual property rights.

Trademarks and Geographical Indications. Chapter Fourteen establishes rules concerning the protection of trademarks and geographical indications. For example, Parties must provide the owner of a registered trademark the exclusive right to prevent its use in the course of trade for related goods and services by any party not having the owner's consent. The Chapter also sets out rules with respect to the registration of trademarks. Each Party must provide protection for trademarks, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, the Chapter requires that the Parties provide efficient and transparent procedures governing the application for protection of trademarks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights. Chapter Fourteen provides for broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically requires protection for the rights of performers and producers of phonograms.

To curb copyright piracy, Chapter Fourteen requires the governments to use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Fourteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Fourteen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Fourteen also includes a variety of provisions for the protection of patents. The Parties may only exclude inventions from patentability to protect *ordre public* or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment. The Parties also may exclude from patentability animals and diagnostic, therapeutic, and surgical procedures for the treatment of humans or animals. The Parties also confirm the availability of patents for new uses or methods of using a known product. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The Chapter requires the Parties to provide for patent term adjustments to compensate for unreasonable delays that occur

while granting the patent, as well as for unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products. Chapter Fourteen includes specific measures relating to certain regulated products, specifically pharmaceuticals and agricultural chemicals. Among other things, the Parties must protect test information regarding safety and efficacy submitted in seeking marketing approval for such products by precluding other firms from relying on the information. It provides specific periods for such protection – for example, five years for new pharmaceuticals and 10 years for new agricultural chemicals. It also requires the Parties to adopt measures to prevent the marketing of a pharmaceutical product during the term of a patent covering that product.

Enforcement Provisions. Chapter Fourteen also creates obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for award of damages based on a fixed range (*i.e.*, "statutory damages"), on the election of the right holder in cases involving infringement of copyright and related rights and trademark counterfeiting.

Chapter Fourteen provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Fourteen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint. Chapter Fourteen provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

Transition Periods. All provisions of the Chapter take effect when the Agreement enters into force. However, Bahrain may take up to one year after the Agreement enters into force effect to ratify or accede to: (1) the Brussels Convention; and (2) the Budapest Treaty.

Side Letters. Finally, two side letters to Chapter Fourteen that are part of the Agreement contain additional obligations on the part of Bahrain with respect to intellectual property rights. In particular, Bahrain will adopt further measures: (1) requiring effective written notice to Internet service providers with respect to materials that are claimed to be infringing a copyright; and (2) regarding the manufacture of optical discs, including provisions concerning licensure, registration, record keeping, and inspections, among others.

Chapter Fifteen: Labor

Chapter Fifteen sets out the Parties' commitments regarding trade-related labor rights. As with other recent free trade agreements, this Chapter draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the U.S. free trade agreements with Chile, Singapore, and Jordan.

General Principles. Under Chapter Fifteen, the Parties reaffirm their obligations as members of the International Labor Organization ("ILO") and their commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its law recognizes and protects the fundamental labor principles spelled out in the ILO declaration and listed in the Chapter. Each Party also must strive to ensure it does not waive or otherwise derogate from its labor laws to encourage bilateral trade or investment. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures for the enforcement of labor laws.

Effective Enforcement. Each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting bilateral trade. The Chapter defines labor laws to include those related to: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition on the use of any form of forced or compulsory labor; (4) labor protections for children and young people, including a minimum age for the employment of children and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to minimum wages, hours, and occupational safety and health. While committing each Party to effective labor law enforcement, the Chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources. The U.S. commitment includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws.

Cooperation. Each Party may convene a national labor advisory committee, made up of members of its public, including representatives of labor and business organizations, to advise it on the implementation of the Chapter. Each Party also will designate a contact point for communications with the other Party and the public regarding operation of the Chapter. In addition, the Joint Committee (see Article 18.2) may establish a Subcommittee on Labor Affairs comprising the relevant officials from each Party's labor ministry and other appropriate agencies to discuss the operation of Chapter Fifteen. Meetings of the Subcommittee will normally include a public session.

Finally, the Parties will establish a Labor Cooperation Mechanism to address labor matters of common interest, such as: (1) promoting fundamental rights and their effective application; (2) developing unemployment assistance programs and other social safety net programs; (3) improving working conditions; (4) developing processes for regulating foreign workers; (5) creating alternative forms of labor-management collaboration; (6) eliminating gender discrimination in the employment arena; and (7) utilizing labor statistics.

Consultations and Dispute Settlement. If a Party believes that the other Party is not complying with its obligations, Chapter Fifteen provides for consultations regarding any matter arising under the Chapter, including the opportunity to refer a matter to the Subcommittee on Labor Affairs, if established. If the matter concerns a Party's compliance with the Chapter's effective enforcement obligation, the complaining Party may choose to pursue consultations under Chapter Fifteen or Chapter Nineteen (Dispute Settlement). If a Party chooses to request consultations under Chapter Nineteen, consultations under Chapter Fifteen on the same matter cease. In addition, after 60 days of consultations under Chapter Fifteen, the Parties may agree to

refer the matter concerning compliance with the effective enforcement obligation directly to the Joint Committee for resolution under Chapter Nineteen.

Chapter Sixteen: Environment

Chapter Sixteen sets out the Parties' commitments regarding environmental protection. Chapter Sixteen draws on, but does not replicate, the North American Agreement on Environmental Cooperation (the supplemental NAFTA environmental agreement) and the environmental provisions included in U.S. free trade agreements with Chile, Singapore, and Jordan.

General Principles. Each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage bilateral trade or investment. The Chapter also includes commitments to provide certain procedural guarantees that ensure fair, equitable, and transparent proceedings for the administration and enforcement of environmental laws. In addition, the Chapter calls on the Parties to encourage the development of voluntary measures and market-based mechanisms for achieving and maintaining high levels of environmental protection. The Parties also must ensure that opportunities exist for the public to provide input concerning the implementation of the Chapter.

Cooperation. Chapter Sixteen includes commitments to enhance bilateral cooperation in environmental matters. In particular, the Parties agree to undertake activities pursuant to a United States-Bahrain Memorandum of Understanding on Environmental Cooperation. The Parties also commit to continue to seek means to enhance the mutual benefits of multilateral environmental agreements ("MEAs") and trade agreements to which they are both party, and to consult regularly with respect to the WTO negotiations regarding MEAs.

In addition, at the request of either Party, a Subcommittee on Environmental Affairs will be established to discuss the operation of Chapter Sixteen. The subcommittee will include the relevant officials from each Party's trade and environmental agencies. Meetings of the subcommittee will normally include an open session, and any decisions or reports of the subcommittee concerning implementation of Chapter Sixteen will normally be made public.

Effective Enforcement. The U.S. commitment on enforcement of environmental laws applies to federal environmental statutes and regulations enforceable by the federal government, but it does not cover state or local environmental laws. The Chapter also recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources.

Consultations and Dispute Settlement. If a Party believes that the other Party is not complying with its obligations under the Chapter, it may convene bilateral consultations and then may refer the matter to the Subcommittee on Environmental Affairs, if it has been established. If the matter concerns a Party's compliance with the Chapter's effective enforcement obligation, the complaining Party may choose to pursue consultations under Chapter Sixteen or Chapter

Nineteen (Dispute Settlement). If a Party chooses to request consultations under Chapter Nineteen, consultations under Chapter Sixteen on the same matter cease. In addition, after 60 days of consultations under Chapter Sixteen, the Parties may agree to refer the matter concerning compliance with the effective enforcement obligation directly to the Joint Committee for resolution under Chapter Nineteen.

Chapter Seventeen: Transparency

Chapter Seventeen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all measures concerning subjects covered by the Agreement and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected by an administrative proceeding applying measures to particular persons, goods, or services of the other Party. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action when time, the nature of the process, and the public interest permit. Chapter Seventeen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

In addition, Chapter Seventeen contains innovative provisions on combating bribery and corruption. Each country must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, both countries will adopt or maintain appropriate measures to protect those who, in good faith, report acts of bribery and will work jointly to encourage and support appropriate regional and multilateral initiatives.

Chapter Eighteen: Administration of the Agreement

Chapter Eighteen requires that each Party designate a contact point to facilitate communication between the Parties on any matter relating to the Agreement. The Chapter also creates a Joint Committee to supervise the implementation and operation of the Agreement and to review the trade relationship between the Parties. Among others, its tasks will be to: (1) facilitate the avoidance and settlement of disputes arising under the Agreement; (2) consider and adopt any amendment or other modification to the Agreement; and (3) consider ways to further enhance trade relations between the Parties. The Joint Committee will convene at least once a year.

Chapter Nineteen: Dispute Settlement

Chapter Nineteen sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.*, the WTO Agreement), the

complaining Party may choose the forum for resolving the matter. The selected forum is the exclusive venue for resolving that dispute.

Consultations. Either Party may request consultations on any matter that it believes might affect the operation of the Agreement. After requesting or receiving a request for consultations, each Party must solicit the views of the public on the matter. If the Parties cannot resolve the matter through consultations within 60 days, a Party may refer the matter to the Joint Committee, which will attempt to resolve the dispute.

Panel Procedures. If the Joint Committee cannot resolve the dispute within 60 days after delivery of the request, the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. In disputes related to a Party's enforcement of its labor or environmental laws, panelists must have expertise or experience relevant to the subject matter that is under dispute. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 180 days after the chair is selected. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits of equivalent effect.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform to the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of

the assessment will be established by agreement of the Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or if the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for appropriate labor or environmental initiatives. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place, and the defending country will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, whichever occurs first.

Chapter Twenty: Exceptions

Chapter Twenty sets out exceptions that apply to the entire Agreement. Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Ten (Cross Border Trade in Services), Twelve (Telecommunications), and Thirteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of the Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

Essential Security. Chapter Twenty allows each Party to take actions it considers necessary to protect its essential security interests.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect either Party's rights or obligations under any tax convention. The exception sets out certain circumstances

under which tax measures are subject to the Agreement's national treatment obligation for goods and national treatment and MFN obligations for services.

Disclosure of Information. The Chapter also provides that a Party may withhold information from the other Party where such disclosure would impede domestic law enforcement or otherwise be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Chapter Twenty-One: Final Provisions

Chapter Twenty-One provides that the Parties may amend the Agreement subject to applicable domestic procedures. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-One establishes that any other country or group of countries may become a party to the Agreement on terms and conditions that are agreed upon between the country or countries and the Parties and that are approved according to each country's domestic procedures. The Chapter also permits non-application of the agreement between a Party and a newly acceding country or group of countries. It also provides for the entry into force of the Agreement and for its termination 180 days after a Party provides written notice that it intends to withdraw.

THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the Dominican Republic – Central America – United States Free Trade Agreement ("Agreement" or "CAFTA-DR") that the United States has concluded with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (collectively "Central America) and the Dominican Republic.

Preamble

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the Agreement and provides context for the provisions that follow.

Chapter One: Initial Provisions

Chapter One sets out provisions establishing a free trade area, describing the objectives of the Agreement, and providing that the Parties will interpret and apply the Agreement in light of these objectives. The Parties affirm their existing rights and obligations with respect to each other under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which they are all party. The Parties also agree that they will give effect to the Agreement, including, in the case of the United States, by taking steps necessary to ensure observance of provisions applicable to state governments.

Chapter Two: General Definitions

Chapter Two defines certain terms that recur in various chapters of the Agreement.

Chapter Three: National Treatment and Market Access for Goods

Chapter Three and its relevant annexes and appendices set out the Agreement's principal rules governing trade in goods. It requires each Party to treat products from another Party in a non-discriminatory manner, provides for the phase-out and elimination of tariffs on "originating" goods (as defined in Chapter Four) traded between the Parties, and requires the elimination of a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Three provides for the elimination of customs duties on originating goods traded between the Parties. Duties on most tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other goods will be phased out over periods of up to 10 years. Some agricultural goods will have longer periods for elimination of duties or be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). The General Notes to the U.S. Schedule to Annex 3.3 include detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. The Chapter provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect. Annex 3.3.6 of the

Agreement establishes additional tariff commitments that apply between the Central American Parties and the Dominican Republic. These commitments largely reflect tariff commitments these Parties have under an earlier free trade agreement between them.

Waiver of Customs Duties. Chapter Three provides that Parties may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement. However, Costa Rica, the Dominican Republic, El Salvador, and Guatemala are permitted to maintain such measures through 2009, provided they do so in accordance with the WTO Subsidies and Countervailing Measures (SCM) Agreement. Honduras and Nicaragua are permitted to maintain such measures indefinitely, provided they do so in accordance with the SCM Agreement. Chapter Three defines the term "performance requirements" so as not to restrict a Party's ability to provide duty drawback on goods imported from the other Parties.

Temporary Admission. Chapter Three requires the Parties to provide duty-free temporary admission for certain products. Such items include professional equipment, goods for display or demonstration, and commercial samples. The Chapter also includes specific provisions on transit of vehicles and containers used in international traffic.

Import/Export Restrictions, Fees, and Formalities. The Agreement clarifies that restrictions prohibited under the General Agreement on Tariffs and Trade (GATT) 1994 and this Agreement include export and import price requirements (except under antidumping and countervailing duty orders) and import licensing conditioned on the fulfillment of a performance requirement. In addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered. The United States agreed not to apply its merchandise processing fee on imports of originating goods. The Central American Parties and the Dominican Republic agreed not to require a person of another Party to have or maintain a relationship with a "dealer" as a condition for allowing the importation of a good. These Parties also agreed not to prohibit or restrict the importation of any good of another Party as a remedy for a violation or alleged violation of any law, regulation, or other measure relating to the relationship between a "dealer" in its territory and a person of another Party.

Distinctive Products. The Central American Parties and the Dominican Republic agreed to recognize Bourbon Whiskey and Tennessee Whiskey as "distinctive products" of the United States, meaning these Parties will not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey unless it was manufactured in the United States in accordance with applicable laws and regulations.

Committee on Trade in Goods. Chapter Three also establishes a Committee on the Trade in Goods to consider matters arising under Chapters Three, Four, and Five. The functions of the Committee are to promote and address barriers to trade in goods and to provide advice and recommendations on trade capacity building with respect to matters covered by Chapters Three, Four, and Five.

Agriculture

TRQs. Chapter Three requires that TRQs be administered in a manner that is transparent, non-discriminatory, responsive to market conditions and minimally burdensome on trade and allows importers to fully utilize import quotas. In addition, the Chapter provides that Parties may not condition application for, or utilization of, import licenses or quota allocations on the re-export of an agricultural good.

Export Subsidies. Each Party will eliminate export subsidies on agricultural goods destined for another CAFTA-DR country. Under Article 3.14, no Party may introduce or maintain a subsidy on agricultural goods destined for another Party unless the exporting Party believes that a third country is subsidizing its exports to that other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

Safeguards. Chapter Three sets out a transitional agricultural safeguard mechanism that allows a Party to impose a temporary additional duty on specified agricultural products if imports exceed an established volume "trigger". The safeguard measure will remain in force until the end of the calendar year in which the measure applies. A Party may not apply an agricultural safeguard on a good after the date that the good is subject to duty-free treatment under the Party's Schedule to Annex 3.3 of the Agreement.

A Party may not apply a safeguard measure to a good that is already the subject of a safeguard measure under either Chapter Eight (Trade Remedies) of the Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. All agricultural safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must, upon request, consult with the other Party concerning the application of the measure.

No Party may impose safeguard duties pursuant to the WTO Agreement on Agriculture on originating goods.

Sugar. The Agreement contains several unique features applicable to imports of sugar into the United States. First, imports under the TRQs created in the Agreement will be limited to the lesser of (i) the quantity established in the TRQ, or (ii) the exporting Party's trade surplus in specific sugar goods. (A Party's "trade surplus" is the amount by which its exports to all destinations exceed its imports from all sources in specified sugar and sweetener goods, except that a Party's exports of sugar to the United States and its imports of high fructose corn syrup from the United States are not included in the calculation of its trade surplus.) The aggregate quantities established in the TRQs are modest – 107,000 metric tons in the first year. The maximum quantities increase to approximately 151,000 metric tons in year 15 of the Agreement. The United States will also establish a quota for specialty sugar goods of Costa Rica in the amount of 2,000 metric tons annually. Second, unlike other commodities, the United States will not eliminate its over-quota duty on sugar imports under the Agreement. Lastly, the Agreement

includes a mechanism that allows the United States, at its option, to provide some form of alternative compensation to CAFTA-DR country exporters in place of imports of sugar.

Ethanol. In the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement, the United States agreed to continue to treat the Central American countries and the Dominican Republic as beneficiary countries under the Caribbean Basin Initiative (CBI) preference program with respect to ethanol imports. Accordingly, the Central American countries and the Dominican Republic will continue to share in the duty-free quota that the United States makes available to CBI beneficiary countries. The United States also agreed to establish country-specific allocations for Costa Rica and El Salvador, but did not increase the total quantity allowed under the CBI quota.

Additional Provisions. Chapter Three provides for the creation of a Committee on Agricultural Trade. The Committee will be established within 90 days of entry into force of the Agreement and will provide a forum for promoting cooperation in the implementation and administration of the Agreement, as well as for consultations on matters related to the agricultural provisions of the Agreement. The Chapter also provides for the establishment of an Agriculture Review Commission. The Commission will be established 14 years after entry into force of the Agreement and will review the implementation and operation of the Agreement as it relates to trade in agricultural goods, including whether to extend the agricultural safeguard mechanism. Further, the Chapter provides that the Parties will consult on and review the operation of the Agreement as it relates to trade in chicken nine years after entry into force of the Agreement.

Textiles and Apparel

Chapter Three also sets out various provisions specifically addressing trade in textile and apparel goods.

Tariff Elimination. Duties on nearly all originating textile or apparel goods will be eliminated when the Agreement enters into force. Moreover, the preferential duty treatment under the Agreement may, on a reciprocal basis, be made retroactive to January 1, 2004.

Safeguards. The Chapter establishes a transitional safeguard procedure for textile and apparel goods, under which an importing Party may temporarily impose additional duties up to the level of the normal trade relations/most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause, or threaten to cause, serious damage to a domestic industry as a result of the elimination or reduction of duties under the Agreement. An importing Party may impose a textile safeguard measure only once on the same textile or apparel good. The measure may not be in place for more than three years. The ability to impose textile safeguards lapses five years after the entry into force of the Agreement. A Party may not apply a textile safeguard measure to a good while the good is subject to a safeguard measure under (i) Chapter Eight (Trade Remedies), or (ii) Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

A Party imposing a safeguard measure must provide the exporting Party with mutually agreed-upon compensation in the form of trade concessions for textile or apparel goods that have

substantially equivalent value to the increased duties resulting from application of the safeguard measure. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has substantially equivalent value to the increased duties resulting from application of the safeguard measure.

Rules of Origin and Related Matters. Under the Agreement, a textile or apparel good will generally qualify as an "originating good" only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of the United States or another CAFTA-DR Party, or if there is an applicable change in tariff classification under the specific rules of origin contained in Annex 4.1 of the Agreement.

Chapter Three sets out special rules for determining whether a textile or apparel good is an "originating good," including a *de minimis* exception for non-originating yarns or fibers, a process for designating inputs not available in commercial quantities, a rule for treatment of sets, an exception for use of certain nylon filament yarn, and consultation provisions.

The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute ten percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Annex 3.25 of the Agreement sets out a list of fabrics, yarns, and fibers that the Parties have determined are not available in commercial quantities in a timely manner from producers in the United States or the other CAFTA-DR countries. A textile or apparel good that includes the fabrics, yarns, or fibers included in this list will be treated as if it is originating for purposes of the specific rules of origin in Annex 4.1 of the Agreement, regardless of the actual origin of those inputs. Chapter Three establishes procedures under which the United States will determine whether additional fabrics, yarns, or fibers are not available in commercial quantities in the United States or the other CAFTA-DR countries. The United States may also remove a fabric, yarn, or fiber from the list if it determines that the fabric, yarn, or fiber has become available in commercial quantities.

Appendix 4.1-B of the Agreement provides that for purposes of determining whether woven apparel (of chapter 62 of the HTS) is originating, materials used in the production of the article that are produced in Canada or Mexico will be treated as if the materials were produced in a CAFTA-DR country, provided that Canada and Mexico, respectively: (i) provide reciprocal treatment for U.S.-produced inputs under their free trade agreements with the other CAFTA-DR countries; and (ii) agree with the United States to textile verification procedures that are substantially similar to the procedures under the CAFTA-DR.

This treatment of woven apparel made with Canadian or Mexican materials is subject to an overall quantitative limit, which is set initially at 100 million square meter equivalents, and to sub-limits for trousers and skirts, jeans, and tailored wool apparel. The overall limit may increase to a maximum of 200 square meter equivalents, with corresponding increases in the sub-

limits, based on the percentage increase in U.S. imports of originating woven apparel from the other

CAFTA-DR countries. The overall limit may also increase as a result of negotiations between the Parties following entry into force of the Agreement.

Customs Cooperation. Chapter Three commits each Party to cooperate to enforce or assist in enforcing laws related to trade in textile and apparel goods, to ensure the accuracy of claims of origin, and to prevent circumvention of laws of the Parties or agreements affecting trade in textile and apparel goods. The Parties also agreed that, under certain circumstances, the exporting Party must conduct a verification to determine that a claim of origin is accurate, or to determine compliance with relevant laws. Such a verification may include site visits to the premises of the exporter or producer of the goods in question. If there is insufficient information to make the relevant determination, or if an enterprise provides incorrect information, the importing Party may take appropriate action, which may include denying application of preferential tariff treatment or denying entry to the goods in question. Further, any Party may convene consultations to resolve technical or interpretive issues arising with respect to customs cooperation or may request technical assistance from another Party in implementing the customs cooperation provisions.

Additional Provisions. Chapter Three provides for duty-free treatment for goods that an importing Party and exporting Party agree qualify as handmade, hand-loomed, or traditional folklore goods. Separately, the Chapter establishes that, for the first two years of the Agreement, the United States will charge duties that are half the NTR/MFN rate for a limited quantity of tailored wool apparel goods assembled in Costa Rica regardless of the origin of the fabric used to make the goods. Moreover, for the first ten years of the Agreement, the United States shall provide preferential tariff treatment to cotton and man-made fiber apparel goods assembled in Nicaragua that do not qualify as "originating" goods. The United States also agreed that goods assembled in CAFTA-DR countries from U.S. components with U.S. thread that do not qualify as "originating" goods will be subject to NTR/MFN duties on only the value of the assembled good minus the value of U.S. components used in the good.

Chapter Four: Rules of Origin and Origin Procedures

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating good" under the rules of origin set out in Chapter Four and Annex 4.1. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties' territories.

Key Concepts. Chapter Four provides general criteria under which a good may qualify as an "originating good:"

- When the good is wholly obtained or produced in the territory of one or more of the Parties (*e.g.*, crops grown or minerals extracted in the United States); or

- When the good: (1) is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or more of the Parties; or (2) meets any applicable "regional value content" requirement (see below); and (3) satisfies all other requirements of Chapter Four, including Annex 4.1; or

- When the good is produced in one or more Parties entirely from "originating" materials.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials that do not undergo the required tariff shift does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Chapter. This *de minimis* requirement does not apply to certain agricultural and textile goods.

Regional Value Content. Some origin rules under the Agreement require that certain goods meet a regional value content test in order to qualify as "originating," meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calculating that percentage: (1) the "build-down method" (based on the value of non-originating materials used); and (2) the "build-up method" (based on the value of originating materials used). The regional value content of certain automotive goods, however, may be calculated on the basis of the net cost of the good. Finally, accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

Claims for Preferential Treatment. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must be prepared to submit, on the request of the importing Party's customs authority, a statement explaining why the good qualifies as an originating good. A Party may only deny preferential treatment in writing, and must provide legal and factual findings. The Chapter establishes a procedure for filing post-importation claims for preferential treatment up to one year from importation and for seeking a refund of any excess duties paid. Chapter Four also provides that a Party will not penalize an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed within one year of submission of the claim.

Verification. For purposes of determining whether a good is an originating good, each Party must ensure that its customs authority may conduct verifications. Where an importing Party determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good is an originating good, the Party may suspend preferential tariff treatment to identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with the Chapter.

Additional Rules. Chapter Four further delineates specific rules with respect to the treatment of (1) packing materials and containers; (2) indirect materials; (3) fungible goods; and (4) sets of goods. The Chapter provides that Parties may not treat a good as originating if the good undergoes production outside the territories of the Parties or does not remain under the control of customs authorities in the territory of a non-Party. Chapter Four also calls for the Parties to publish guidelines for interpreting, applying, and administering Chapter Four and the relevant provisions of Chapter Three.

Chapter Five: Customs Administration and Trade Facilitation

Chapter Five establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

General Principles. Chapter Five commits each Party to observe certain transparency obligations. Each Party must promptly publish its customs measures, including on the Internet, and, where possible, solicit public comments before amending its customs regulations. Each Party must also provide written advance rulings, on request, to its importers and to exporters and producers of another Party, regarding whether a product qualifies as an "originating" good under the Agreement, as well as on other customs matters. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties must release goods from customs promptly and expeditiously clear express shipments. The Chapter provides a transition period of between one and three years to comply with several of these obligations in the case of the Central American Parties and the Dominican Republic.

Cooperation. Chapter Five also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the implementation and operation of the provisions of the Agreement governing importations and exportations. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity relating to its laws and regulations governing the importation of goods.

Chapter Six: Sanitary and Phytosanitary Measures

Chapter Six defines the Parties' obligations to each other regarding sanitary and phytosanitary (SPS) matters. It reflects the Parties' understanding that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is a shared objective.

Key Concepts. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Cooperation. Under Chapter Six, the Parties will establish an SPS Committee consisting of relevant trade and regulatory officials. The objectives of the Committee are to (i) help each Party to implement the WTO SPS Agreement; (ii) assist each Party to protect human, animal, or plant life or health; (iii) enhance consultation and cooperation between the Parties on SPS matters; and (iv) facilitate trade between the Parties. The Committee will also provide a forum for enhancing mutual understanding of each Party's SPS measures and the regulatory processes that relate to those measures; consulting on SPS matters that may affect trade between the Parties; and consulting on issues, agendas, and positions for meetings of certain international organizations.

Dispute Settlement. Neither Party may invoke the Agreement's dispute settlement procedures for a matter arising under Chapter Six. Instead, any SPS dispute between the Parties must be resolved under the applicable agreement(s) and rules of the WTO.

Chapter Seven: Technical Barriers to Trade

Under Chapter Seven, the Parties will build on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards ("technical regulations"), and procedures used to determine whether a particular good meets such standards, *i.e.*, "conformity assessment" procedures.

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Under Chapter Seven, the Parties will apply these principles and consult on pertinent matters under consideration by international or regional bodies.

Cooperation. Chapter Seven sets out multiple means for cooperation between the Parties to reduce barriers and improve market access, and provides for a Committee on Technical Barriers to Trade to oversee implementation of the Chapter and facilitate cooperation. The Committee's specific functions include: (i) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; (ii) facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies; (iii) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures; and (iv) consulting, at a Party's request, on any matter arising under the Chapter.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Chapter Seven further provides that Parties shall recognize conformity assessment bodies in the territories of the other Parties on no less favorable terms than it accords conformity assessment bodies in its own territory.

Transparency. Chapter Seven contains various transparency obligations, including obligations on each Party to: (i) allow persons of the other Parties to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (ii) transmit regulatory proposals notified under the TBT Agreement directly to the other Parties; (iii) describe in writing the objectives of and reasons for regulatory proposals; and (iv) consider comments on regulatory proposals and respond in writing to significant comments it receives.

Chapter Eight: Trade Remedies

Safeguards. Chapter Eight establishes a safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The Chapter does not affect the Parties' rights or obligations under the WTO's safeguard provisions (global safeguards) or under other WTO trade remedy rules.

Chapter Eight authorizes each Party to impose temporary duties on an imported originating good if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good. Unlike agricultural and textile or apparel safeguard measures, which will apply bilaterally, safeguard measures under Chapter Eight will apply with respect to all imports of an originating good, other than imports from a Party whose import market share is de minimis (*i.e.*, a market share of less than three percent of total imports of the originating good, unless the import market share of all such Parties exceeds nine percent).

A safeguard measure may be applied on a good only during the Agreement's "transition period" for phasing out duties on the good. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. A safeguard measure may be in place for a total of four years, including any extensions of the measure. A Party may extend a measure if it determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals. Annex 8.3 sets out the procedural and substantive investigation requirements that Parties must follow in conducting safeguard investigations.

If a Party imposes a safeguard measure, Chapter Eight requires it to provide offsetting trade compensation to the other Parties whose goods are subject to the measure. If the Parties cannot agree on the amount or nature of the compensation, a Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the importing Party.

Global Safeguards. Chapter Eight maintains each Party's right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A

Party may exclude imports of an originating good from another Party from a global safeguard measure if such imports are not a substantial cause of serious injury or threat thereof. A Party may not apply a safeguard measure under Chapter Eight at the same time that it applies a safeguard measure on the same good under the WTO Agreement on Safeguards.
Antidumping and Countervailing Duties. Chapter Eight confirms that the Parties retain their rights and obligations under the WTO agreements relating to the application of antidumping and countervailing duties. Antidumping and countervailing duty measures may not be challenged under the Agreement's dispute settlement procedures. The Chapter provides that the United States will continue to treat the other CAFTA-DR countries as CBI beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)), which preclude the U.S. International Trade Commission from aggregating (or "cumulating") imports from CBI beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether imports of a particular product from such beneficiary countries are injuring or threaten to injure a U.S. industry.

Chapter Nine: Government Procurement

Chapter Nine provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other Parties. The rules of Chapter Nine are broadly based on the rules of the WTO Agreement on Government Procurement.

General Principles. Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Parties in a manner that is "no less favorable" than the domestic counterparts. The Chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain dollar thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. Specifically, the Chapter applies to procurements by listed "central" (*i.e.*, national or U.S. Federal) government agencies of goods and services valued at $58,550 or more and construction services valued at $6,725,000 or more. The equivalent thresholds for purchases by listed "sub-central" government entities (*i.e.*, Central American and Dominican Republic municipalities and U.S. state government agencies) are $477,000 and $6,725,000, for goods and services and construction services, respectively. For the three-year period following entry into force of the Agreement, the Chapter applies, in the case of the Central American Parties and the Dominican Republic, to purchases of goods and services by central government agencies valued at $117,100 or more and by sub-central government agencies valued at $650,000 or more and purchases of construction services by either central or sub-central government agencies valued at $8,000,000 or more. The Chapter's thresholds for listed "government enterprises" are either $250,000 or $538,000 for goods and services, and

$6,725,000 for construction services, except that for the three-year period following entry into force of the Agreement, the threshold for construction services in the Central American Parties and the Dominican Republic is $8,000,000. All thresholds are subject to adjustment every two years for inflation. (Separate annexes to Chapter Nine establish special coverage rules with respect to procurement between (i) the Central American Parties, and (ii) each Central American Party and the Dominican Republic.)

Transparency. Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

Tendering Rules. Chapter Nine provides rules for setting deadlines on "tendering" (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service. It also sets out the circumstances under which procuring entities are allowed to use limited tendering, *i.e.*, award a contract to a supplier without opening the procurement to all interested suppliers.

Award Rules. Chapter Nine requires that to be considered for an award, a tender must be submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

Additional Provisions. Chapter Nine builds on the anti-corruption provisions of Chapter Eighteen, including by requiring each Party to maintain procedures to declare suppliers that have engaged in fraudulent or other illegal procurement actions ineligible for participation in the Party's procurement. It establishes procedures under which a Party may modify its coverage under the Chapter, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health, including environmental measures necessary to protect human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor.

Chapter Ten: Investment

Chapter Ten establishes rules to protect investors from one Party against unfair or discriminatory government actions when they make or attempt to make investments in another Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment treaties) and in customary international law, and contain several innovations that were incorporated in the free trade agreements with Chile and Singapore as well as others.

Key Concepts. Under Chapter Ten, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, licenses, and contracts. It includes both investments existing when the Agreement enters into force and future investments. The term "investor of a Party" encompasses U.S., Central American, and Dominican Republic nationals as well as firms (including branches) established in one of the Parties.

General Principles. Investors enjoy six basic protections: (1) non-discriminatory treatment relative to domestic investors as well as investors of non-Parties; (2) limits on "performance requirements"; (3) free transfer of funds related to an investment; (4) protection from expropriation other than in conformity with customary international law; (5) a "minimum standard of treatment" in conformity with customary international law; (6) and the ability to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the Chapter particular sectors or measures for which it negotiated an exemption from the Chapter's rules relating to national treatment, most favored nation treatment, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

Investor-State Disputes. Chapter Ten provides a mechanism for an investor of a Party to submit to binding international arbitration a claim for damages against another Party. The investor may assert that the Party has breached a substantive obligation under the Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor. "Investment agreements" and "investment authorizations" are particular types of arrangements between an investor and a host government based on contracts and authorizations, respectively. These terms are defined in Chapter 10.

Chapter Ten affords public access to information on the Chapter's investor-State proceedings. For example, Chapter Ten requires that hearings will generally be open to the public and that key documents will be publicly available, with exceptions for confidential business information. The Chapter also authorizes tribunals to accept amicus submissions from the public. In addition, the

Chapter includes provisions similar to those used in U.S. courts to dispose quickly of frivolous claims. Finally, an annex to Chapter Ten calls on the Parties, within three months of the date of entry into force of the Agreement, to initiate negotiations to develop an appellate body to review arbitral awards rendered by tribunals under the Chapter.

Chapter Ten also provides that, "except in rare circumstances," nondiscriminatory regulatory actions designed and applied to meet legitimate public welfare objectives, such as public health and the environment, are not expropriatory.

Chapter Eleven: Cross-Border Trade in Services

Chapter Eleven governs measures affecting cross-border trade in services between the Parties. Certain provisions also apply to measures affecting investments to supply services. Chapter provisions are drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

Key Concepts. Under the Agreement, cross-border trade in services covers supply of a service:

- from the territory of one Party into the territory of another Party (*e.g.*, electronic delivery of services from the United States to Costa Rica);

- in the territory of a Party by a person of that Party to a person of another Party (*e.g.*, a Guatemalan company provides services to U.S. visitors in Guatemala); and

- by a national of a Party in the territory of another Party (*e.g.*, a U.S. lawyer provides legal services in El Salvador).

Chapter Eleven should be read together with Chapter Ten (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter Eleven applies where, for example, a service supplier is temporarily present in a territory of a Party and does not operate through a local investment.

General Principles. Among Chapter Eleven's core obligations are requirements to provide national treatment and MFN treatment to service suppliers of the other Parties.
Thus, each Party must treat service suppliers of another Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. Chapter provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by a Party. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (*e.g.*, that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's

market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The chapter excludes financial services (which are addressed in Chapter Twelve), except that certain provisions of Chapter Eleven apply to investments in unregulated financial services that are covered by Chapter Ten (Investment). In addition, Chapter Eleven does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the chapter's core obligations. All existing state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes a measure that it has exempted, however, it must, in most cases, thereafter maintain the measure at least at that level of openness.

Specific Commitments. Chapter Eleven includes a comprehensive definition of express delivery services that requires each Party to provide national treatment, MFN treatment, and additional benefits to express delivery services of the other Parties. The Chapter provides that the Central American Parties and the Dominican Republic may not adopt or maintain any restriction on express delivery services that was not in place on the date the Agreement was signed. The Chapter also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services. Costa Rica, the Dominican Republic, El Salvador, Guatemala, and Honduras also made commitments regarding their "dealer protection" regimes. Under existing "dealer protection" regimes, U.S. firms may be tied to exclusive or inefficient distributor arrangements. The commitments under the Agreement give U.S. firms and their Central American and Dominican Republic partners more freedom to contract the terms of their commercial relations and encourage the use of arbitration to resolve disputes between parties to dealer contracts.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Eleven. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment. An annex to Chapter Eleven sets out specific commitments that individual Parties have agreed to undertake.

Exclusions. Chapter Eleven excludes any service supplied "in the exercise of governmental authority" – that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not generally apply to government subsidies, although the Parties have undertaken a commitment relating to cross-subsidization of express delivery services.

Chapter Twelve: Financial Services

Chapter Twelve provides rules governing each Party's treatment of: (1) financial institutions of another Party; (2) investors of another Party, and their investments, in financial institutions; and (3) cross-border trade in financial services.

Key Concepts. The Chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Twelve's core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Specifically, Chapter Twelve imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access of financial institutions, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of another Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis. As between the Central American Parties and the Dominican Republic, obligations pertaining to banking services, or as between Guatemala and the Dominican Republic, financial services generally, do not apply until two years after entry into force of the Agreement.
Non-Conforming Measures. Similar to Chapters Ten and Eleven, each Party has listed in an annex to Chapter Twelve particular financial services measures for which it negotiated exemptions from the Chapter's core obligations. Existing non-conforming U.S. state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes one of these non-conforming measures, however, it must, in most cases, maintain the measure at least at that new level of openness.

Other Provisions. Chapter Twelve also includes provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to Other Chapters. Measures that a Party applies to financial services suppliers of another Party, other than regulated financial institutions, that make or operate investments in the Party's territory are covered principally by Chapter Ten (Investment) and certain provisions of Chapter Eleven (Cross-Border Trade in Services). In particular, the core obligations of Chapter Ten apply to such measures, as do the market access, transparency, and domestic regulation provisions of Chapter Eleven. Chapter Twelve incorporates by reference certain provisions of Chapter Ten, such as those relating to transfers and expropriation.

Chapter Thirteen: Telecommunications

Chapter Thirteen creates disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications

trade and investment between the Parties. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the territories of the other Parties. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants. Chapter Thirteen also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Thirteen, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "information services" (*e.g.*, services that enable users to create, store, or process information over a network). A "major supplier" is a company that, by virtue of its market position or control over certain facilities, can materially affect the terms of participation in the market.

Competition. Chapter Thirteen establishes rules promoting competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of another Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, El Salvador must ensure that its public phone companies do not provide preferential access to Salvadoran banks or Internet service providers, to the detriment of U.S. competitors);

- give another Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of another Party that seek to build physical networks in the Party's territory have access to key physical facilities where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of another Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers."

Regulation. The Chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and

- will avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Costa Rica. Costa Rica's obligations with respect to telecommunications are contained in a separate annex to Chapter 13. The annex recognizes the unique nature of Costa Rica's social policy on telecommunications and commits Costa Rica to undertake certain obligations as of January 1, 2006. These obligations include ensuring that enterprises have access to, and use of, public telecommunications services, and that suppliers of public communications services are provided interconnection with major suppliers.

Chapter Fourteen: Electronic Commerce

Chapter Fourteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The Chapter represents a major advance over previous international understandings on this subject.

Customs Duties. Chapter Fourteen provides that a Party may not impose customs duties on digital products of another Party transmitted electronically and will determine the customs value of an imported carrier medium bearing a digital product based on the value of the carrier medium alone, without regard to the value of the digital product stored on the carrier medium.

Non-Discrimination. Chapter Fourteen requires the Parties to apply the principles of national treatment and MFN treatment to trade in electronically-transmitted digital products. Thus, a Party may not discriminate against electronically-transmitted digital products on the grounds that they have a nexus to another country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of another Party or a non-Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to another Party than it gives to like products that have a nexus to a third country. The non-discrimination rules do not apply to non-conforming measures adopted under Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), or Twelve (Financial Services).

Cooperation. Chapter Fourteen provides for future cooperation between the Parties, including exchanging information in areas such as data privacy and cyber-security.

Chapter Fifteen: Intellectual Property Rights

Chapter Fifteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. Under Chapter Fifteen the Parties are obligated to ratify or accede to several agreements on intellectual property rights, including, by the date of entry into force of the Agreement, the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, and, within specified time frames, the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. The United States is already a Party to these Agreements. National treatment requirements apply broadly.

Trademarks and Geographical Indications. Chapter Fifteen establishes that marks include marks in respect of goods and services, collective marks, and certification marks, and that geographical indications are eligible for protection as marks. It sets out rules with respect to the registration of marks and geographical indications. Each Party must provide protection for marks and geographical indications, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, the Parties must provide efficient and transparent procedures governing the application for protection of marks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights. Chapter Fifteen provides broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically protects the rights of performers and producers of phonograms.

To curb copyright piracy, government agencies of the Parties must use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Fifteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Fifteen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Fifteen also includes a variety of provisions for the protection of patents. The Parties agree to make patents available for any invention, subject to limited exclusions, and

confirm the availability of patents for new uses or methods of using a known product. The Chapter provides for protection to stop imports of patented products when the patent owner has placed restrictions on import by contract or other means. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. Under Chapter Fifteen, Parties must provide adjustments to the patent term to compensate for unreasonable delays that occur while granting the patent, as well as unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products. Chapter Fifteen includes specific measures relating to certain regulated products, including pharmaceuticals and agricultural chemicals. Among other things, it protects test data that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection – five years for pharmaceuticals and ten years for agricultural chemicals. This means, for example, that during the period of protection, test data that a company submits for approval of a new agricultural chemical product could not be used without that company's consent in granting approval to market a combination product. The Chapter also requires Parties to implement measures to prevent the marketing of pharmaceutical products that infringe patents.

Enforcement Provisions. Chapter Fifteen also creates obligations with respect to the enforcement of intellectual property rights. Among these, the Parties, in determining damages, must take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for damages based on a fixed range (*i.e.*, "statutory damages"), at the option of the right holder or alternatively additional damages in cases involving copyright infringement

Chapter Fifteen provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Fifteen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint. Chapter Fifteen provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

Transition Periods. Most obligations in the Chapter take effect upon the Agreement's entry into force. However, the Central American Parties and the Dominican Republic may delay giving effect to certain specified obligations for periods ranging from six months to four years from the date of entry into force of the Agreement.

Chapter Sixteen: Labor

Chapter Sixteen sets out the Parties' commitments and undertakings regarding trade-related labor rights. Chapter Sixteen draws on the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of other recent U.S. FTAs, including those with Jordan, Chile, Singapore, Australia, and Morocco. The Chapter goes

further than these prior FTAs, however, in that it contains the most comprehensive set of commitments and undertakings regarding trade-related labor rights. As described below, the Chapter (i) includes detailed provisions to ensure that labor law enforcement is fair, equitable, and transparent; (ii) requires Parties to provide for public input on labor matters; and (iii) establishes a detailed framework that will assist Parties to develop the institutional capacity to fulfill the goals of the Chapter.

General Principles. Under Chapter Sixteen, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its law recognizes and protects the fundamental labor principles spelled out in the ILO Declaration as listed in the Chapter. Each Party also must strive to ensure that it does not derogate from or waive the protections of its labor laws to encourage trade with or investment from another Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. While committing each Party to effective enforcement of its labor laws, the Chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Effective Enforcement. In Chapter Sixteen each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting trade between the Parties. The Chapter defines labor laws to include those related to: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition of forced or compulsory labor; (4) a minimum age for the employment of children and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to wages, hours, and occupational safety and health. For the United States, "labor laws" includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws.

Procedural Guarantees. In Chapter Sixteen, the Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. To this end, each Party must ensure that workers and employers have access to tribunals for the enforcement of its labor laws and that decisions of such tribunals are in writing, made publicly available, and based on information or evidence in respect of which the parties were offered the opportunity to be heard. In addition, hearings in such proceedings must be open to the public, except where the administration of justice otherwise requires. Chapter Sixteen also commits each Party to make remedies available to ensure the enforcement of its labor laws. Such remedies might include orders, fines, penalties, or temporary workplace closures.

Dispute Settlement. Chapter Sixteen provides for cooperative consultations if a Party believes that another Party is not complying with the obligations in this Chapter. If the matter concerns a Party's compliance with its obligation not to fail to effectively enforce its labor law, the complaining Party may, after an initial 60-day consultation period under Chapter Sixteen, invoke the provisions of Chapter Twenty (Dispute Settlement) by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under that Chapter. If the

Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. The Parties will maintain a roster of experts to serve on any dispute settlement panel convened to hear disputes regarding a Party's obligation to effectively enforce its labor laws.

Cooperation and Capacity Building. Chapter Sixteen establishes a cabinet-level Labor Affairs Council to oversee the Chapter's implementation and to provide a forum for consultations and cooperation on labor matters. The Chapter requires each Party to designate a contact point for communications with the other Parties and the public regarding the Chapter. Each Party's contact point must provide transparent procedures for the submission, receipt, and consideration of any communications from the public relating to the provisions of the Chapter.

The Chapter also creates a labor cooperation and capacity building mechanism through which the Parties will work together to strengthen each Party's institutional capacity to fulfill the goals of the Labor Chapter. In particular, the mechanism will assist the Parties to establish priorities for, and carry out, bilateral and regional cooperation and capacity building activities relating to such topics as: the effective application of fundamental labor rights; legislation and practice relating to compliance with ILO Convention 182 on the worst forms of child labor; strengthening labor inspection systems and the institutional capacity of labor administrations and tribunals; mechanisms for supervising compliance with laws and regulations pertaining to working conditions; and the elimination of gender discrimination in employment.

Chapter Seventeen: Environment

Chapter Seventeen sets out the Parties' commitments and undertakings regarding environmental protection. Chapter Seventeen draws on the North American Agreement on Environmental Cooperation and the environmental provisions of other recent U.S. FTAs, including those with Jordan, Chile, Singapore, Australia, and Morocco. The Chapter goes further than these prior FTAs, however. In particular, the CAFTA-DR is the first U.S. FTA that includes a process for public submissions on environmental enforcement matters in the body of the FTA.

General Principles. Under Chapter Seventeen, the Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage trade with or investment from another Party. Chapter Seventeen further includes commitments to enhance cooperation between the Parties in environmental matters and encourages the Parties to develop voluntary, market-based mechanisms as one means for achieving and sustaining high levels of environmental protection.

Effective Enforcement. In Chapter Seventeen each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting trade between the Parties. At the same time, the Chapter recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources in a bona fide manner. For the United States, "environmental laws" includes federal environmental statutes and regulations enforceable by the federal government.

Procedural Matters. Chapter Seventeen commits each Party to make judicial, quasi-judicial, or administrative proceedings available to sanction or remedy violations of its environmental laws. Each Party must ensure that such proceedings are fair, equitable, and transparent, and, to this end, comply with due process of law and are open to the public, except where the administration of justice otherwise requires. The Chapter requires each Party to ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that each Party's competent authorities give such requests due consideration. Chapter Seventeen also commits each Party to make appropriate and effective remedies available for violations of its environmental laws. Such remedies may include, for example, fines, injunctions, or requirements to take remedial action or pay for damage to the environment.

Public Submissions. Chapter Seventeen commits each Party to provide for the receipt and consideration of public submissions on matters related to the Chapter. In addition, the Chapter provides that any person of a Party may file a submission with a secretariat asserting that a Party has failed to effectively enforce its environmental laws. The secretariat will review the submission according to specified criteria and in appropriate cases recommend to the Environmental Affairs Council that a factual record concerning the matter be developed. The secretariat will prepare a factual record if one member of the Environmental Affairs Council instructs it to do so. The Council will consider the record and, where appropriate, provide recommendations to an environmental cooperation commission that will be created under a related environmental cooperation agreement. U.S. persons who consider that the United States is failing to effectively enforce its environmental laws may invoke the comparable public submissions process under the North American Agreement on Environmental Cooperation. Pursuant to a separate understanding between the Parties, a new environmental unit within the Secretariat for Central American Economic Integration (SIECA) will serve as the secretariat for the receipt of public submissions.

Dispute Settlement. Chapter Seventeen provides for cooperative consultations if a Party believes that another Party is not complying with its obligations under the Chapter. If the matter concerns a Party's compliance with its obligation not to fail to effectively enforce its environmental law, the complaining Party may, after an initial 60-day consultation period under Chapter Seventeen, invoke the provisions of Chapter Twenty (Dispute Settlement) by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under that Chapter. If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. The Parties will maintain a roster of experts to serve on any dispute settlement panel convened to hear disputes regarding a Party's obligation to effectively enforce its environmental laws.

Institutional arrangements and cooperation. Chapter Seventeen establishes a cabinet-level Environment Affairs Council to oversee the implementation and operation of the Chapter. Opportunities will be provided at Council meetings for the public to express views on the implementation of Chapter Seventeen and cooperative work between the Parties. The Parties also agree under Chapter Seventeen to continue to seek ways to enhance the mutual supportiveness of multilateral agreements and trade agreements to which they are all party, and

to consult as appropriate on negotiations in the WTO regarding multilateral environmental agreements. In addition, to facilitate cooperation efforts, the Parties will enter into a separate environmental cooperation agreement.

Chapter Eighteen: Transparency

Chapter Eighteen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Parties' nationals and enterprises that are directly affected by an agency process, including an adjudication, rulemaking, licensing, determination, and approval process. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit.

Chapter Eighteen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter Eighteen also affirms the Parties' resolve to eliminate bribery and corruption in international trade and investment. To this end, Parties are obligated to make it a criminal offense to offer or accept a bribe in exchange for favorable government action in matters affecting international trade or investment. Parties must also endeavor to protect persons who, in good faith, report acts of bribery or corruption and to work together to encourage and support initiatives in relevant international fora to prevent bribery and corruption.

Chapter Nineteen: Administration of the Agreement and Trade Capacity Building

Chapter Nineteen creates a Free Trade Commission to supervise the implementation and overall operation of the Agreement. The Commission will be comprised of the Parties' trade ministers. It will meet annually and make decisions by consensus. The Commission will assist in the resolution of any disputes that may arise under the Agreement. The Commission may issue interpretations of the Agreement and agree to accelerate duty elimination on particular products and adjust the Agreement's product-specific rules of origin.
Chapter Nineteen requires each Party to designate an office to provide administrative assistance to dispute settlement panels and perform such other functions as the Commission may direct.

Chapter Nineteen also establishes a Committee on Trade Capacity Building, comprised of representatives of each Party. The overall objective of the Committee is to assist the Central American Parties and the Dominican Republic to implement the Agreement and adjust to liberalized trade. Particular functions of the Committee include: seeking the prioritization of trade capacity building projects at the national and regional level within Central America and the Dominican Republic; inviting international donor institutions, private sector entities, and non-

governmental organizations to assist in the development and implementation of trade capacity building projects in accordance with each country's national trade capacity building strategy; and monitoring and assessing progress in implementing trade capacity building projects.

Chapter Twenty: Dispute Settlement

Chapter Twenty sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.*, the WTO agreements), the complaining government may choose the forum for resolving the matter. The selected forum is the exclusive venue for resolving that dispute.

Consultations. A Party may request consultations with another Party on any actual or proposed measure that it believes might affect the operation of the Agreement. Any other Party having a substantial trade interest in the matter may participate in the consultations. If the Parties cannot resolve the matter through consultations within a specified period (normally 60 days), any consulting Party may refer the matter to the Free Trade Commission, which will attempt to resolve the dispute.

Panel Procedures. If the Commission cannot resolve the dispute within a specified period (normally 30 days), any consulting Party may refer the matter, if it involves an actual measure, to a panel comprising independent experts that the Parties select. Any party that participated in the consultations may participate in the panel proceedings as a complaining Party. Any other Party may participate in the panel proceedings as a third party.

The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the disputing Parties agree otherwise, a panel is to present its initial report within 120 days after the last panelist is selected. This period can be extended to 180 days in certain circumstances. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 30 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the disputing Parties cannot resolve the dispute after they receive the panel's final report, the disputing Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the

complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform to the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the disputing Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the disputing Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Commission for appropriate labor and environmental initiatives. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, which ever occurs first.

Settlement of Private Disputes. The Parties will encourage the use of arbitration and other alternative dispute resolution mechanisms to settle international commercial disputes between private parties. Each Party must provide appropriate procedures for the recognition and enforcement of arbitral awards, for example by complying with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

Chapter Twenty-One: Exceptions

Chapter Twenty-One sets out general provisions that apply to the entire Agreement with the following exception. Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement, *mutatis mutandis*, and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), and Fourteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of the Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

Essential Security. Chapter Twenty-One allows each Party to take actions it considers necessary to protect its essential security interests.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect a Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: (1) national treatment obligation for goods; (2) national treatment and MFN obligations for services; (3) prohibitions on performance requirements; and (4) expropriation rules.

Balance of Payments. Chapter Twenty-One establishes criteria that a Party must follow if it applies a balance-of-payments measure on trade in goods.

Disclosure of Information. The Chapter also provides that a Party may withhold information from another Party where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises.

Chapter Twenty-Two: Final Provisions

Chapter Twenty-Two provides that (i) the annexes, appendices, and footnotes are part of the Agreement, (ii) the Parties may amend the Agreement subject to applicable domestic procedures, and (iii) the English and Spanish texts are both authentic. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Two provides for the entry into force of the Agreement, and establishes procedures under which a Party may withdraw from the Agreement. The Chapter provides that

any other country or group of countries may accede to this agreement on terms and conditions that are agreed with the Parties and approved according to each Party's domestic procedures. Finally, the Chapter provides that the original texts of the Agreement shall be deposited with the Organization of American States.

UNITED STATES – CHILE FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States – Chile Free Trade Agreement.

Chapter One: Initial Provisions

Chapter One sets out provisions establishing a free trade area, describing the objectives of the Agreement, and providing that the Parties will interpret and apply the Agreement in light of these objectives. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which both the United States and Chile are party. The Parties also agree that they will give effect to the Agreement, including, in the case of the United States, by taking steps necessary to ensure observance of provisions applicable to state governments.

Chapter Two: General Definitions

Chapter Two defines certain terms that recur in various chapters of the Agreement.

Chapter Three: National Treatment and Market Access for Goods

Chapter Three sets out the Agreement's principal rules governing trade in goods. It requires each Party to treat products from the other Party in a non-discriminatory manner, provides for the phase-out of tariffs on "originating goods" (as defined in Chapter Four) traded between the two Parties, and requires the elimination of a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Three provides for the elimination of all tariffs on originating goods traded between the Parties. Most tariffs will be eliminated as soon as the Agreement enters into force. The remaining tariffs will be phased out over periods of up to 12 years. The United States has also agreed not to apply its merchandise processing fee on imports of originating goods from Chile. The chapter also provides that the two Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Temporary Admission. Chapter Three requires the Parties to provide duty-free temporary admission for certain products without the usual bonding requirement that applies to imports. Such items include professional equipment, goods for display or demonstration, and commercial samples.

Import/Export Restrictions, Fees, and Formalities. Chapter Three prohibits the Parties from imposing export and import price requirements, import licensing conditioned on performance requirements, and voluntary export restraints inconsistent with the WTO General Agreement on

Tariffs and Trade 1994 (GATT). In addition, it limits all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered.

Specific Barriers. When the Agreement enters into force, Chile must end its 50 percent surcharge on imports of used goods, including capital goods. Chapter Three phases out duty drawback and deferral programs between the Parties in years eight through 12 of the Agreement. Chile will eliminate its 85 percent automobile luxury tax in four years, and will increase the minimum threshold for imposing the tax by $2,500 each preceding year.

Agriculture. Chapter Three also provides that the Parties will work together in WTO agriculture negotiations to eliminate export subsidies. Other provisions on agricultural trade address rules on subsidized exports between the Parties and mutual recognition of grading, quality, or marketing measures. The chapter provides that Chile will eliminate its price band mechanism for wheat, wheat flour, vegetable oils, and sugar in 12 years. For sugar, the chapter provides that each Party's access to the other's market is limited to the amount of its net trade surplus. Recognizing the special conditions agricultural products face, Chapter Three also sets out a transitional tariff "snap-back" mechanism that allows a Party to impose a temporary duty on specified agricultural products under certain conditions. Once tariffs on a product reach zero, the Parties may no longer use the snap-back for that product. The temporary duty may not exceed normal trade relations/most-favored-nation (NTR/MFN) rates.

Textiles and Apparel. Chapter Three sets out various provisions addressing trade in textile and apparel goods, including a "safeguard" provision, special rules of origin, and anti-circumvention provisions.

Chapter Three provides for the elimination of tariffs on all "originating" textile and apparel goods traded between the two countries once the Agreement takes effect. To deal with emergency conditions that might result for particular goods as a result of immediate duty elimination, the Agreement includes a "safeguard" provision that will permit the importing country temporarily to reimpose NTR/MFN duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Safeguard measures may be imposed for up to three years during the first eight years after duties on a good are eliminated under the Agreement.

Chapter Three includes special rules of origin for textile and apparel goods under the Agreement, including a *de minimis* exception for non-originating yarns or fibers, a rule for treatment of sets, and consultation provisions. The *de minimis* rule applies to products that ordinarily would not be considered originating goods because fibers or yarns in their origin-determining components do not undergo an applicable change in tariff classification. Under the special rule, however, the Parties will consider these products to be originating goods if the fibers or yarns in question constitute seven percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Chapter Three also calls for the United States and Chile to provide "tariff preference levels" (TPLs) for a limited quantity of cotton and man-made fiber fabric goods and cotton and man-

made fiber apparel goods from non-Party sources. For fabric formed from non-Party yarn or fabric, TPL status will apply to 1 million square meters annually. For apparel cut and sewn from non-Party fabric or yarn, TPL status will apply to 2 million square meters per year in the first 10 years of the Agreement, and thereafter to 1 million square meters per year. TPL goods will be accorded preferential tariff treatment as if they were originating goods.

The chapter also includes a customs cooperation article that sets out detailed commitments designed to prevent circumvention of the Agreement's rules governing trade in textile and apparel goods. As part of these commitments, the Parties will cooperate in enforcing relevant laws, in ensuring the accuracy of claims of origin, and preventing circumvention of laws affecting trade in textile and apparel goods. Each Party will also conduct site visits under specified conditions, and will provide information necessary to conduct site visits. The chapter permits a Party to respond to circumvention and certain actions that impede a Party from detecting circumvention by denying preferential tariff treatment under the Agreement to specific textile or apparel goods, or by limiting more generally imports of textile and apparel goods from particular enterprises.

Consultations. Either party may convene bilateral consultations to resolve any technical or interpretive issues that arise under the chapter's customs cooperation article. In addition, either Party may request technical assistance from the other Party in implementing the article.

Chapter Four: Rules of Origin and Origin Procedures

To benefit from various trade preferences provided under the Agreement, including reduced duties, goods must qualify as "originating goods" under the rules of origin set out in Chapter Four and a related annex. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties' territories.

Key Concepts. Chapter Four provides three alternative sets of criteria under which a product will generally qualify as an "originating good:"

- When the good is wholly obtained or produced in the territory of one or both of the Parties (for example crops grown or minerals extracted in the United States); or

- When the good is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or both Parties, the good meets any applicable "regional value content" requirement (see below), and the good satisfies all other requirements of Chapter Four; or

- When the good is produced in one or both countries entirely from "originating" materials.

Chapter Four and Annex 4.1 further clarify that simple combining or packaging operations, or mere dilution with water or another substance that does not change the characteristics of the good, will not confer origin.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the chapter.

Regional Value Content. Some origin rules under the Agreement require that certain goods must meet a regional value content test in order to qualify as "originating," meaning that a specified percentage of the value of the good must be attributable to originating materials. The Agreement provides two methods for calculating that percentage: the "build-down method" based on the value of non-originating materials used, and the "build-up method" based on the value of originating materials used. Under the Agreement, accessories, spare parts, and tools delivered with a good will be considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating the regional value content.

Certificates of Origin. Under the Agreement, importers who wish to claim preferential FTA tariff treatment for particular goods must make a written declaration that the good qualifies as originating and be prepared to submit, on the request of the importing Party's customs authority, a valid certificate of origin for the goods. Certificates must be completed by the producer or exporter of the good. They will remain valid for four years and may cover either a single importation of one or more goods, or several importations of identical goods.

Post-Importation Claims. Chapter Four establishes a method for filing post-importation claims for preferential treatment up to one year from importation and for seeking a refund of any excess duties paid. Parties must issue any denials of preferential treatment in writing, accompanied by legal and factual findings. Chapter Four also provides that a Party will not penalize an importer where the importer promptly and voluntarily corrects a declaration. Verification of more than one false certification, however, may result in a Party denying preferential tariff treatment to identical goods of that importer until the importer proves its compliance with laws and regulations governing claims of origin.

Chapter Four also calls for the Parties to publish guidelines for interpreting, applying, and administering the Agreement's market access and rules of origin chapters.

Textile and Apparel Rules of Origin. A textile or apparel product will generally qualify as an "originating good" only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties or if there is an applicable change in tariff classification as specified in Annex 4.1.

Chapter Five: Customs Administration

Chapter Five establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

General Principles. Chapter Five commits each Party to observe certain transparency obligations. Each Party must promptly publish its customs measures on the Internet or a comparable computer-based telecommunications network and, where possible, solicit public comments before amending its customs regulations. Each Party will also provide written advance rulings, on request, to its importers and to exporters and producers of the other Party, regarding whether a product qualifies as an "originating good" under the Agreement as well as on other customs matters. Each Party will also guarantee importers access to both administrative and judicial review of customs matters. The Parties will also release goods from customs promptly and apply expedited procedures for clearing express shipments through customs.

Cooperation. Chapter Five is also designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement, to the WTO Customs Valuation Agreement, and to import and export restrictions.

Chapter Six: Sanitary and Phytosanitary Measures

Chapter Six aims to enhance the Parties' implementation of existing WTO rules on sanitary and phytosanitary (SPS) measures. It reflects the Parties' agreement that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement) is their shared objective, and that including additional SPS rights and obligations in the Agreement is not necessary.

Key Concepts. In general, an SPS measure is a law or regulation applied to protect humans, animals, or plants from certain health risks. Such risks may include plant- and animal-borne pests and diseases, as well as additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Cooperation. Chapter Six calls for the Parties to establish an SPS Committee, consisting of relevant trade and regulatory officials, to serve as a bilateral forum for SPS issues. The Committee will provide a forum for discussing SPS measures that may affect trade between the Parties, consulting on SPS matters that are before international organizations, and coordinating technical cooperation programs, among other activities. Neither Party may invoke the Agreement's dispute settlement procedures for any matter arising under Chapter Six. Instead, any SPS dispute between the Parties will be resolved under the applicable provisions of the WTO SPS Agreement using WTO dispute settlement rules.

Chapter Seven: Technical Barriers to Trade

Chapter Seven seeks to enhance the Parties' implementation of existing WTO rules on technical barriers to trade. It builds on WTO rules to promote transparency, accountability, and cooperation between the Parties on product regulatory issues.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may occur in preparing, adopting, or applying voluntary product standards, mandatory product standards ("technical regulations"), and procedures used to determine whether a particular product meets such standards, *i.e.*, "conformity assessment" procedures.

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Chapter Seven requires the Parties to apply these principles.

Cooperation and Recognition. Chapter Seven provides multiple options for cooperation between the Parties on trade facilitation to improve market access. In addition, where a Party provides for the acceptance of foreign technical regulations as equivalent to its own, Chapter Seven requires it to provide reasons for not accepting technical regulations of the other Party as equivalent.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Where a Party recognizes conformity assessment bodies, Chapter Seven creates a right for bodies located in the territory of the other Party to qualify on a non-discriminatory basis.

Transparency. Chapter Seven contains various transparency obligations, including obligations to permit persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures; transmit regulatory proposals notified under the TBT Agreement directly to the other Party; describe in writing the objective of and reasons for regulatory proposals; and accept and respond in writing to comments on regulatory proposals.

Chapter Eight: Trade Remedies

Chapter Eight establishes a bilateral safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The chapter does not affect either government's rights or obligations under the WTO's global safeguard provisions or under other WTO trade remedy rules.

Key Concepts. Chapter Eight authorizes each Party to impose temporary duties on a product imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the product is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" product.

Specifics. A safeguard measure may be applied only during the Agreement's ten-year "transition period" (or 12 years for certain agricultural goods) for phasing out duties on bilateral trade. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement.

A bilateral safeguard measure may last up to three years. For measures lasting more than one year, however, the Party must scale back the measure at regular intervals. Chapter Eight incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter Eight requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on compensation, the Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the other Party.

Global Safeguards. Chapter Eight maintains each country's right to take remedial action against imports from all sources under GATT Article XIX and the WTO Agreement on Safeguards, without providing additional rights or obligations. A Party may not apply a safeguard measure under Chapter Eight to a good while the good is subject to a global safeguard the Party has imposed. Special safeguard provisions for textile and apparel and agricultural products appear in Chapter Three (National Treatment and Market Access for Goods).

Antidumping and Countervailing Duties. Chapter Eight confirms that the Parties retain their rights and obligations under WTO agreements relating to the application of antidumping and countervailing duties. The Agreement does not create any rights or obligations for the Parties with respect to antidumping and countervailing duties. Those measures may not be challenged under the Agreement's dispute settlement procedures.

Chapter Nine: Government Procurement

Chapter Nine provides comprehensive rules prohibiting each government from discriminating in its purchasing practices against products, services, and suppliers from the other country and requiring each Party to apply fair and transparent procurement procedures. While Chile is not a party to the WTO Agreement on Government Procurement, the rules of Chapter Nine broadly resemble WTO procurement rules.

General Principles. Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules must treat goods, services, and suppliers from the other country in a manner that is "no less favorable" than it treats their domestic counterparts. The chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also prohibits the imposition of "offsets," such as local content, licensing, investment, or similar requirements, designed to favor domestic production.

Coverage and Thresholds. Chapter Nine applies to purchases above certain dollar thresholds by those government departments, agencies, and enterprises named in each Party's schedule. The chapter applies to purchases by listed "central" (*i.e.*, Chilean national or U.S. federal) government agencies of goods and services valued at $56,190 or more and construction services valued at $6,481,000 or more. The equivalent thresholds for purchases for "sub-central" government entities (*i.e.*, Chilean municipalities and U.S. state government agencies) are set at $460,000 and $6,481,000, respectively. The chapter's thresholds for listed government

enterprises are either $280,951 or $518,000 for goods and services, and $6,481,000 for construction services. All thresholds are subject to adjustment for inflation.

Transparency. Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The chapter lists minimum information that such notices must include.

Tendering Rules. Chapter Nine provides rules for setting deadlines on "tendering" (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service.

Award Rules. Chapter Nine requires that to be considered for award a tender must be made in writing and submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

Additional Provisions. Chapter Nine is designed to ensure integrity in each Party's procurement practices, including by requiring the Parties to maintain laws that make bribery of procurement officials a crime. It establishes procedures under which a Party may change the extent to which the chapter applies to its government entities, such as when a Party privatizes an entity whose purchases are covered under the chapter. It also provides that Parties may adopt or maintain measures necessary to protect: public morals, order, or safety; human, animal, or plant life or health; or intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor. Finally, Chapter Nine establishes a bilateral Committee on Procurement to address issues related to the implementation of the chapter.

Chapter Ten: Investment

Chapter Ten establishes rules to protect investors from one Party against unfair or discriminatory government actions when they make or attempt to make investments in the other Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment treaties) and in customary international law, and contain several innovative provisions.

Key Concepts. Under Chapter Ten, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, concessions, and contracts. It includes both existing and future investments. The term "investor of a Party" encompasses both U.S. and Chilean nationals as well as firms (including branches) established in one of the Parties.

General Principles. Investors enjoy six basic protections under Part A of Chapter Ten: non-discriminatory treatment relative to domestic investors as well as investors of non-Parties; freedom from "performance requirements;" free transfer of funds related to an investment; protection from expropriation other than in conformity with customary international law; a "minimum standard of treatment" in conformity with customary international law; and the ability to hire key managerial and technical personnel without regard to nationality.

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the chapter particular sectors or measures for which it negotiated an exemption from the chapter's rules relating to national treatment, most favored nation treatment, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Investor-State Disputes. Chapter Ten provides a mechanism for an investor of a Party to pursue a claim against the other Party. The investor may assert that the Party has breached a substantive obligation under Part A of Chapter Ten or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment.

Innovative provisions afford public access to information on Chapter Ten investor-State proceedings and ensure proper application of dispute settlement rules. For example, Chapter Ten requires the Parties to make public all documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The chapter also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims. A special annex addressing investor-State procedures provides Chile limited policy flexibility with respect to certain capital flows it may consider disruptive.

Chapter Eleven: Cross-Border Trade in Services

Chapter Eleven governs measures affecting cross-border trade in services between the United States and Chile. Certain of its provisions also apply to measures affecting services investments. The chapter is drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

Key Concepts. Under the Agreement, cross-border trade in services covers supply of a service:

- from the territory of one Party into the territory of another (*e.g.*, electronic delivery of services from the United States to Chile);

- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, a Chilean company provides services to U.S. visitors in Chile); and

- by a national of a Party in the territory of another Party (*e.g.*, a U.S. lawyer provides legal services in Chile).

Chapter Eleven should be read together with Chapter Ten (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter Eleven applies where, for example, a service supplier is temporarily present in the United States or Chile and does not operate through a local investment.

General Principles. Among Chapter Eleven's core obligations are requirements to provide national treatment and most-favored-nation treatment to service suppliers of the other Party. Thus, the chapter requires each Party to treat service suppliers of the other Party no less favorably than its own suppliers. The chapter protects the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The chapter also includes a rule prohibiting the Parties from requiring firms to establish a local presence before they can supply a service. In addition, the chapter seeks to remove market access barriers by barring certain types of restrictions on the supply of services (*e.g.*, rules limiting the number of firms that may offer a particular service or restricting or requiring specific types of legal structures or joint ventures with local companies in order to supply a service). The chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The chapter excludes financial services except that certain provisions of Chapter Eleven apply to investments in unregulated financial services that are covered by Chapter Ten (Investment). In addition, Chapter Eleven does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the chapter's core obligations. All existing state and local laws and regulations are exempted from these obligations. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Eleven. The transparency rules apply to the development and application of regulations governing services. The chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

Exclusions. Chapter Eleven excludes any service supplied "in the exercise of governmental authority" – that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not generally apply to government subsidies, although Chile has undertaken a commitment relating to cross-subsidization of express delivery services.

Chapter Twelve: Financial Services

Chapter Twelve provides rules governing each Party's treatment of: 1) financial institutions of the other Party, 2) investors of the other Party, and their investments, in financial institutions, and 3) cross-border trade in financial services.

Key Concepts. The chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Twelve's core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Thus, Chapter Twelve imposes rules requiring national treatment and most-favored-nation treatment, prohibiting certain quantitative restrictions on market access, and barring restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and to services companies that are currently supplying and that seek to supply financial services from one Party's territory to the other's.

Non-Conforming Measures. Similar to Chapters Ten and Eleven, each Party has listed in an annex to Chapter Twelve particular financial services measures for which it negotiated exemptions from the chapter's core obligations. All existing U.S. state and local laws and regulations are exempted from these obligations. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Other Provisions. Chapter Twelve includes complementary provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to other Chapters. Measures that a Party applies to financial services suppliers of the other Party – other than regulated financial institutions – that make or operate investments in the Party's territory are covered principally by Chapter Ten and certain provisions of Chapter Eleven. In particular the core obligations of the investment chapter apply to such measures, as do the market access, transparency, and domestic regulation provisions of the services chapter. Chapter Twelve incorporates by reference certain provisions of Chapter Ten, such as those relating to transfers and expropriation.

Chapter Thirteen: Telecommunications

Chapter Thirteen creates disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications trade and investment between the United States and Chile. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the other country. In addition, the chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party.

Chapter Thirteen also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality. Chapter Thirteen improves on work undertaken in the WTO, where Chile has not committed to allow competition in its market for local telecommunications services.

Key Concepts. Under Chapter Thirteen, the term "public telecommunications network" covers the infrastructure used to provide public telecommunications services between defined endpoints. A "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "information services" (*e.g.*, services that enable users to create, store, or process information over a network).

Competition. Both the U.S. and Chilean regulatory systems provide for open, competitive domestic and cross-border telecommunications markets. Chapter Thirteen establishes rules that reflect the common elements of these systems. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Chile must ensure that its public phone companies do not provide preferential access to Chilean banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities, such as buildings, where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers" – *i.e.*, companies that, by virtue of their market position or control over certain facilities, can materially affect the terms of participation in the market.

Regulation. The chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met;

- will avoid imposing economic regulations on information service providers, such as Internet providers, other than to promote competition or protect consumers; and

- will endeavor to avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Chapter Fourteen: Temporary Entry for Business Persons

Chapter Fourteen calls for each government to facilitate the temporary entry into its territory of business persons of the other Party. The Agreement requires each Party to use transparent criteria and procedures in carrying out its temporary entry rules. At the same time, the rules set out in Chapter Fourteen respect each Party's need to ensure border security and protect its domestic labor force and permanent employment.

Key Concepts. Chapter Fourteen covers temporary entry only. Its provisions do not apply to measures regarding citizenship, permanent residence, or employment on a permanent basis. An annex to Chapter Fourteen groups business persons into four categories (business visitors, traders and investors, intra-company transferees, and professionals) and identifies the criteria under which the Parties must grant them temporary entry. Each business person meeting these criteria must also be qualified for entry under the Party's general requirements relating to public health and safety and national security. An annex permits the United States to limit the number of Chilean professionals entering the United States under the chapter to 1,400 per year. The Parties may require attestations for professionals similar to those required by the United States under the "H-1B" visa program.

General Provisions. To avoid unduly impairing or delaying trade in goods or services or investment activities under the Agreement, the chapter calls on each Party to apply its measures

relating to temporary entry expeditiously. Chapter Fourteen clarifies that merely requiring a visa for admission does not violate this rule. Further, a Party may refuse admission if the temporary entry of the business person might affect adversely the settlement of a labor dispute or the employment of a person involved in such a dispute. In such cases, the Party must provide a written statement of the reasons for the refusal and prompt notification to the other Party.

Other Provisions. Chapter Fourteen permits recourse to dispute settlement in disputes over a Party's pattern of practice in carrying out its temporary entry commitments, but not for individual denials of entry. The chapter creates a Subcommittee on Temporary Entry to facilitate the administration of its provisions. Chapter Fourteen makes clear that it contains all of the substantive obligations the two Parties have assumed under the Agreement with respect to temporary entry. The chapter does not impose obligations or commitments with respect to subjects covered under other chapters of the Agreement.

Chapter Fifteen: Electronic Commerce

Chapter Fifteen establishes rules designed to prohibit duties on, and discriminatory regulation of, electronic trade in digitally encoded products, such as computer programs, video, images, and sound recordings. The chapter represents the first U.S. agreement on this subject with a country in the Western Hemisphere and a major advance over previous understandings on this subject.

Customs Duties. Chapter Fifteen provides that a Party may not impose customs duties on digital products of the other Party that are transmitted electronically. By virtue of Chapter Three (National Treatment and Market Access for Goods), each Party must assess the customs value (and any applicable tariffs) on the medium rather than the content of any digital products imported on a physical medium, such as a compact disc (*i.e.*, on the value of the disc rather than that of the information it contains).

Non-Discrimination. Chapter Fifteen requires the Parties to apply principles of non-discrimination to trade in electronically transmitted digital products so that they benefit from the same sorts of principles that govern trade in goods and services. Thus, for example, each Party must refrain from discriminating against electronically transmitted digital products on the ground that they have a nexus to the other country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of the other Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like products that have a nexus to a third country.

Cooperation. Chapter Fifteen provides for future cooperation between the United States and Chile on electronic commerce issues such as data privacy, consumer protection, and cyber-security.

Chapter Sixteen: Competition Policy, Designated Monopolies, and State Enterprises

Chapter Sixteen includes several provisions related to business conduct in recognition that healthy, competitive domestic markets are vital for fully realizing the benefits of trade

liberalization. The chapter sets out basic procedural safeguards and rules ensuring against harmful conduct by state monopolies and state enterprises. Neither of these types of enterprises account for a significant portion of either Party's economy.

Antitrust Laws. Chapter Sixteen requires each Party to adopt or maintain laws prohibiting anticompetitive business conduct and an agency to enforce them. Each Party will take appropriate enforcement action under its law to address anticompetitive practices. Chapter Sixteen affirms that the antitrust enforcement policy of each Party is not to discriminate on the basis of nationality.

Procedural Rights. Chapter Sixteen guarantees basic procedural rights for firms facing antitrust enforcement actions. Each Party will provide a right to be heard and to present evidence before imposing a sanction or remedy, and will ensure that any sanctions or remedies are subject to review by a court or independent tribunal.

Designated Monopolies. Under Chapter Sixteen, whenever a Party gives a private or government-owned entity the sole right to provide or purchase a good or service, the Party must ensure that the entity conducts itself in a manner consistent with commercial considerations, does not discriminate against the other Party's goods or service suppliers, and does not engage in anticompetitive practices in markets outside its monopoly mandate.

State Enterprises. Chapter Sixteen sets obligations regarding each Party's responsibilities for "state enterprises," which are companies that a Party owns or controls. Each Party must ensure that its state enterprises accord non-discriminatory treatment to the other's companies.

Cooperation. Chapter Sixteen calls for bilateral cooperation on antitrust matters and furthers transparency by providing for the exchange of publicly available information on antitrust enforcement and on designated monopolies and state enterprises. The Parties may avail themselves of consultations to discuss specific issues.

Dispute Settlement. The chapter's provisions requiring the Parties to adopt and enforce antitrust laws are not subject to the Agreement's dispute settlement procedures, nor are the provisions governing cooperation and consultations. By contrast, the chapter's rules addressing designated monopolies and state enterprises may be enforced through the Agreement's dispute settlement mechanism.

Chapter Seventeen: Intellectual Property Rights

Chapter Seventeen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights.

General Provisions. The chapter will require Chile to ratify or accede to several agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. The chapter also includes full national treatment commitments, with no exceptions for digital

products. It also requires each Party to publish its laws, regulations, procedures, and decisions concerning the protection or enforcement of intellectual property rights.

Trademarks and Geographical Indications. Chapter Seventeen includes provisions on the registration of collective, certification, and sound marks, as well as geographical indications and scent marks. The chapter also contains provisions on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy. Each Party must provide full protection for trademarks with respect to later geographical indications by providing a "first-in-time, first-in-right" rule for trademarks.

Copyrights and Related Rights. Chapter Seventeen articulates rights that are unique to the digital age, affirming and building on rights set out in several international agreements, including the World Intellectual Property Organization Internet treaties. For instance, the chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies – an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will ensure that authors have the exclusive right to make their works available online. To curb copyright piracy, Chapter Seventeen requires the two governments to use only legitimate computer software, setting an example for the private sector. The chapter also includes provisions on anti-circumvention under which the Parties commit to prohibit tampering with technology used by authors to protect copyrighted works. In addition, Chapter Seventeen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Each Party must also provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works).

Recognizing the importance of satellite broadcasts, Chapter Seventeen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, rather than solely to the content contained in the signals.

Patents and Trade Secrets. Chapter Seventeen requires patent term extensions to compensate for unreasonable administrative or regulatory delays (including for marketing approval) that occur while granting the patent. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The chapter also limits the exceptions to patent protection. In addition, Chapter Seventeen offers protection against unfair commercial use of test data that a company submits in seeking marketing approval for certain regulated products. It precludes other firms from relying on the data for specific periods – five years for pharmaceuticals and ten years for agricultural chemicals.

Enforcement Provisions. Chapter Seventeen imposes obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The chapter also provides for damages fixed in advance (*i.e.*, "statutory damages"), at the option of the right holder. Such pre-established damages help to deter piracy by ensuring an appropriate remedy in cases where, for instance, information on actual damages is inadequate.

Chapter Seventeen provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Seventeen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods – including those in transit – without waiting for a formal complaint. Chapter Seventeen provides that each Party must make counterfeiting and piracy subject to criminal penalties.

Transition Periods. Certain provisions of the chapter will take effect over periods of up to two to five years.

Chapter Eighteen: Labor

Chapter Eighteen sets out the Parties' commitments and undertakings regarding trade-related labor rights. It draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the United States-Jordan Free Trade Agreement.

General Principles. Under Chapter Eighteen, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Each Party must strive to ensure that its domestic law recognizes and protects the fundamental labor principles spelled out in the ILO declaration and listed in the chapter. Each Party must also strive to ensure it does not derogate from or waive the protections of its domestic labor laws to encourage trade with or investment from the other Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws.

Effective Enforcement. Chapter Eighteen commits each Party not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting bilateral trade. The chapter defines labor laws to include those related to: 1) the right of association; 2) the right to organize and bargain collectively; 3) a prohibition of forced or compulsory labor; 4) a minimum age for the employment of children and elimination of the worst forms of child labor; and 5) acceptable conditions of work with respect to wages, hours and occupational safety and health. The U.S. commitment includes federal statutes and regulations addressing these areas, but not state or local labor laws. While committing each Party to effective labor law enforcement, the chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Dispute Settlement. Chapter Eighteen provides for cooperative consultations if a Party believes that the other Party has violated its labor commitments. If the matter concerns a Party's compliance with the chapter's labor law enforcement provision, the complaining Party may invoke the provisions of Chapter Twenty-Two (Dispute Settlement) after an initial 60-day consultation period by requesting a meeting of the Agreement's ministerial-level Free Trade

Commission. The Parties will maintain a special roster of experts to serve on any dispute settlement panels convened to hear disputes regarding labor law enforcement.

Cooperation. A bilateral Labor Affairs Council will oversee the chapter's implementation and will provide a forum for consultations and cooperation on labor matters. Each Party will designate a contact point for communications with the other Party and the public regarding the chapter. An annex creates a mechanism for ongoing labor cooperation focusing on the improvement of labor standards, particularly those in the 1998 ILO declaration, and the elimination of the worst forms of child labor.

Chapter Nineteen: Environment

Chapter Nineteen establishes the Parties' commitments and undertakings regarding environmental protection, and includes several key provisions that parallel those in the Agreement's labor chapter. Chapter Nineteen draws on, but does not replicate, the North American Agreement on Environmental Cooperation and the environmental provisions of the United States-Jordan Free Trade Agreement.

Like the labor chapter, Chapter Nineteen includes a commitment on effective law enforcement. It also includes commitments to establish high levels of environmental protection and to strive not to weaken or reduce environmental laws to encourage bilateral trade or investment. Chapter Nineteen includes commitments to enhance bilateral cooperation in environmental matters.

General Principles. The Parties must ensure that their laws provide for high levels of environmental protection and strive to improve these levels. They must also strive to ensure they do not waive or derogate from their environmental laws to encourage trade with or investment from the other Party.

Effective Enforcement. Chapter Nineteen commits each Party not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The U.S. commitment applies to federal environmental statutes and regulations. At the same time, the chapter recognizes the right of each Party to establish its own environmental laws, exercise discretion in regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Dispute Settlement. If a Party believes that the other Party is not complying with its obligations, Chapter Nineteen provides for cooperative consultations. If the matter concerns a Party's compliance with the chapter's environmental law enforcement provision, the complaining Party may invoke the provisions of Chapter Twenty-Two (Dispute Settlement) after an initial 60-day consultation period by requesting a meeting of the Agreement's ministerial-level Free Trade Commission. The Parties will maintain a special roster of experts to serve on any dispute settlement panels convened to hear disputes regarding environmental law enforcement.

Cooperation. Chapter Nineteen establishes an Environment Affairs Council, composed of cabinet-level environment officials, to advise on matters addressed in the chapter. Opportunities will be provided at Council meetings for the public to share concerns and ideas about the

implementation of Chapter Nineteen and cooperative work between the Parties. Chapter Nineteen also includes a commitment to conduct a series of cooperative projects, including improving capacity for wildlife management, remediating hazardous waste sites in Chile, and developing a pollutant release and transfer registry in Chile. The Parties have signed a separate environmental cooperation agreement to guide future efforts. The Parties will consult on the outcome of the current WTO negotiations regarding the relationship between the WTO and multilateral environmental agreements.

Chapter Twenty: Transparency

Chapter Twenty sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must ensure reasonable notice of regulatory proceedings and the opportunity to present facts and arguments. Chapter Twenty also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter Twenty-One: Administration of the Agreement

Chapter Twenty-One creates a Free Trade Commission to supervise implementation of the Agreement and assist in the resolution of any disputes that may arise under the Agreement. The Commission may also agree to accelerate duty phase-outs on particular products and adjust the Agreement's product-specific rules of origin. The Commission will make decisions by consensus. Each Party will designate an office to provide administrative assistance to dispute settlement panels and perform such other functions as the Commission may direct. The Commission will be chaired by each government's trade minister and will convene at least once a year.

Chapter Twenty-Two: Dispute Settlement

Chapter Twenty-Two sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other trade agreements (*e.g.*, the WTO agreements), the complaining government may choose the forum for resolving the matter.

Consultations. Either Party may request consultations on any actual or proposed measure that it believes might affect the operation of the Agreement. If the Parties cannot resolve the matter through consultations within the specified period (normally 60 days), a Party may request a meeting of the Free Trade Commission. To help resolve the dispute, the Commission may employ technical advisers, good offices, conciliation, mediation, or other dispute resolution procedures.

Panel Procedures. If the Commission cannot resolve the dispute within a specified period (generally 30 days), either Party may request the establishment of an arbitral panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have 14 days to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 30 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (*i.e.,* obligations other than enforcement of labor and environmental laws), if the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform with the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the Parties or, failing that, will be set at 50% of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Commission for labor and environmental initiatives. If the

defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

Settlement of Private Disputes. The Parties will encourage the use of arbitration and other alternative dispute mechanisms to settle international commercial disputes between private parties in the two countries. Each country must provide for the recognition and enforcement of arbitral awards, for example by complying with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

Chapter Twenty-Three: Exceptions

Chapter Twenty-Three sets out general provisions that apply to all or large portions of the Agreement. For example, it incorporates the general exceptions set forth in Article XX of the GATT and Article XIV of the GATS for various chapters.

Essential Security. Chapter Twenty-Three allows each Party to take actions it considers necessary to protect its essential security interests.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides the Agreement does not affect either Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's 1) national treatment obligation for goods, 2) national treatment and most-favored-nation obligations for services, 3) prohibitions on performance requirements, and 4) expropriation rules.

Balance of Payments. Chapter Twenty-Three establishes criteria that a Party must follow if it applies a balance-of-payments measure on trade in goods.

Disclosure of Information. The chapter also provides that a Party may withhold information from the other where such disclosure would impede domestic law enforcement or contravene laws protecting personal privacy or financial records.

Chapter Twenty-Four: Final Provisions

Chapter Twenty-Four provides that the annexes, appendices, and footnotes are part of the Agreement, that the Parties may amend the Agreement subject to applicable domestic procedures, and that the English and Spanish texts are both authentic. The chapter provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the

Agreement is amended, and it provides for the entry into force of the Agreement and for its termination six months after a Party provides written notice that it intends to withdraw.