

Chapter []

National Treatment and Market Access for Goods

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National Treatment and Market Access for Goods

X.1 [EU: Objective]

The Parties progressively and reciprocally liberalize trade in goods over a transitional period starting from the entry into force of this Agreement in accordance with the provisions of this Agreement and in conformity with Article XXIV of the GATT 1994.]

X.2 Scope [US: and Coverage]

[US: Except as otherwise provided in this Agreement, this] [EU: This] Chapter applies to trade in goods [US: of a Party] [EU: between the Parties].

X.3. National Treatment

1. Each Party shall accord national treatment to the goods of [US: another] [EU: the other] Party in accordance with Article III of GATT 1994, including its Notes and Supplementary Provisions. To this end, Article III of GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, mutatis mutandis.

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

3. Paragraphs 1 and 2 shall not apply to measures set out in Annex X-A.]

X.4. [EU: Classification of Goods]

The classification of goods in trade between Parties shall be governed by each Party's respective tariff nomenclature in conformity with the Harmonized Commodity Description and Coding System 2012 ("HS 2012") and its amendments.]

X.5. [EU: Reduction and] Elimination of Customs Duties [EU: on Imports]

1. [EU: Upon the entry into force of the] Except as otherwise provided in this Agreement, [EU: neither Party may] [US: no Party shall] increase any existing customs duty, or [US: adopt] [EU: introduce] any new customs duty [US: ,] on [EU: the importation of a good originating in the other Party] [US: an originating good].

[EU: This shall not preclude either Party from raising] [US: For greater certainty, a Party may:

(a) raise] a customs duty to the level established in its Schedule [US: to Annex X-B] following a unilateral reduction [EU: ,] [US: ; or

(b) maintain or increase a customs duty as authorized under Article 22 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes by the Dispute Settlement Body of the WTO].

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2. [US: Except as otherwise provided in this Agreement, each Party shall progressively] [EU: Each party shall reduce and] eliminate its customs duties [EU: ¹] on [US: originating] [EU: imported] goods [EU: originating² in the other Party] in accordance with [US: its Schedule to Annex X-B] [EU: the schedules set out in the Annexes [...] and [...] (hereinafter referred to as “the Schedules”)].

3. (a) [US: Upon the request of a Party,] [EU: Three years after the entry into force of this Agreement, at the request of either Party,] the Parties shall consult to consider accelerating [EU: and broadening the scope of the reduction and] [US: the] elimination of customs duties [US: set out in their Schedules to Annex X-B] [EU: on imports].

(b) [US: An agreement] [EU: A decision] by the Parties [EU: (within the ... Committee) on such acceleration and broadening] [US: to accelerate the elimination of a customs duty on a good] shall supersede any duty rate or staging category determined pursuant to their Schedules [US: to Annex X-B] for that good [US: when approved by each Party in accordance with its applicable legal procedures].

4. [EU: If at any moment a Party reduces its applied most favored nation customs duty rates on imports after the date on entry into force of this Agreement, that duty rate shall apply if and for as long as it is lower than the customs duty rate on imports calculated in accordance with that Party's Schedule.]

[US: For greater certainty, no Party shall prohibit an importer from claiming for an originating good the rate of customs duty applied under the WTO Agreement.]

X.6. [US: Waiver of Customs Duties

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

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

X.7. [US: Temporary Admission of Goods

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

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

1 [See Definitions.]

2 [See Definitions.]

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(b) goods intended for display or demonstration, including their competent parts, ancillary apparatus, and accessories;

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

(d) goods admitted for sports purposes.

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

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

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

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

(d) be capable of identification when exported;

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

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

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

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

4. Each Party shall grant duty-free temporary admission for containers and pallets regardless of their origin, in use or to be used in the shipment of merchandise or goods in international traffic.

5. If any condition that a Party imposes under paragraph 2 has not been fulfilled, that Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalties provided for under its law.

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

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

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

9. Subject to Chapter [...] (Investment) and [...] (Cross-Border Trade in Services):

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

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

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

d) no Party shall require that the carrier bringing a container from the territory of another Party into its territory be the same carrier that takes the container out of the Party's territory.]

X.8. Goods Re-entered After Repair [US: or Alteration]

1. [EU: For the purposes of this Article, repair means any processing operation undertaken on goods to remedy operating defects or material damage and entailing the re-establishment of goods to their original function or to ensure their compliance with technical requirements for their use, without which the goods could no longer be used in the normal way for the purposes for which it was intended. Repair of goods includes restoring and maintenance.]

[US: For purposes of this Article, repair or alteration does] [EU: It shall] not include an operation or process that [EU: either]:

(a) destroys [US: a good's] [EU: the] essential characteristics [EU: of goods] or creates [US: a] new or commercially different good [EU:s,] [US: ;] or

(b) transforms [US: an] unfinished good [EU: s] into [US: a] finished [US: good.] [EU: goods, or

(c) is used to improve the technical performance of goods.]

2. [EU: Except as otherwise provided in Annex X.13, a Party shall not] [US: No Party shall] apply [US: a] customs duty to [US: a] good [EU: s], regardless of [US: its] [EU: their] origin, that re-enter [US: s] its territory after [US: that good has] [EU: those goods have] been temporarily exported from its territory to the territory of [EU: the other] [US: another] Party for repair [US: or alteration], regardless of whether such repair [US: or alteration has increased the value of the good or could be performed in the territory of the Party from which the good was exported for repair or alteration] [EU: could be performed in the territory of the Party from which the goods were temporarily exported for repair].

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3. [EU: Paragraph 2 does not apply to goods imported in bond, into free trade zones, or zones of similar status, that are exported for repair and are not re-imported in bond, into free trade zones, or zones of similar status.]

4. [US: No Party shall] [EU: A Party shall not] apply [US: a] customs duty to [US: a] good [EU: s], regardless of [US: its] [EU: their] origin, [US: admitted] [EU: imported] temporarily from the territory of [US: another] [EU: the other] Party for repair [US: or alteration].

X.9. [US: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of another Party, regardless of their origin, but may require that:

(a) the samples be imported solely for the solicitation of orders for goods or services provided from the territory of another Party or of a non-Party; or

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

X.10. Import and Export Restrictions

1. [EU: Article XI of the GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made a part of this Agreement, *mutatis mutandis*.

2. Before taking any measures provided for in Articles XI.2 (a) and (c) of the GATT 1994, the Party intending to take measures shall supply the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days, the exporting Party may apply measures under this Article on the exportation of the product concerned, without prejudice to the dispute settlement provisions of this Agreement. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.]

3. [US: Except as otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT 1994 and its Notes and Supplementary Provisions incorporated into and made a part of this Agreement, *mutatis mutandis*.

4. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 3 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

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- (a) export or import price requirements, except as permitted in enforcement of anti-dumping and countervailing duty orders or price undertakings;
- (b) import licensing conditioned on the fulfillment of a performance requirement; or
- (c) voluntary export restraints inconsistent with Article VI of the GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

5. Paragraphs 3 and 4 shall not apply to the measures set out in Annex X-A.

6. For greater certainty, paragraph 3 applies to any good implementing or incorporating cryptography, where the good is not designated or modified specifically for government use and is sold or otherwise made available to the public.

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

- (a) limiting or prohibiting the importation of the good of the non-Party from territory of another Party; or
- (b) requiring, as a condition for exporting the good to territory of another Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

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

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

10. For greater certainty, paragraph 9 does not prevent a Party from requiring that a person referred to in that paragraph designate a point of contact for the purpose of facilitating communications between its regulatory authorities and that person.]

X.11. [US: Re-manufactured Goods

1. For greater certainty, paragraph 3 of Article X.10 (Import and Export Restrictions) applies prohibitions and restrictions on re-manufactured goods.

2. If a Party adopts or maintains prohibitions or restrictions on used goods, it shall not apply those measures to re-manufactured goods.^{3]}

3 [US: For greater certainty, subject to its obligations under this Agreement and the relevant WTO Agreements, a Party may require that re-manufactured goods:

- (a) be identified as such for distribution or sale in its territory; and

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X.12. Import [EU: and Export] Licensing

1. [EU: The Parties affirm their existing rights and obligations under the WTO Agreement on Import Licensing Procedures.
2. The Parties shall ensure that all import and export licensing procedures are neutral in application, and administered in a fair, equitable, non-discriminatory and transparent manner.
3. The Parties shall only adopt or maintain licensing procedures as a condition for importation into their territory or exportation from their territory to the other Party when other appropriate procedures to achieve an administrative purpose are not reasonably available.
4. The Parties shall not adopt or maintain non-automatic import or export licensing procedures unless such procedures are necessary to implement a measure that is consistent with this Agreement. Any Party adopting a non-automatic licensing procedure shall indicate clearly the measure being implemented through such a licensing procedure.
5. The Parties shall introduce and administer any import licensing procedures in accordance with Articles 1 to 3 of the WTO Agreement on Import Licensing Procedures.
6. Any Party introducing licensing procedures or changes in these procedures shall proceed in accordance with Article 5 of the WTO Agreement on Import Licensing Procedures.
7. Upon request of the other Party, each Party shall promptly provide any relevant information regarding any licensing procedures which the Party to which the request is addressed intends to adopt or has adopted or maintained, including the information indicated in paragraph 5.]
8. [US: Promptly after this Agreement enters into force, each Party shall notify another party of its existing import licensing procedures, if any. The notification shall:
 - (a) include the information specified in Article 5.2 of the Import Licensing Agreement; and
 - (b) be without prejudice as to whether the import licensing procedure is consistent with this Agreement.
9. A Party shall be deemed to be in compliance with paragraph 8 if:
 - (a) it has notified that procedure to the Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement, together with the information specified in Article 5.2 of the agreement; and
 - (b) in the most recent annual submission due before entry into force of this Agreement for that Party to the Committee on Import Licensing in response to the annual questionnaire on import licensing procedures described in Article 7.3 of the Import Licensing Agreement, it has provided, with respect to that procedure the information requested in that questionnaire.

(b) meet all applicable technical requirements that apply to equivalent goods in new condition.]

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10. A Party shall publish on an official government Internet website any new or modified import licensing procedure, including any information that it is required to publish under Article 1.4(a) of the Import Licensing Agreement. To the extent possible, the Party shall do so at least 20 days before the new procedure or modification takes effect.

11. No Party shall apply an import licensing procedure to a good of another Party unless the Party has complied with the requirements of paragraphs 8 and 10 with respect to that procedure.]

X.13. [US: Transparency in Export Licensing Procedures

1. Within 30 days after the date of entry into force of this Agreement, each Party shall notify the other Party in writing of the publications in which its export licensing procedures, if any, are set out, including addresses of relevant government Internet websites. Thereafter, each Party shall publish any new export licensing procedure, or any modification of an export licensing procedure, it adopts no later than 30 days after the new procedure or modification takes effect.

2. Each Party shall ensure that it includes in the publications it has notified under paragraph 1:

(a) the texts of its export licensing procedures, including any modifications it makes to those procedures;

(b) the goods subject to each licensing procedure;

(c) for each procedure, a description of:

(i) the process for applying for license; and

(ii) any criteria an applicant must meet to be eligible to seek a license, such as possessing an activity license, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) a contact point or points from which interested persons can obtain further information on the conditions for obtaining an export license;

(e) the administrative body or bodies to which an application or other relevant documentation should be submitted;

(f) a description of any measure or measures that the export licensing procedure is designed to implement;

(g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until withdrawn or revised in a new publication;

(h) if the Party intends to use a licensing procedure to administer an export quota, the overall quantity and value of the quota and the opening and closing dates of the quota; and

(i) any exemptions or exceptions available to the public that replace the requirement to

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obtain an export license, how to request or use these exemptions or exceptions, and the criteria for them.

3. A Party shall provide another Party, upon the other Party's request and to the extent possible, the following information regarding a particular export licensing procedure that it adopts or maintains, except where doing so would reveal business proprietary or other confidential information of a particular person:

(a) the aggregate number of licenses the Party has granted over a recent period specified in the other Party's request; and

(b) measures, if any, that the Party has taken in conjunction with the licensing procedure to restrict domestic production or consumption or to stabilize production, supply, or prices for the relevant good(s).

4. Nothing in this Article shall be construed in a manner that would require a Party to grant an export license, or that would prevent a Party from implementing its obligations under United Nations Security Council Resolutions, as well as multilateral non-proliferation regimes, including: the *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*; the Nuclear Suppliers Group; the Australia Group; the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction*, done at Paris, January 13, 1993; the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*, done at Washington, London and Moscow, April 10, 1972; the *Treaty on the Non-Proliferation of Nuclear Weapons*; and the Missile Technology Control Regime.

5. For the purposes of this Article:

export licensing procedure means a requirement that a Party adopts or maintains under which an exporter must, as a condition for exporting a good from the Party's territory, submit an application or other documentation to an administrative body or bodies, but does not include customs documentation required in the normal course of trade or any requirement that must be fulfilled prior to introduction of the good into commerce within the Party's territory.]

X.14. [US: Administrative] Fees Formalities [EU: Connected with Importation and Exportation]

1. [EU: Each Party shall ensure, in accordance with Article VIII of the GATT 1994, that all fees and charges of whatever character other than customs duties imposed on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered, which shall not be calculated on an *ad valorem* basis, and shall not represent an indirect protection to domestic goods or taxation of imports or exports for fiscal purposes. To this end Article VIII of the GATT 1994, including its Notes and Supplementary Provisions, is made part of this Agreement.]

2. No Party shall require consular transaction [EU: ⁴], including related fees and charges, in

4 [See Definitions.]

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connection with the importation of any good of a [EU: nother] Party.

3. Each Party shall [US: make available and maintain on the Internet] [EU: publish] a [US: current] list of the fees and charges [US: subject to the obligation in paragraph 2 that] it imposes in connection with importation or exportation.

X.15. [US: Export] [EU: Elimination of Customs] Duties [US: ,] [EU: and] Taxes [US:, or Other Charges] [EU: on Exports]

[US: No] [EU: Neither] Party shall [US: adopt or] maintain [EU: or institute] any [EU: customs] duty, [EU: or] tax [US: or other charge] on [EU: or in connection with] the export [EU: ation or sale for export of goods] [US: of any good to territory of another Party] [EU: to the other Party, or any internal taxes on goods exported to the other Party that are in excess of those imposed on like goods destined for internal sale] [US: unless the duty, tax, or charge is also applied to the good when destined for domestic consumption].

X.16. [US: Committee on Trade in Goods] [EU: Institutional Provisions]

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

2. The Committee shall meet on the request of a Party or the Joint Committee to consider any matter arising under this Chapter, Chapter X (Roles of Origin and Origin Procedures), or Chapter Y (Customs Administration and Trade Facilitation).

3. The Committee's functions shall include:

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

(b) addressing tariff and non-tariff barriers to trade in goods between the Parties and, if appropriate, referring such matters to the Joint Committee for its consideration.

4. The Committee shall also:

(a) discuss and endeavor to resolve any difference that may arise between the Parties on matters related to the classification of goods under the Harmonized System;

(b) review conversion to the Harmonized System 2017 nomenclature and its subsequent revisions to ensure that each Party's obligations under this Agreement are not altered, and consult to resolve any conflicts between:

- (i) the Harmonized System 2017 nomenclature or its revisions and Annex X-B; and
- (ii) Annex X-B and national nomenclatures.

The Committee may convene a subcommittee on customs matters to assist the Committee in its work under this paragraph.]

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X.17. Definitions

[EU: Unless otherwise specified in this Chapter, terms shall have the meanings attributed to them in the GATT and the WTO multilateral agreements on trade in goods.]

For the purposes of this Chapter [EU: , the following definitions shall apply]:

consular transaction [US: s means the] [EU: The] procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a [US: non-] [EU: third] Party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shippers' export declaration, or any other customs documentation in connection with the importation of the good;

[EU: **Customs duty** A duty or charge of any kind imposed on or in connection with the importation or exportation of a good, including any form of surtax or surcharge imposed on or in connection with such importation or exportation. It does not include: (a) a charge equivalent to an internal tax imposed consistently with Article [...] of this Chapter; (b) a duty imposed consistently with [any bilateral duties authorized under the agreement, e.g. bilateral safeguards or DS sanctions, text to be defined]; (c) a duty applied consistently with Article VI, Article XVI, Article XIX of GATT 1994, the WTO Agreement on Implementation of Article VI of GATT 1994, the WTO Agreement on Subsidies and Countervailing Measures, the WTO Agreement on Safeguards, Article V of the WTO Agreement on Agriculture and the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes; or (d) a fee or other charge imposed consistently with Article [...] of this Chapter.]

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

- (a) charge equivalent to an internal tax imposed consistently with Article III-2 of GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
- (b) anti-dumping or countervailing duty; or
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered;

The United States anticipates that the definition for “customs duties” will be moved to the General Definitions Chapter due to its use in multiple chapters.]

[EU: **Originating** Qualifying under the rules of origin set out in the [Annex on Rules of Origin].]

[US: **advertising films and recordings** means recorded visual media or audio materials that exhibit for prospective customers that nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party;

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

consumed means:

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

container means an article of transport equipment that is fully or partially enclosed to constitute a compartment intended for containing merchandise or goods, is substantial and has an internal volume of one cubic meter or more, is of a permanent character and accordingly strong enough to be suitable for repeated use, is used in significant numbers in international traffic, is specially designed to facilitate the carriage of merchandise of goods by more than one mode of transport without intermediate reloading, and is designed both for ready handling, particularly when being transferred from one mode of transport to another, and to be easy to fill and to empty, but does not include vehicles, accessories or spare parts of vehicles, or packaging;

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

duty-free means free of customs duty;

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

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

performance requirement means a requirement that:

- (a) a given level or percentage of goods or services be exported;
- (b) domestic goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods;
- (c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;
- (d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services with a given level or percentage of domestic content in the territory of the Party granting the waiver of customs duties or the import license; or

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

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

(f) subsequently exported;

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

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

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

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogs, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicize, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge; and

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

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[US: ANNEX A: NATIONAL TREATMENT AND IMPORT AND EXPORT RESTRICTIONS

Section A: Measures of the United States

Articles X.3 (National Treatment) and X.10 (Import and Export Restrictions) shall not apply to:

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

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

(iii) the amendment to a non-conforming provision of any statute referred to in clause (i) to the extent that the amendment does not decrease the conformity of the provision with Articles X.3 (National Treatment) and X.11 (Import and Export Restrictions);
- (c) actions authorized under Article 22 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes by the Dispute Settlement Body of the WTO; and
- (d) any measure that the United States applies to address market disruption pursuant to procedures that have been incorporated into the WTO Agreement.]

[US: ANNEX B: TARIFF ELIMINATION

1. Except as otherwise provided in a Party's Schedule to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article XX.X;]
2. The base rate of customs [EU: duties on imports, to which the successive reductions are to be applied under paragraph [...], shall be specified in the Schedules.] [US: duty and staging category for determining the interim rate of customs duty at each stage of reduction for an item are indicated for the item in each Party's Schedule to this Annex.]
3. [US: Interim staged rates shall be rounded down, at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest tenth of one USD cent in the case of the United States and the nearest tenth of one EUR cent in the case of the European Union.
4. For purposes of this Annex and a Party's Schedule to this Annex, **year one** means the year of entry into force of this Agreement as provided for in Article [...] (Entry into Force and

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Termination).

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

Chapter []

Agriculture [US: Market Access]

Consolidated Proposals

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Chapter X

Agriculture [US: Market Access]

Article X.1: [EU: Objective,] Scope and Coverage

1. [EU: The Parties, reaffirming their commitments under the WTO Agreement on Agriculture, hereby lay down the necessary arrangements for the promotion and facilitation of trade in agricultural goods of the Parties.]
2. [EU: The Parties recognize the differences in their respective agricultural models and the need to ensure that this Agreement does not adversely affect the agricultural diversity of the Parties.]
3. [EU: The Parties recognize that their respective societal choices may differ with respect to public policy decisions affecting agriculture. In this regard, nothing in this Agreement will restrain the Parties from taking measures necessary to achieve legitimate policy objectives such as the protection of public health, safety, environment or public morals, social or consumer protection, or the promotion and protection of cultural diversity that each side deems appropriate. Both Parties will seek to ensure that the effect of such measures does not create unnecessary obstacles to trade in agricultural goods between them and that the measures are not more trade-restrictive than necessary to fulfill their legitimate objective.]
4. This Chapter applies to measures adopted or maintained by [EU: the Parties in respect of trade in agricultural goods (hereinafter referred to as “agriculture goods”) between them covered by the definition in Annex I of the WTO Agreement on Agriculture] [US: a Party relating to trade in agricultural goods].
5. [EU: This Chapter does not apply to measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, which will be dealt with in Chapter {X on SPS}, or measures in other chapters applicable to agricultural goods].

Article X.2: [EU: Cooperation in Agriculture]

1. [EU: The Parties recall the prominent role of sustainability in its economic, social and environmental dimensions in agriculture and aim at developing a fruitful cooperation and dialogue on agricultural sustainability issues. To this end, the Parties shall work together to:
 - (a) facilitate information and knowledge-sharing through networks of farmers, researchers and public authorities; and
 - (b) exchange ideas and share experience in developing sustainable farming practices, particularly with regards to organic farming, and environmentally friendly rural development programs.]
2. [EU: The Parties shall cooperate in matters related to geographical indications in line with the provisions of Section 3 (Articles 22-24) of the TRIPS Agreement, without prejudice to the relevant provisions laid down in the Intellectual Property Chapter of this Agreement. The Parties reaffirm the importance of origin-linked products and geographical indications for sustainable agriculture and

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rural development, and in particular for small and medium-sized enterprises.]

Article X.3: Cooperation in Multilateral [EU: and Other] Fora

1. The Parties shall work together to facilitate the successful conclusion of agriculture negotiations in the WTO [EU: and consider that this Agreement constitutes a significant contribution in that respect.] [US: that:

- (a) substantially improves market access for agricultural goods;
- (b) reduces, with a view to phasing out, agricultural export subsidies;
- (c) develops disciplines that eliminate restrictions on a person's right to export agricultural goods; and
- (d) substantially reduces trade-distorting domestic support.]

2. [EU: The Parties recognize the efforts undertaken in international fora to enhance global food security and nutrition, and sustainable agriculture, and commit to actively engage in cooperation in those fora. To this end, the Parties shall:

- (a) refrain from undertaking export restrictions as well as the use of export taxes which might exacerbate volatility, increase prices and have a detrimental effect on critical supplies of agricultural goods to the Parties and to other trading partners, and seek a coordinated approach in the relevant fora; and
- (b) encourage research and innovation and share practices to secure viable food production in the face of growing world food demand, and at the same time ensure the sustainable management of natural resources.]

3. [US: The Parties shall work to promote international agricultural development and enhanced global food security by:

- (a) promoting robust global markets for food products and agricultural inputs;
- (b) seeking to avoid unwarranted trade measures that increase global food prices or exacerbate price volatility, in particular through avoiding the use of export taxes, export prohibitions or export restrictions on agricultural goods; and
- (c) encouraging and supporting research and education to develop innovative new agricultural products and strategies that address global challenges related to the production of abundant, safe and affordable food, feed, fiber, and energy.]

4. [EU: The Parties shall work together to promote the export of agricultural products from the least developed countries and to encourage regional integration of trade in agricultural products.]

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Article X.4: [EU: Export Competition]

1. [EU: For the purposes of this Article, “export subsidies” shall have the meaning assigned to that term in Article 1(e) of the WTO Agreement on Agriculture.]
2. [EU: “Measures with equivalent effect” are export credits, export credit guarantees or insurance programs, as well as other measures that have an equivalent effect on an export subsidy.]
3. [EU: The Parties reaffirm their commitment, expressed in the 2013 Bali Ministerial Declaration, to the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect.]
4. [EU: Upon entry into force of this Agreement, no Party shall maintain, introduce or reintroduce export subsidies or other measures with equivalent effect on an agricultural good that is exported or incorporated in a product that is exported to the territory of the other Party or the territory of a non-Party with which both Parties have concluded a free trade agreement where the non-Party has fully eliminated duties on that agricultural good for the benefit of both Parties. This paragraph shall not apply to export financing support as referred to in paragraph 5 and for which paragraphs 5 to 7 apply.]
5. [EU: The Parties recognize the work undertaken in the WTO Doha Development Round in respect of the disciplines governing the provision of export credits, export credit guarantees, or insurance programs (“export financing support”). The Parties shall not grant any financial support to exports of an agricultural good, provided by entities referred to in paragraph 6, destined to the territory of the other Party or the territory of a non-Party referred to in paragraph 4, where the non-Party has fully eliminated duties on that agricultural good for the benefit of both Parties, unless this export financing support complies with the terms and conditions laid down in paragraph 7. The export credits, export credit guarantees and insurance programs shall comprise:
 - (a) direct financing support, comprising direct credits/financing, refinancing, and interest rate support;
 - (b) risk cover, comprising export credit insurance or reinsurance and export credit guarantees;
 - (c) government-to-government credit agreements covering the imports of agricultural products from the creditor country under which some or all of the risk is undertaken by the government of the exporting country; and
 - (d) any other form of governmental export credit support, direct or indirect, including deferred invoicing and foreign exchange risk hedging.]
6. [EU: The provisions of this article shall apply to export financing support provided by or on behalf of the following entities, hereinafter referred to as “export financing entities”, whether such entities are established at the national or at the sub-national level:
 - (a) government departments, agencies, or statutory bodies;

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(b) any financial institution or entity engaged in export financing in which there is governmental participation by way of equity, provision of funds, loans, or underwriting of losses;

(c) agricultural export state trading enterprises; and

(d) any bank or other private financial, credit insurance or guarantee institution which acts on behalf of or at the direction of governments or their agencies.]

7. [EU: Export financing support shall be provided in conformity with the terms and conditions set out below.

(a) **Maximum repayment term:** the maximum repayment term for export financing support under this Agreement, this being the period beginning at the starting point of credit¹ and ending on the contractual date of the final payment, shall be no more than 180 days. This shall apply from the entry into force of this Agreement. Existing contracts which have been entered into prior to the signature of this Agreement and that are operating on a longer time frame than that defined in the preceding sentence, shall run their course until the end of their contractual date, provided that they are notified to the other Party.

(b) **Self-financing:** export credit guarantee, insurance and reinsurance programs, and other risk cover programs included within subparagraphs 5 (b) (c) and (d) above shall be self-financing. Where premium rates charged under a program are inadequate to cover the operating costs and losses of that program over a previous 4-year rolling period, this shall, in and of itself, be sufficient to determine that program is not self-financing. In addition, where these programs are found to constitute export subsidies within the meaning of item (j) of Annex I to the Agreement on Subsidies and Countervailing Measures, they shall also be deemed to be not self-financing under this Agreement.]

8. [EU: If a Party maintains, introduces or reintroduces subsidies or other measures with equivalent effect on the export of agricultural goods to the other Party or the territory of a non-Party referred to in paragraph 4, which are not in compliance with the Article, the other Party may apply an additional tariff that will increase customs duties for imports of such goods up to the level of either the MFN applied duty or the base rate set out in Annex X {Tariff Elimination Schedule}, whichever is lower, for the period of the granting of the export subsidy or adoption of the measure with equivalent effect.]

9. [EU: In order for the importing Party to eliminate the additional tariff applied in accordance with paragraph 8, the exporting Party shall provide detailed information which demonstrates compliance with the provisions of this Article.]

10. [EU: The Parties reaffirm their commitment in the 2013 Bali Ministerial Declaration to enhance transparency and to improve monitoring in relation to all forms of export subsidies and all export measures with equivalent effect. To this end, upon request of the other Party, a Party shall provide necessary information on measures applied on an agricultural good destined to the territory of the

1 The “starting point of a credit“ shall be no later than the weighted mean date or actual date of the arrival of the goods in the recipient country for a contract under which shipments are made in any consecutive six-month period.

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other Party or territory of a non-Party referred to in paragraph 4.]

11. [EU: The Parties agree that the international food aid transactions destined for the territory of the Parties or the territory of a non-Party with which both Parties have concluded a free trade agreement, as well as for the territory of a least developed country, shall be provided in fully untied, in cash and fully grant form with the exception of clearly defined emergency situations.

An emergency situation refers to a situation where:

(a) there has been a declaration of an emergency by the recipient country or by the Secretary-General of the United Nations; or

(b) there has been an emergency appeal from a country, a relevant United Nations agency, including the World Food Programme and the United Nations Humanitarian Programme Cycle, the International Committee of the Red Cross or the International Federation of Red Cross and Red Crescent Societies, a relevant regional or international intergovernmental agency, or a non-governmental humanitarian organization of recognized standing traditionally working in conjunction with the former bodies; and

in either case, there is an assessment of need coordinated under the auspices of a relevant United Nations Agency, including the World Food Programme, the International Committee of the Red Cross, or the International Federation of the Red Cross and the Red Crescent Societies. Needs assessment should be done with the involvement of the recipient government and may involve a relevant regional intergovernmental organization or an NGO, but while the latter bodies may be so involved, this is in a context where they are in coordination with the relevant United Nations Agency or ICRC/IFRCRCS as the case may be.]

[EU: *The EU reserves the right to alter its proposal, following the DDA outcome. This does not constitute an official position of the EU in multilateral negotiations.*]

US: Article X.5: [Export Subsidies]

[US: A Party shall not introduce or maintain any export subsidy on any agricultural good destined for the territory of another Party.]

EU: Article X.6: [Domestic Support]

[EU: *The EU reserves the right to present a proposal on domestic support, in particular on the interaction between trade-distorting domestic support and market access commitments. This is without prejudice to the position of the EU in multilateral negotiations.*]

Article X.7: Committee on Agriculture

1. The Parties hereby establish a Committee on Agriculture [EU: comprised of representatives of each Party. The Committee on Agriculture] [US: which] shall report to the [EU: {Trade}] [US: Joint] Committee. [US: Each Party shall have a representative on the Committee.

2. The Committee [EU: on Agriculture] shall [US: provide a forum for]:

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- (a) [EU: monitor and promote cooperation on the implementation and administration of Chapter {*TTIP chapter on agriculture*}, in order to facilitate the] [US: facilitating] trade in agricultural goods between the Parties;
- (b) [EU: provide a forum for the Parties to discuss developments of domestic agricultural programs and trade in agricultural goods between the Parties;]
- (c) address [US: ing] barriers [EU: in] [US: to] trade in agricultural goods between the Parties;
- (d) [US: exchanging information on domestic agricultural programs and environmental measures affecting agriculture];
- (e) [EU: evaluate the impact of this Agreement on the agricultural sector of each Party, as well as the operation of the instruments of this Agreement, and recommend any appropriate action to the {*Trade*} Committee;]
- (f) [EU: consult on matters related to Chapter {*TTIP chapter on agriculture*} in coordination with other relevant committees, working groups, or any other specialized body under this Agreement;]
- (g) [EU: undertake any additional work that the {*Trade*} Committee may assign to it; and]
- (h) [EU: report and submit for consideration of the {*Trade*} Committee the results of its work under this paragraph.]
- (i) [US: discussing agricultural export competition issues;]
- (j) [US: considering any matter arising under this Chapter; and]
- (k) [US: discussing agricultural issues arising in the WTO and other multilateral fora in which the Parties participate.]

3. The committee [EU: on Agriculture] shall meet at least once [EU: a] [US: each] year unless the Parties [EU: decide otherwise] [US: otherwise decide]. [EU: When special circumstances arise, upon request of a Party, the Committee shall meet at the Agreement of the Parties no later than 30 days following the date of such request. Meetings of the Committee on Agriculture shall be chaired by representatives of the Party hosting the meeting.]

4. [EU: The Committee on Agriculture shall adopt all decisions by consensus.]

5. [US: The committee shall report the results of each meeting to the Joint Committee.]

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Article X. 8: [EU: Non-tariff Issues]

[EU: *The EU reserves the right to present a textual proposal on specific non-tariff issues.*]

Article X. 9: [US: Definitions]

[US: For the purposes of this Chapter:]

[US: **Agreement on Agriculture** means the WTO Agreement on Agriculture, contained in Annex 1A of the WTO Agreement;]

[US: **agricultural goods** means those agricultural goods referred to in Article 2 and Annex 1 of the Agreement on Agriculture; and]

[US: **export subsidies** shall have the meaning assigned to that term in Article 1(e) of the Agreement on Agriculture.]

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[EU: Annex X-A: Trade in Wine and Spirit Drinks²

Title I Initial Provisions

Article 1 Application

The provisions of this Chapter apply to the United States of America and to the European Union, hereafter referred to as “the Parties”.

Article 2 Objectives

The objective of this Chapter is to facilitate trade in wine and spirit drinks between the Parties, and to improve cooperation in the development and enhance the transparency of regulations affecting such trade.

Article 3 Definitions

For the purposes of this Agreement:

- (a) “wine-making practice” means a process , treatment, technique or material used to produce wine;
- (b) “COLA” means a Certificate of Label Approval or a Certificate of Exemption from Label Approval that results from an approved Application for and Certification/Exemption of Label/Bottle Approval, as required under US federal laws and regulations and issued by the US government that includes a set of all labels approved to be firmly affixed to a bottle of wine or a bottle of spirit drinks;
- (c) “originating”, when used in conjunction with the name of one Party in respect of wine imported into the territory of the other Party, means the wine has been produced in accordance with either Party’s laws, regulations and requirements from grapes wholly obtained in the territory of the Party concerned; and
- (d) “WTO Agreement” means the Marrakesh Agreement establishing the World Trade Organization, done on 15 April 1994.

Article 4 Scope and Coverage

² [EU: ² Provisions related to spirit drinks to be adapted and/or developed further.]

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1. For the purposes of this Agreement, the term “wine” shall cover beverages obtained exclusively from the total or partial alcoholic fermentation of fresh grapes, whether or not crushed, or of grape must, with the possible addition of any constituent parts of fresh grapes authorized in the producing Party, in accordance with wine-making practices authorized under the regulatory mechanisms of the Party in whose territory the wine is produced, which:

(a) contain an actual alcohol content of not less than 7 percent (7%) and not more than 22 percent (22%) by volume; and

b) contain no artificial coloring, flavoring or added water beyond technical necessity.

2. For the purposes of this Agreement the term “spirit drink” shall cover alcoholic beverages:

(a) having a minimum alcoholic strength of 15% vol.; and

(b) having been produced:

(i) either directly:

– by the distillation, with or without added flavorings, of naturally fermented products; and/or

– by the maceration or similar processing of plant materials in ethyl alcohol of agricultural origin and/or distillates of agricultural origin and/or spirit drinks within the meaning of this Chapter; and/or

– by the addition of flavorings, sugars or other sweetening products listed in Annex X and/or other agricultural products and/or foodstuffs to ethyl alcohol of agricultural origin and/or to distillates of agricultural origin and/or to spirit drinks, within the meaning of this Chapter;

(ii) or by the mixture of a spirit with one or more:

– other spirit drinks; and/or

– ethyl alcohol of agricultural origin or distillates of agricultural origin; and/or

– other alcoholic or non-alcoholic beverages.

3. Measures taken by either Party for the protection of human health and safety are outside the scope of this Chapter.

TITLE II

Wine-making Practices and Specifications

Article 5

Present Wine-making Practices and Specifications

1. Each Party recognizes that the laws, regulations and requirements of the Party relating to wine-making fulfill the objectives of its own laws, regulations and requirements, in that they authorize wine-making practices that do not change the character of wine arising from its origin in grapes in a

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manner inconsistent with good wine-making practice. These practices include such practices that address the reasonable technological or practical need to enhance the keeping or other qualities or stability of the wine and that achieve the winemaker's desired effect, including with respect to not creating an erroneous impression about the product's character and composition.

2. Within the scope of this Agreement as defined in Article 4, neither Party shall restrict, on the basis of either wine-making practices or product specifications, the importation, marketing or sale of wine originating in the territory of the other Party that is produced using wine-making practices that are authorized under laws, regulations and requirements of the other Party listed in Annex X and published or communicated to it by the other Party.

Article 6

New Wine-making Practices and Specifications

1. If a Party proposes to authorize for commercial use in its territory a new wine-making practice or modify an existing wine-making practice authorized under the laws, regulations and requirements listed in Annex X, and it intends to propose the inclusion of the practice among those authorized in the Annex X documents, it shall provide public notice and specific notice to the other Party and provide a reasonable opportunity for comment and to have those comments considered.

2. If the new wine-making practice or modification referred to in paragraph 1 is authorized, the authorization Party shall notify the other Party in writing of that authorization within 60 days.

3. A Party may, within 90 days of receiving the notification provided for in paragraph 2, object in writing to the authorized wine-making practice, on the grounds that it is inconsistent with the objectives referred to in Article 5(1) or the criteria set out in Article 4(1), and request consultations pursuant to Article 12 concerning this wine-making practice.

4. The Parties shall amend Annex X, as provided for in Article 12, as necessary to cover any new wine-making practice or modification that has not been subject to objections pursuant to paragraph 3 or for which the Parties have reached a mutually agreed solution following consultations provided for in paragraph 3. With respect to new wine-making practices or modifications to existing practices that are proposed after day/month/year, but before the date of application of Article 5, as set out in Article X, either Party may specify that the modification to Annex X shall not be effective until the date of application of Article 5.

TITLE III

SPECIFIC PROVISIONS

Article 7

Names of Origin

1. The United States shall provide that certain names may be used as names of origin for wine and spirit drink only to designate wines and spirit drinks of origin indicated by such a name, and shall include, among such names, those listed in: Annex X, Part A, names of quality wines produced in specified regions, and names of table wines with geographical indications; Part B, names of Member States; and Annex X, names of spirit drinks.

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2. The European Union shall provide that the names of viticultural significance listed in Annex X may be used as names of origin for wine only to designate wines of the origin indicated by such name. The European Union shall provide that the names of spirit drinks listed in Annex X may be used as names of origin for spirit drinks only to designate spirit drinks of the origin indicated by such name.

3. Each Party's competent authorities shall take measures to ensure that any wine and spirit drinks not labeled in conformity with this Article is not placed on or is withdrawn from the market until it is labeled in conformity with this Article.

4. In addition to the obligation of paragraph 1 and 3, the United States shall maintain the status of the names listed in Title 27 US Code of Federal Regulations, Section 12.31, set forth in Annex X, Part C, as non-generic names of geographic significance that are recognized as distinctive designations of a specific wine of a particular place or region in the European Union, distinguishable from all other wines, in accordance with Title 27 US Code of Federal Regulations, Section 4.24(c) (1) and (3) and Section 12.31, as amended.

Article 8

Wine and Spirit Drinks Labeling

1. Each Party shall provide that labels of wine sold in its territory shall not contain false or misleading information in particular as to character, composition or origin.

2. Each Party shall provide that, subject to paragraph 1, wine may be labeled with optional particulars or additional information in accordance with the Protocol of Wine Labeling (hereinafter "the Protocol").

3. Neither Party shall require that processes, treatments or techniques used in wine-making be identified on the label.

Article 9

Wine Certification and Other Marketing Conditions

1. The EU shall permit wine originating in the US to be imported into, marketed and sold in the EU if it is accompanied by a certification document, the format and required information for which are specified in Annex X.

2. The EU shall permit the information on the document referenced in paragraph 1, excluding the producer's signature, to be preprinted. The EU shall permit the document to be submitted electronically to the competent authorities of its Member States provided they have enabled the necessary technology.

3. The US shall ensure that decisions to approve or disapprove a COLA are consistent with published criteria and subject to review. The format and required information for the COLA application form are referenced in Annex X.

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4. The US shall permit the information on the application form referenced in paragraph 3, excluding the applicant's signature, to be preprinted and transmitted electronically.

5. Each Party may modify its respective form, referred to in paragraphs 1 and 3, in accordance with its internal procedures, in which case the Party concerned shall give due notice to the other Party. The Parties shall amend Annex X, as necessary, in accordance with the procedure laid down in Article 12.

6. This Agreement does not require certification that the practices and procedures used to produce wine in the EU constitute proper cellar treatment within the meaning of Section 2002 of US Public Law 108-429.

TITLE IV GENERAL PROVISIONS

Article 10 Committee on Trade in Wines and Spirit Drinks

1. The Parties agree to set up a Committee on trade in wines and spirit drinks, herein referred to as “the Committee”, with the purpose of monitoring the development of this Protocol, intensifying their cooperation, exchanging information, notably product specifications, and improving their dialogue.

2. The Parties shall through the Committee maintain contact on all matters relating to the implementation and the functioning of this Protocol. In particular, the Parties shall ensure timely notification to each other of amendments to laws and regulations on matters covered by this Protocol that have an impact on products traded between them.

3. The Committee shall see to the proper functioning of this Protocol and may make recommendations and adopt decisions by consensus.

4. The Committee may modify the Annexes of this Chapter. The Parties may in particular modify Annex X and adopt specific rules, pursuant to their cooperation under Article 11(1), pertaining to the marketing of wine products and spirit drinks, including labeling and related requirements as well as product definitions and certification of wine products and spirit drinks.

5. The Committee shall determine its own rules of procedure.

Article 11 Cooperation and Dispute Avoidance

1. The Parties shall address issues related to trade in wines and spirit drinks, and in particular:

- product definitions, certification and labeling of wines;
- use of grape varieties in wine-making and labeling thereof;

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- use of traditional terms on labeling of wines;
- product definitions, certification and labeling of spirit drinks.

2. the provisions laid down in Part X (TTIP specific title of chapter on dispute settlement to be included) of the Agreement shall apply mutatis mutandis to any relevant matter arising under this Chapter.

Article 12

Management of the Agreement and Cooperation

{This article may be adapted to take into account the provisions of Article 10.}

1. The Parties shall maintain contact on all matters relating to bilateral trade in wine and spirit drinks and the implementation and functioning of this Agreement. In particular, each Party shall, if requested, cooperate in assisting the other Party to make available to the other Party's producers information concerning specific limits on contaminants and residues in effect in the territory of the first Party.
2. Each Party shall notify the other Party in a timely manner of proposed amendments to its labeling rules and, except for minor amendments that do not affect labeling for the wine and spirit drinks of the other Party, allow for a reasonable period of time for the other Party to comment.
3. Either Party may notify the other Party in writing of:
 - a) a request for a meeting or consultations between representatives of the Parties to discuss any matter relating to the implementation of the Agreement, including consultations with respect to new wine-making practices foreseen under Article 6;
 - b) a proposal for amendments to the Annexes or the Protocol, including its appendices;
 - c) legislative measures, administrative measures, and judicial decisions concerning the application of this Agreement;
 - d) information or suggestions intended to optimize the operation of the Agreement; and
 - e) recommendations and proposals on issues of mutual interest to the Parties.
4. A Party shall respond within a reasonable period, which shall not exceed 60 days from receipt, to a notification under paragraph 3(a), (b), (d) or (e). However, following a request for consultations under paragraph 3(a), the Parties shall meet within 30 days unless the Parties agree otherwise.
5. An amendment to an Annex or the Protocol, including its appendices, to this Chapter shall take effect on the first day of the month following receipt of a written response, pursuant to a notification by one Party under paragraph 3(b) of the amended text of the Annex or the Protocol concerned, including its appendices, confirming the Party's agreement with the amended text, or on a particular date that the Parties shall specify.
6. Each Party shall provide all notices, requests, responses, proposals, recommendations and other communications under this Chapter to the contact point for the other Party in Annex X. Each Party shall notify changes in its contact point in a timely manner.
7. (a) Each Party and interested persons of that Party may:

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- (i) address inquiries regarding matters arising from Titles I, II and III of the Chapter including the Protocol; and
- (ii) present information concerning actions that may be inconsistent with the obligations of those Titles to the contact point of the other Party as identified in Annex X.

(b) Each Party shall, through its contact point:

- (i) ensure that action is taken to examine the matter and to respond to the inquiry and information presented in a timely matter; and
- (ii) facilitate follow-up communications between the other Party or interested persons of that Party and the appropriate enforcement or other appropriate authorities.

TITLE V FINAL PROVISIONS

Article 13 **Applicable Rules**

Unless otherwise provided for in this Protocol or in the Agreement, the importation and marketing of products covered by this Protocol traded between the Parties shall be conducted in compliance with the laws and regulations applying in the territory of the Party of importation.

Article 14 **Relation to Other Agreements**

1. The Agreements of 1994 in the form of an exchange of letters between the European Community and the United States of America on the mutual recognition of certain distilled spirits/spirits drinks is hereby terminated.
2. The Agreements of 2006 between the European Community and the United States of America on trade in wine is hereby terminated.
3. Nothing in this Agreement shall:
 - (a) affect the rights and obligations of the Parties under the WTO Agreement;
 - (b) oblige the Parties to take any measures concerning intellectual property rights that would not otherwise be taken under the Parties' respective intellectual property laws, regulations and procedures, consistent with subparagraph (a).
4. Nothing in this Agreement prevents a Party from taking measures, as appropriate, to allow the use of homonymous names of origin where consumers will not be misled or to allow a person to use, in the course of trade, that person's name or the name of that person's predecessor in business in a manner that does not mislead the consumer.

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4. This Agreement is without prejudice to the rights of free speech in the United States under the First Amendment of the US Constitution and in the European Union.

5. Article 7 shall not be construed in and of itself as defining intellectual property or as obligating the Parties to confer or recognize any intellectual property rights. Consequently, the names listed in Annex X are not necessarily considered, nor excluded from being considered, geographical indications under US law, and the names listed in Annex X are not necessarily considered, nor excluded from being considered, geographical indications under European Union law.

Article 15

Final Provisions

1. The annexes to this Chapter shall form an integral part hereof.

2. If, pursuant to Article X of the Agreement, this Chapter is applied provisionally, references in this Chapter to the date of entry into force shall be deemed to refer to the date the provisional application of this Agreement takes effect between the United States of America and the European Union.

Annexes

Annex X: (List of wine-making practices)

Annex X: (List of products to be allowed for the sweetening of spirit drinks)

Annex X: (Certification document)

Annex X: Part A , Part B, Part C (list of EU wine names)

Annex X: List of EU and US spirit drinks

Protocol of wine labeling

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[US: ANNEX X-B: DISTILLED SPIRITS]

1. [US: This Annex applies to the preparation, adoption, and application of measures of central government bodies relating to distilled spirits.]
2. [US: No Party shall require any of the following to appear on the container, label, or packaging of a distilled spirit:
 - (a) date of packaging;
 - (b) date of bottling;
 - (c) date of production or manufacture;
 - (d) date of expiration;
 - (e) date of minimum durability; or
 - (f) best-by date,]

[US: except that a Party may require the display of a date of minimum durability on products that on account of the addition of perishable ingredients could have a shorter date of minimum durability than would normally be accepted by the consumer.]

3. [US: No Party shall require translations of trademarks or trade names to appear on distilled spirit containers, labels, or packaging.]
4. [US: Each Party shall permit mandatory information, including translations, to be displayed on a supplementary label affixed to the distilled spirit container. Each Party shall permit such supplementary labels to be affixed to an imported distilled spirit container after importation but prior to the product being offered for sale in the Party's territory. A Party may require that the supplementary label be affixed prior to release from customs.]
5. [US: Each Party shall permit distilled spirit containers or labels to include lot identification codes, provided that they are not misleading to consumers. In doing so, each Party shall permit suppliers to determine:
 - (a) where to place the lot identification codes on the container or labels, provided they are not placed so as to obscure mandatory information; and
 - (b) the specific font size, type, and formatting of the codes.]
6. [US: No Party shall normally apply a measure to distilled spirits that were entered into commerce in the Party's territory prior to the date on which the measure entered into force.]
7. [US: Where a Party requires a sample, test result, or certification as to origin, age, or authenticity for distilled spirits produced in the territory of another Party before the product can be placed on the Party's market, the Party:
 - (a) shall normally require the supplier to obtain the sample, test result, or certification only for the initial shipment of a particular brand, producer, and lot; and
 - (b) shall not require a sample quantity larger than is necessary to complete the relevant

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conformity assessment procedure.]

[US: Nothing in this paragraph shall preclude a Party from undertaking verification of a particular test result or certification or requiring a non-routine sample, test result, or certification where a Party has a reasonable concern that a shipment of a particular brand, producer, and lot may be out of compliance with its requirements.]

8. [US: Where a Party requires certifications of analysis for imported distilled spirits, it shall accept for this purpose a certification issued by another Party, or by an entity authorized by another Party to provide such certifications.

9. [US: For the purposes of this Annex:]

[US: **distilled spirit** means a potable alcoholic distillate, and all dilutions or mixtures thereof, for consumption;]

[US: **mandatory information** means information required by a Party to appear on a distilled spirits container, label, or packaging; and]

[US: **supplier** means producer, importer, exporter, bottler, or wholesaler.]

**Transatlantic Trade and Investment Partnership
Cross-Border Trade in Services Text Consolidation
November 30, 2015**

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Disclaimer: The Parties reserve the right to make subsequent modifications to this text and to complement its proposal at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.

This consolidated text is without prejudice to the architecture of the final agreement.

This consolidated text focuses on the core text of cross-border trade services.

Chapter {X}

Cross-Border Trade in Services

Article X.1: Definitions

Note: without prejudice to placement

[EU: 'cross-border supply of services' means the supply of a service:

- (i) from the territory Party into the territory of the other Party
- (ii) in the territory of a Party to the service consumer of the Party]

Note: The EU has proposed a Chapter on Entry and Temporary Stay of Natural Persons for business Purposes (Chapter IV).

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

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

but does not include the supply of a service in the territory of a Party through a covered investment;]

[EU: an 'enterprise' means a juridical person, branch or representative office set up through establishment, as defined under this article;]

[US: **enterprise** means an 'enterprise' as defined in Article XX.XX (Definitions of General Application), and a branch of an enterprise;]

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

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[US: **service of a Party** means a person of that Party that seeks to supply or supplies a service¹;

[EU: 'service supplier' of a Party means any natural or juridical person of a Party that seeks to supply or supplies a service]

[US: **specialty air services** means any non-transportation air services, such as aerial firefighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter lift work for logging and construction, and other airborne agricultural, industrial, and inspection services.]

[EU: 'subsidiary' of a juridical person of a Party means a juridical person which is effectively controlled by another juridical person of that Party²;

[EU: a 'natural person of the EU' means a national of one of the Member States of the EU according to its legislation³ and a 'natural person of the US' means a national of the US according to its legislation;]

[EU: 'juridical person' means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;]

[EU: a 'juridical person of the EU' or a 'juridical person of the US' means a juridical person set up in accordance with the laws of the Member States of the EU or of the US and engaged in substantive business operations⁴ in the territory of the EU or of the US, respectively;]

[EU: Notwithstanding the preceding paragraph, shipping companies established outside the EU or US and controlled by nationals of a Member State of the EU or of the US, respectively, shall also be beneficiaries of the provisions of this title, with the exception of Chapter II section (2) [Investment Protection] if their vessels are registered in accordance with their respective legislation, in that Member State, or in the US, and fly the flag of a Member State of the US;]

[EU: a 'measure' means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;]

Note: The EU has also tabled a text on International Maritime Transport Services (Chapter V,

1 [US: ¹ For the purposes of Article X.{4} (National Treatment) and X.{5}(Most-favored Nation Treatment), 'service suppliers' has the same meaning as 'service and service suppliers' as used in Articles II and XVII of the GATS.]

2 [EU: ² A juridical person is controlled by another juridical person if the latter has the power to name a majority of its directors or otherwise to legally direct its actions.]

3 [EU: ³ The definition of natural person also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.]

4 [EU: ⁴ In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG 39/1), the EU understands that the concept of 'effective and continuous link' with the economy of a Member State of the EU enshrined in Article 54 of the TFEU is equivalent to the concept of 'substantive business operations'. Accordingly, for a juridical person set up in accordance with the laws of the US and having only its registered office or central administration in the territory of the US, the EU shall only extend the benefits of this agreement if that juridical person possesses an effective and continuous economic link with the territory of the US.]

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Section VII).

Article X.2: Scope [US: and Coverage]

1. This Chapter applies to measures [EU: of the Parties] [US: adopted or maintained by a Party] affecting [EU: the] cross-border [EU: supply of] [US: trade in] services [EU: in all services sectors] [US: by service suppliers of the other Party. Such measures include measures affecting:

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

[EU: 2. The provisions of this Chapter shall not apply to audio-visual services]

[EU: 3. Subsidies shall be dealt with in Chapter {X (on competition and state aid)} and the provisions of this chapter shall not apply to subsidies granted by the Parties.]

[US: Notwithstanding paragraph 1, this Chapter does not apply to:

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

[EU: 4. Government procurement shall be dealt with in Chapter {X on public procurement}. And nothing in this shall be construed to limit the obligations of the Parties under Chapter X on public procurement or to impose any additional obligation with respect to government procurement.]

[US: Notwithstanding paragraph 1, this Chapter does not apply to:

- (b) government procurement;]

[US: 5. Notwithstanding paragraph 1,

- (a) Articles X. {3} (Market Access), X. {8} (Domestic Regulation), and X. {9} (Transparency in Developing and Applying Regulations) shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment; and

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(b) Annex XX-A and Annex XX-B shall apply to measures adopted or maintained by a Party affecting the supply of certain services, including by a covered investment⁵.

6. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) financial services as defined in Article XX.XX (Financial Services Chapter: definitions), except that paragraph {5} shall apply where the financial service is supplied by a covered investment that is not a covered investment in a financial institution (as defined in Article XX.XX (Financial Services Chapter: definitions) in the Party's territory;

(b) government procurement;

(c) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service; and

(ii) specialty air services; or

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

Note: The EU proposed a text on air transport services (Chapter V, Section VIII); see below.

[US: 7. This Chapter does not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.]

[US: 8. This Chapter does not apply to services supplied in the exercise of governmental authority in a Party's territory. A 'service supplied in the exercise of governmental authority' means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.]

[EU: 'services' means any service in any sector except services supplied in the exercise of governmental authority]

[EU: 'services and activities performed in the exercise of governmental authority' means services or activities which are performed neither on a commercial basis nor in competition with one or more economic operators]

9. **[US: Nothing in this Chapter or any other provision of this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, including admission or conditions for temporary entry.]**

⁵ [US: For greater certainty, nothing in this Chapter, including this paragraph and Annexes XX-A and XX-B, is subject to investor-state dispute settlement pursuant to Section B of Chapter XX (Investment).]

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[EU: This Title shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence, or employment on a permanent basis.]

Nothing in this Title shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits⁶ accruing to any Party under the terms of a specific commitment in this Title and its Annexes.]

[US:10. For purposes of this Chapter, **measures adopted or maintained by a Party** means measures adopted or maintained by:

- (a) central, regional, or local governments and authorities; and
- (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.]

[EU: 'measures adopted or maintained by a Party' means measures taken by:

- (i) governments and authorities at all levels; and
- (ii) non-governmental bodies in the exercise of powers delegated by governments or authorities at all levels.]

Article X.3 : Market Access

[EU: In sectors or subsectors where market access commitments are undertaken, neither Party shall] [US: Neither Party may] adopt or maintain [EU: with regards to market access through the cross-border supply of services], either on the basis of [EU: its entire territory or on the basis of a territorial sub-division] [US: a regional subdivision or on the basis of its entire territory], measures that:

(a) impose limitations on:

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

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

(iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; [US:⁷] or

6 [EU: ⁶ The sole fact of requiring a visa for a natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.]

7 [US: This clause does not cover measures of a Party that limits inputs for the supply of services.]

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

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

Article X.4: National Treatment^[EU:8]

1. Each Party shall accord to [EU: services and] service suppliers of the other Party [EU: , in respect of all measures affecting the cross-border supply of services,] treatment no less favorable than [EU: the treatment] [US: that] it accords, in like [EU: situations] [US: circumstances], to its own [EU: services and] service suppliers.]

[US: 2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.]

[EU: 2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that which it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favorable if it modifies the conditions of competition in favor of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

4. Nothing in this Article shall be construed to require any Party to compensate for inherent services or service suppliers.]

Article X.5: Most-Favored Nation Treatment

1. Each Party shall accord to [EU: services and] service suppliers of the other Party [EU: , in respect of all measures affecting the cross-border supply of services,] treatment no less favorable than [US:that] [EU: the treatment] it accords, in like [EU: situations] [US: circumstances], to [EU: services and] service suppliers of [EU: any] [US: a] non-Party.

[EU: 2. Paragraph 1 shall not be construed to oblige a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from:

(a) {reference to double taxation agreements in case not covered by horizontal provisions in the agreement}

8 [EU: For greater certainty, Article X. (National Treatment) shall also be interpreted in accordance with paragraphs x, y, z with respect to economic activities performed through establishment.]

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(b) measures providing for the recognition of qualifications, licenses, or prudential measures in accordance with the Article VII of the General Agreement on Trade in Services, or its Annex on Financial Services.]

Article X.6: [EU: Reservations and Exceptions] [US: Non-conforming Measures]

1. Article X.{4} (National Treatment) X.{5} (Most-favored Nation Treatment) [US:, X.{3} Market Access and X.{7} Local Presence] do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at [EU: the level of:]

(i) [EU: the EU, as set out in its Annex I] [US: the central level of government, as set out by that Party in its Schedule to Annex I];

(ii) [EU: a national government, as set out by that Party in its Annex I]

(iii) [EU: regional government] [US: a regional level of government], as set out by that Party in its [US: Schedule to] Annex I; or

(iv) [EU: a local government] [US: a local level of government].

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X. {4} (National Treatment), X.{5} (Most Favored Nation Treatment), [US: X. {3} (Market Access), or Article X.{7} (Local Presence)].

2. Articles X.{4} (National Treatment), X.{5} (Most Favored Nation Treatment), [US: X. {3} (Market Access), or Article X. {7} (Local Presence)] do not apply to [EU: measures] [US: any measure] that a Party adopts or maintains with respect to sectors, subsectors, or activities set out in its [US: Schedule to] Annex II.

[EU: 3. Article X (Market Access) does not apply to:

(a) any existing measure that is maintained by a Party at the level of a local government; the continuation or prompt renewal of such a non-conforming measure; or an amendment to such a measure to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment with Article X (Market Access).

(b) any measure that a Party adopts or maintains with respect to committed sectors or subsectors as set out in its Annex III.]

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[US: Article X.7: Local Presence

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

Note: the EU includes provisions on the right to regulate in Art 1-1 Objectives, Coverage, and Definitions. The US has the relevant provisions in Art X.8 Domestic Regulation:

[US: Article X.8: Domestic Regulation

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, while recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet national policy objectives, each Party shall endeavor to ensure, as appropriate for individual sectors, that such measures are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service; and

(b) in the case of licensing procedures, not in themselves a restriction on the supply of the service.]

Note: US and EU to discuss consolidation of domestic regulation.

[EU: Article 1 -1 Objective, Coverage, and Definitions

The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for the progressive reciprocal liberalization of trade in services, for the liberalization of investment, and for facilitation of e-commerce. Consistent with the provisions of this Title, each Party retains the right to adopt, maintain, and enforce measures necessary to pursue legitimate policy objectives such as protecting society, the environment and public health, consumer protection, ensuring the integrity and stability of the financial system, promoting public security and safety, and promoting and protecting cultural diversity.⁹]

[US: Article X.10: Recognition][EU: Section III: Mutual Recognition of Professional Qualifications]

Note: for further discussion.

⁹ [EU: EU reserves the right to make further proposals on the right to regulate in light of further developments relating to investment protection.]

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[US: Article X.11: Transfers and Payments

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

[US: Article X.12: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party:
 - (a) does not maintain diplomatic relations with the non-Party; or
 - (b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.
2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or of the denying Party that has no substantial business activities on the territory of the other Party.]

Note: For EU see definition of service supplier, natural person, and juridical person.

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Article X.14: [EU: Review] [US: Implementation]

[EU: 1. With a view to further deepening the liberalization of cross-border supply of services, the Parties shall [X] years after the entry into force of this Agreement and at regular intervals thereafter, review the remaining restrictions on the cross-border supply of services, consistent with their commitments in international agreements.

2. In the context of the review referred to in paragraph 1, the Parties shall assess any obstacles to the cross-border supply of services that have been encountered. As a result of such review, the [body defined by the agreement] may decide to amend the relevant Annexes with specific commitments and reservations.]

[US: 1. The Parties shall consult annually, or as otherwise agreed, upon issues of mutual interest arising from the implementation of this Chapter.]

Note: EU addresses general exceptions through Chapter VII of this Title, US addresses general exceptions through General Exceptions.

[EU: SECTION VIII – AIR TRANSPORT SERVICES

Article 5 – 40

Scope, definitions and obligations

1. This Section sets out the principles regarding the liberalizations of air transport services pursuant to Chapter II Section 1 and Chapters III and IV of this Title.

2. Neither Party undertakes any obligation on domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

'aircraft repair and maintenance services during which an aircraft is withdrawn from service' means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

(ii) the selling and marketing of air transport services;

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

(iii) computer reservation system (CRS) services;

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'computer reservation system (CRS) services' means services provided by computerized systems that contain information about air carriers' schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued.

(iv) ground handling services;

'ground handling services' means the supply at an airport of the following services: airline representation, administration, and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fueling of an aircraft, and aircraft servicing and cleaning; surface transport; flight operation, crew administration, and flight planning.

Ground handling services do not include security, aircraft repair and maintenance, or management or operation of essential centralized airport infrastructure such as deicing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems'

(v) airport operation services;

'airport operation services' means the supply of air terminal, airfield, and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

(vi) Rental of aircrafts with crew;

(vii) Ownership and control of air carriers.

3. In relation to the services indicated at point (i) up to (vi) above, each Party undertakes obligations subject to the reservations indicated in its Annex I, Annex II, and Annex III.

4. In relation to the ownership and control of air carriers (indicated at point (vii) above), each Party undertakes not to apply any limitation relating to ownership and control to natural persons or enterprises of the other Party, including for the purpose of granting an operating license for the operation of air transport services.

Transatlantic Trade and Investment Partnership (TTIP)

Chapter []

Consolidated Proposed

Electronic Communications / Telecommunications Text

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[EU: Article 40: Scope and Definitions] [US: Article X.1: Scope and Coverage]

[EU: 1. This Section sets out principles of the regulatory framework for the provision of electronic communications networks and services, liberalized pursuant to Chapter II Section 1, Chapters III and IV of the Title.]

[US: 1. Nothing in this Chapter shall be construed to:

(a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally; and

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.]

[EU: 2.] [US: Article X.2: Definitions]

For the purpose of this **[EU: Sub-section] [US: Chapter]:**

[EU: (a) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical, or other electromagnetic means;]

[EU: (b) 'electronic communications service' means a service which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting. Those services exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services;]

[EU: (c) 'public electronic communications service' means any publicly available electronic communications service;]

[EU: (d) 'public electronic communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which supports the transfer of information between network termination points;]

[US: public telecommunications network means telecommunications infrastructure used to provide public telecommunications services;]

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

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[EU: (f) a 'regulatory authority' in the electronic communications sector] [US: **telecommunications regulatory body**] means [EU: the] [US: a] body or bodies [EU: charged by a Party with] [US: responsible for] the regulation of [EU: electronic communications mentioned in this sub-section] [US: telecommunications];

[EU: (g) 'essential facilities'] [US: **essential facilities**] mean facilities of a public [EU: electronic communications] [US: telecommunications] network [EU: and] [US: or] service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to [EU: provide] [US: supply] a service;

[EU: (h) 'associated facilities' means those associated services, physical infrastructures, and other facilities or elements associated with an electronic communication network and/or service which enable and/or support the provision of services via that network and/or service, or have the potential to do so, and include, inter alia, buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes and cabinets;]

[EU: (i) a '**major supplier**' in the electronic communications sector is a supplier which] [US: **major supplier** means a supplier of public telecommunications services that] has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for [EU: electronic communications] [US: public telecommunications] services as a result of [US: (a)] control over essential facilities [US: ;] or [EU: the] [US: (b)] use of its position in the market;

[EU: (j) 'access' means the making available of facilities and/or services to another supplier under defined conditions, for the purpose of providing electronic communication services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming and access to virtual network services;]

[EU: (k) 'interconnection'] [US: **interconnection**] means [EU: the physical and logical] linking [US: with suppliers providing public telecommunications services] [EU: of public communications networks used by the same or a different supplier] in order to allow the users of one supplier to communicate with users of [EU: the same or] another supplier, [US: and] [EU: or] to access services provided by another supplier; [EU: services may be provided by the parties involved or other parties who have access to the network;]

[EU: (l) 'universal service' means the minimum set of services of specified quality that must be made available to all users in the territory of a Party, regardless of their geographical location and at an affordable price: its scope and implementation are decided by each Party;]

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[EU: (m) 'number portability'] [US: **number portability**] means the ability of [US: end-users of public telecommunications] [EU: all subscribers of public electronic communications] services [EU: who so request] to retain, at the same location, the same telephone numbers without impairment of quality, reliability, or convenience when switching between [EU: the same category of] suppliers of public [US: telecommunications] [EU: electronic communications] services;

[US: **backhaul links** means end-to-end transmission links from a submarine cable landing station to another primary point of access to any public telecommunications network;]

[US: **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;]

[US: **cross-connect links** means the links in a submarine cable landing station used to connect submarine cable capacity to the transmission, switching, or routing equipment of any supplier of public telecommunications services co-located in that submarine cable landing station;]

[US: **end-user** means a final consumer of, or subscriber to, a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;]

[US: **enterprise** means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization, and includes a branch of an enterprise;]

[US: **leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user and are supplied by a supplier of fixed telecommunications services;]

[US: **license** means any authorization that a Party may require of a person, in accordance with its laws and regulations, in order for such person to offer a telecommunications service, including concessions, permits, or registrations;]

[US: **non-discriminatory** means treatment no less favorable than that accorded to any other user of similar public telecommunications services in similar circumstances, including with respect to timeliness;]

[US: **reference interconnection offer** means an interconnection offer extended by a major supplier and filed with, or approved by, or determined by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications services willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;]

[US: **service supplier of the other Party** means, with respect to a Party, a person that is either a covered investment in the territory of the Party, or a person of the other Party, and that seeks to supply or supplies services within or into the territory of the Party, and includes a supplier of public telecommunications services;]

[US: **telecommunications** means the transmission and reception of signals by any electromagnetic

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means, including by photonic means;]

[US: **user** means a service consumer or a service supplier.]

[EU: **Article 41: Regulatory Authority**] [US: **Article X.3: Independent Regulator**]

[EU: 1. Regulatory authorities for electronic communications networks and services shall be legally distinct and functionally independent from any supplier of electronic communications networks, electronic communications services, or electronic communications equipment.]

[US: 1. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that, to the extent that its telecommunications regulatory body oversees specific services, that it is separate from, and not accountable to, any supplier of such services, and that it does not hold a financial interest or maintain an operating or management role in any such supplier.]

[EU: 2. A party that retains ownership or control of providers of electronic communication networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control. The regulatory authority shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to it under national law.]

[EU: 3. The regulatory authority shall be sufficiently empowered to regulate the sector, and have adequate financial and human resources to carry out the task assigned to it. Only appeal bodies set up in accordance with paragraph 7 of this Article shall have the power to suspend or overturn decisions by the regulatory authority. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body. Parties shall ensure that regulatory authorities have separate annual budgets. The budgets shall be made public.]

[EU: 4. The decisions made and the procedures used by regulators shall be impartial with respect to all market participants.]

[US: 4. Each Party shall ensure that the regulatory decisions and procedures of its telecommunications regulatory body, including decisions and procedures relating to licensing, interconnection with public telecommunications networks and services, tariffs, and assignment or allocation of spectrum for non-government public telecommunications services, are impartial with respect to all market participants.]

[US: 2. Each Party shall ensure that its telecommunications regulatory body does not accord more favorable treatment to a supplier of services in its territory than that accorded to a similar service supplier of the other Party on the basis that the supplier to be receiving more favorable treatment is owned by the central government of the Party.]

[EU: 5. The powers of the regulatory authorities shall be exercised transparently and in a timely manner.]

[US 5. Each Party shall ensure that its regulatory decisions, and the results of appellate proceedings

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regarding such decisions, are made publicly available.]

[EU: 6. Regulatory authorities shall have the power to ensure that suppliers of electronic communications networks and services provide them, promptly upon request, with all the information, including financial information, which is necessary to enable the regulatory authorities to carry out their tasks in accordance with this sub-section. Information requested shall be proportionate to the performance of the regulatory authorities' tasks and treated in accordance with the requirements of confidentiality.

7. Any user or supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise to enable it to carry out its functions effectively. The merits of the case shall be duly taken into account, and the appeal mechanism shall be effective. Wherever the appeal body is not judicial in character, written reasons for its decision shall always be given, and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced. Pending the outcome of the appeal, the decision of the regulatory authority shall stand, unless interim measures are granted in accordance with national law.

8. Parties shall ensure that the head of a regulatory authority, or where applicable, members of the collegiate body fulfilling that function within a regulatory body, or their replacements, may be dismissed only if they no longer fulfill the conditions required for the performance of their duties which are laid down in advance in national law. The decision to dismiss the head of the regulatory authority concerned, or where applicable, members of the collegiate body fulfilling that function shall be made public at the time of dismissal. The dismissed head of the regulatory authority, or where applicable, members of the collegiate body fulfilling that function shall receive a statement of reasons, and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published.]

[US: 3. Each Party shall provide its telecommunications regulatory body the authority to enforce the Party's measures relating to the obligations set out in Part III (Telecommunications Services). Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, or revocation of licenses.]

[EU: Article 42: Authorization to Provide Electronic Communication Networks and Services]
[US: Article X.4: Licensing]

[EU: 1. Provision of electronic communications networks and/or services shall be authorized, wherever possible, upon simple notification. In this case, the service supplier concerned shall not be required to obtain an explicit decision or any other administrative act by the regulatory authority before exercising the rights stemming from the authorization. The rights and obligations resulting from such authorization shall be made publicly available in an easily accessible form. Obligations should be proportionate to the service in question.

2. Where necessary, a license for the right of use for radio frequencies and numbers can be required in order to:

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- a) avoid harmful interference;
- b) ensure technical quality of service;
- c) safeguard efficient use of spectrum; or
- d) fulfill other objectives of general interest.

The terms and conditions for such licenses shall be made publicly available.]

[EU: 3. Where a license is required:] [US: 6. When a Party requires a supplier of public telecommunications services to have a license:]

[US: (a) the Party shall make publicly available:]

(i) all the licensing criteria and **[US: procedures it applies;]** **[EU: (a) a reasonable period of time normally required to reach a decision concerning an application for a license shall be made publicly available]** **[US: (ii) the period it normally requires to reach a decision concerning an application for a license];**

[US: (iii) the terms and conditions of all licenses in effect; and]

[US: (b) the Party shall ensure that, on request, an applicant receives the reasons for the:

(i)] **[EU: (b) the reasons for the]** denial of a license **[EU: shall be made known in writing to the applicant upon request;]**

[US: (ii) imposition of supplier-specific conditions on a license;

(iii) revocation of a license; or

(iv) refusal to renew a license.]

[EU: (c) the applicant for a license shall be able to seek recourse before an appeal body in the case of a license having been denied.]

[EU: 4. Any administrative costs shall be imposed on suppliers in an objective, transparent, proportionate, and cost-minimizing manner. Any administrative charges imposed by any Party on suppliers providing a service or a network under an authorization referred to in paragraph 1 or a license under paragraph 2 shall, in total, cover only the administrative costs normally incurred in the management, control, and enforcement of the applicable authorization and licenses. These administrative charges may include costs for international cooperation, harmonization and standardization, market analysis, monitoring compliance, and other market control, as well as regulatory work involving preparation and enforcement of legislation and administrative decisions, such as decisions on access and interconnection.

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[US: Article X.5: Regulatory Flexibility

1. The Parties recognize the importance of relying on competitive market forces to provide a wide choice in the supply of telecommunications services.

(a) In this respect, the Parties recognize that a Party may:

(i) engage in direct regulation either in anticipation of an issue that the Party expects may arise, or to resolve an issue that has already arisen in the market;

(ii) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be competitive, or those with low barriers to entry.

(b) Where a Party has engaged in direct regulation, that Party may forbear, to the extent provided for in its law, from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

(i) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;

(ii) enforcement of the regulation is not necessary for the protection of consumers; and

(iii) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

2. Each Party shall ensure that any supplier of telecommunications services may petition its telecommunications regulatory body to forbear from applying any specific regulation with respect to that supplier or any telecommunications services offered by that supplier.

3. Each Party shall require its telecommunications regulatory body to adopt a decision granting or denying the petition in whole or in part.

4. For greater certainty, each Party shall subject its regulatory body's decision to forbear judicial review in accordance with Article X.18 (Resolution of Disputes).]

[US: Article X.6: Review of Regulations

1. Each Party shall require their telecommunications regulatory body to:

(a) regularly review all regulations affecting the supply of telecommunications services;

(b) determine after such review whether any such regulation is no longer necessary as the result of meaningful economic competition between providers of such service; and

(c) repeal or modify any such regulation, where appropriate, pursuant to subsection (b).]

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[US: Article X.7: Technological Neutrality

1. No Party may prevent a supplier of telecommunications services from choosing the technologies it desires to use to supply its services subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting such choice is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade.

2. If a Party adopts a measure that mandates the use of a specific technology or standard, or otherwise limits a supplier's ability to choose the technology it uses to supply a service, it shall do so on the basis of:

(a) legislation; or

(b) a rulemaking

in which the Party determines that market forces have not achieved, or could not reasonably be expected to achieve, its legitimate public policy objective.]

[US: Article X.8: Transparency

1. Each Party shall ensure that where a telecommunications regulatory body seeks input for a proposal for a regulation, it shall:

(a) make the proposal public or otherwise available to any interested persons;

(b) include an explanation of the purpose of and reasons for the proposal;

(c) provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment;

(d) to the extent practicable, make publicly available all relevant comments filed with it; and

(e) respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation.

2. Each Party shall ensure that its measures relating to public telecommunications services are made publicly available, including:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces;

(c) conditions for attaching terminal or other equipment to the public telecommunications network;

(d) notification, permit, registration, or licensing requirements, if any;

(e) general procedures relating to resolution of telecommunications disputes; and

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(f) any measures of the telecommunications regulatory body where the government delegates to other bodies bear the responsibility for preparing, amending, and adopting standards-related measures affecting access and use.]

[EU: Article 43: Scarce Resources] [US: Article X.9: Allocation and Use of Scarce Resources]

[EU: 1. The allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, shall be carried out in an open, objective, timely, transparent, non-discriminatory, and proportionate manner. Procedures shall be based on objective, transparent, non-discriminatory, and proportionate criteria.]

[US: 1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.]

[EU: 2. The current state of allocated frequency bands shall be made publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.]

[US: 2. Spectrum:

(a) Each Party shall make available to the public the current state of frequency bands allocated and assigned to specific suppliers, but retains the right not to provide detailed identification of frequencies allocated or assigned for specific government uses.]

[EU: 3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article {...} (market access). Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of electronic communications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.]

[US: (b) When making a spectrum allocation for commercial services, each Party shall endeavor to rely on an open and transparent process that considers the overall public interest, including the promotion of competition. Each Party shall endeavor to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services. To this end, each Party shall have the authority to use mechanisms such auctions, where appropriate, to assign spectrum for commercial use.]

[US: 3. Numbers:

(a) Each Party shall ensure that telecommunications services suppliers of the other Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis.

(i) To the extent that a Party extends eligibility for access to telephone numbers to services suppliers other than telecommunications services suppliers, such eligibility will be extended to suppliers of like services of the other Party on a non-discriminatory basis.

(ii) No Party shall prevent suppliers eligible to obtain numbers from making such numbers

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available to other services suppliers.]

[US: Article X.10: Access and Use

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions.
2. Each Party shall ensure that service suppliers of the other Party are permitted to:
 - (a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;
 - (b) provide services to individual or multiple end-users over leased or owned circuits;
 - (c) connect owned or leased circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;
 - (d) perform switching, signaling, processing, and conversion functions; and
 - (e) use operating protocols of their choice.
3. Each Party shall ensure that enterprises of the other Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.
4. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services, other than as necessary to:
 - (a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services available to the public generally; or
 - (b) protect the technical integrity of public telecommunications networks or services.
5. Provided that they satisfy the criteria set out in paragraph 4, conditions for access to and use of public telecommunications networks and services may include:
 - (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
 - (b) requirements, where necessary, of the interoperability of such networks and services; and
 - (c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks.]

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[EU: Article 44: Access and Interconnection] [US: Article X.11: Interconnection]

[EU: 1. Access and interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers concerned.]

[US: 1. Each Party shall ensure that all suppliers of public telecommunications services in its territory:

(a) provide, directly, or indirectly within the same territory, interconnection with suppliers of public telecommunications services of the other Party at reasonable rates; and]

[EU: 2. The Parties shall ensure that any suppliers of electronic communications services shall have a right, and when requested by another supplier, an obligation, to negotiate interconnection with each other for the purpose of providing publicly available electronic communications networks and services. The Parties shall not maintain any legal or administrative measures which oblige suppliers granting access or interconnection to offer different terms and conditions to different suppliers for equivalent services, or impose obligations that are not related to the services provided.

3. The Parties shall ensure that suppliers acquiring information from another supplier in the process of negotiating access or interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.]

[US: Each Party shall ensure that all suppliers of public telecommunications services in its territory:

(b) take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements, and only use such information for the purpose of providing these services.]

[EU: 4. Each Party shall ensure that a major supplier in its territory grants access to its essential facilities, which may include, inter alia, network elements, associated facilities, and ancillary services, to suppliers of electronic communications services on reasonable and non-discriminatory terms and conditions (including in relation to rates, technical standards, specifications, quality and maintenance).]

[EU: 5. For public telecommunications transport services, interconnection with a major supplier shall be ensured] [US: (a)] at any technically feasible point in the [US: major suppliers'] network [EU: .] [US: ;] [EU: Such interconnection shall be provided.]

[US: 2. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:]

[EU: (a)] [US: (b)] under non-discriminatory terms, conditions (including [EU: in relation to] technical standards, specifications, [EU: quality and maintenance,]) and rates [EU:, and] [US:;] [US: (c)] of a quality no less favorable than that provided [EU: for the own like services of such] [US: by the] major supplier [US: for its own like services,] [EU:, or] for like services of non-affiliated [US: service] suppliers, or for its subsidiaries or other affiliates;

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[EU: (b)] [US: (d)] in a timely fashion, on terms, conditions (including in relation to technical standards, specifications, **[EU: quality and maintenance,]**) and **[US: at]** cost-oriented rates that regard economic feasibility, and are transparent, reasonable, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

[EU: (c)] [US: (e)] [EU: up]on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

[EU: The procedures applicable for interconnection to a major supplier shall be made publicly available.]

[US: 5. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.]

[EU: Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers where it is appropriate.]

[US: 4. If a major supplier in the territory of a Party has a reference interconnection offer, the Party shall require the offer to be made publicly available.]

[US: 3. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through:

(a) negotiation of a new interconnection agreement; and

(b) one of the following options:

(1) a reference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

(2) the terms and conditions of an interconnection agreement in effect.]

[US: 6. Each Party shall require a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body.¹

7. Each Party shall make publicly available interconnection agreements in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory.

8. Each Party shall ensure that suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period after the supplier requests interconnection, by its telecommunications regulatory body, to resolve disputes regarding the terms, conditions, and rates for interconnection with that major supplier.]

¹ **[US: The United States may comply with paragraph 6 by requiring to file with a state regulatory authority.]**

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[EU: Article 45] [US: Article X.12:] Competitive Safeguards [EU: on major suppliers]

[EU: The Parties shall introduce or] [US: 1. Each Party shall] maintain appropriate measures for the purpose of preventing suppliers [US: of public telecommunications services] [EU: who] [US: that], alone or together are a major supplier [US: in its territory], from engaging in or continuing anti-competitive practices. [EU: These] [US: 2.] The anti-competitive practices [US: referred to in paragraph (a)] [EU: shall] include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information necessary for them to provide services.

[US: Article X.13: Treatment by Major Suppliers of Public Telecommunications Services]

1. Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications services of the other Party treatment no less favorable than such major supplier accords in like circumstances to its subsidiaries, its affiliates, or non-affiliated service suppliers regarding:

- (a) the availability, provisioning, rates, or quality of like public telecommunications services; and
- (b) the availability of technical interfaces necessary for interconnection.]

[US: Article X.14: Resale]

1. Each Party shall ensure that a major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications services.]

[US: Article X.15: Leased Circuit Services]

1. Each Party shall ensure that a major supplier in its territory provides service suppliers of the other Party leased circuits services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and are based on a generally available offer.

2. In carrying out paragraph 1, each Party shall provide its telecommunications regulatory body or other appropriate bodies the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of the other Party at capacity-based and cost-oriented prices.]

[EU: Article 46] [US: Article X.16] Universal Service

[EU: 1. Each Party has the right to define the kind of universal service obligations it wishes to

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maintain.

2. Such obligations will not be regarded per se as anti-competitive, provided they are administered in a proportionate, transparent, objective, and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition, and be not more burdensome than necessary for the kind of universal service as defined by the Party.]

[US: 1. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner, and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.]

[EU: 3. All suppliers of electronic communications networks and/or services should be eligible to provide universal service. The designation of universal service suppliers shall be made through an efficient, transparent, and non-discriminatory mechanism. Where necessary, the Parties shall assess whether the provision of universal service represents an unfair burden on supplier(s) designated to provide universal service. Where justified on the basis of such calculation, and taking into account the market benefit, if any, that accrues to a supplier offering universal service, regulatory authorities shall determine whether a mechanism is required to compensate the supplier(s) concerned, or to share the net cost of universal service obligations.]

[EU: Article 47: Number Portability] [US: Article X.17: Allocation and Use of Scarce Resources]

[EU: Each Party shall ensure that suppliers of public electronic communications services provide number portability on reasonable terms and conditions.]

[US: (b) Each Party shall ensure that telecommunications services suppliers and any other suppliers eligible for access to telephone numbers in its territory provide number portability to an extent that is technically feasible and on reasonable terms and conditions.]

[EU: Article 48: Confidentiality of Information]

Each Party shall ensure the confidentiality of electronic communications and related traffic data by means of a public electronic communication network and publicly available electronic communications services without restricting trade in services.]

[EU: Article 49: Resolution of Electronic Communications Disputes] [US: Article X.18: Resolution of Disputes]

[EU: 1. In the event of a dispute arising between suppliers of electronic communications networks or services in connection with rights and obligations that arise from this sub-section, the regulatory authority concerned shall, at the request of either party concerned, issue a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months, except in exceptional circumstances.]

[US: 1. Each Party shall ensure that enterprises may have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's

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measures relating to matters set out in Articles X.3-X.9 (Telecommunications Services).]

[EU: 2. When such a dispute concerns the cross-border provision of services, the regulatory authorities concerned shall coordinate their efforts in order to bring about a resolution of the dispute.

3. The decision of the regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based, and shall have the right to appeal this decision, according to Article X.2, paragraph 7 of this sub-section.

4. The procedure referred to in paragraphs 1, 2, and 3 of this Article shall not preclude either party concerned from bringing an action before the courts.]

[US: 2. Each Party shall ensure that if a telecommunications regulatory body declines to initiate any action on a request to resolve a dispute, it shall, upon request, provide a written explanation for its decision within a reasonable period of time.

3. Each Party shall ensure that any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision. No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless an appropriate authority stays the determination or decision.

4. Each Party shall ensure that any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party. No Party may permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless the relevant judicial body stays the determination or decision.]

[EU: Article 50: Foreign Shareholding

With regard to the provision of electronic communication services and networks through commercial presence, no party shall impose joint venture requirements or limit the participation of foreign capital in terms of a maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.]

[US: Article X.19: Undersea Cables and Landing Facilities and Services

1. Where a supplier of telecommunications services in the territory of a Party operates a submarine cable system to provide public telecommunications services, that Party shall ensure that the supplier accords suppliers of public telecommunications services of the other Party reasonable and non-discriminatory treatment with respect to access² to that submarine cable system, including landing

2 **[US:** With respect to a supplier of the other Party that does not own facilities in the territory of the Party in which the cable landing system is located, that Party may comply with paragraph 1 by ensuring access to the submarine cable system through facilities that the supplier of the other Party leases from a licensed supplier of public

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facilities.

2. Where a major supplier of international public telecommunications services in the territory of a Party controls cable landing facilities and services for which there are no economically or technically feasible alternatives, the Party shall ensure that the major supplier:

(a) permits suppliers of public telecommunications services of the other Party to:

(1) use the major supplier's cross-connect links in the submarine cable landing station to connect their equipment to backhaul links and submarine cable capacity of any supplier of telecommunications; and

(2) co-locate their transmission and routing equipment used for accessing submarine cable capacity and backhaul links of any supplier of telecommunications in the submarine cable landing station on terms and conditions as well as at cost-oriented rates, that are reasonable, transparent, and non-discriminatory; and

(b) provides suppliers of telecommunications of the other Party international leased circuits, backhaul links, and cross-connect links in the submarine cable landing station on terms and conditions and at rates, that are reasonable, transparent, and non-discriminatory.^{3]}

telecommunications services in the territory of the other Party.]

3 [US: Notwithstanding paragraph (b), a Party may permit a major supplier in its territory to limit access to or use of its submarine cable landing station if capacity at the station is unavailable.

Transatlantic Trade and Investment Partnership (TTIP)

Chapter []

Government Procurement

Post Round

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Article X.1: Definitions

For purposes of this Chapter:

[EU: (a) **aggregated procurement** means procurement on the basis of contractual arrangements such as framework agreements or multi-award contracts which are concluded between one or more procuring entities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period;]

[US: (b) **build-operate-transfer contract and public works concession contract** mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period, temporary ownership, or a right to control and operate, and demand payment for the use of such works for the duration of the contract;]

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

[US/GPA: (d) **Committee** means the Committee on Government Procurement established by Article [X.19];]

(e) **construction service** means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

(f) **days** means calendar days;

(g) **electronic auction** means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

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

[EU:(i) **juridical person of the other Party** means a legal person duly constituted or otherwise organized in accordance with the laws of one of the Member States of the European Union or of the US respectively, and having its registered office, central administration or principle place of business in the territory to which the Treaty on European Union and the Treaty on the Functioning of the European Union apply, or of the US respectively. Should the juridical person have only its registered office or central administration in the territory to which the Treaty on European Union and the Treaty on the Functioning of the European Union apply or of the US, it shall not be considered as a juridical person of the European Union or of the US respectively, unless it engages in

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substantive business operations in the territory to which the Treaty on European Union and the Treaty on the Functioning of the European Union apply or of the US respectively;

A juridical person is:

(i) “owned” by natural or juridical persons of the other Party if more than 50 percent of the equity interest in it is beneficially owned by persons of the other Party;

(ii) “controlled” by natural or juridical persons of the other Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) “affiliated” with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person].

(j) **limited tendering** means a procurement method whereby the procuring entity contracts a supplier or suppliers of its choice;

[EU: (k) **locally established** means a juridical person established in one Party which is owned or controlled by natural or juridical persons of the other Party;]

(k) **measure** means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

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

[EU:(m) **natural person of the other Party** means a national of the US or of one of the Member States of the European Union according to their respective legislation;]

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

(o) **offset** means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, countertrade and similar action or requirement;

(p) **open tendering** means a procurement method whereby all interested suppliers may submit a tender;

(q) [EU: **person** of the other Party means a natural person or a juridical person of the US or of the European Union respectively;] [US: **person** means a natural person or an enterprise;]

(r) **procuring entity** means an entity [EU: covered under Annexes X-1, X-2, X-3 to Appendix I of each Party] [US: listed in Annex X];

[EU: (s) public private partnership;]

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(t) **qualified supplier** means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;

(u) **GPA** refers to the Agreement on Government Procurement text as amended by the Protocol Amending the Agreement on Government Procurement, done at Geneva on 30 March 2012.

(v) **selective tendering** means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

(w) **services** includes construction services, unless otherwise specified;

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

(y) **supplier** means a person or group of persons that provides or could provide goods or services; and

(z) **technical specification** means a tendering requirement that:

(i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(ii) addresses terminology, symbols, packaging, marking or labeling requirements, as they apply to a good or service.

Article X.2: Scope and Coverage

Application of Chapter

1. This Chapter applies to any measure regarding covered procurement, [EU: notwithstanding Article 4(3)] whether or not it is conducted exclusively or partially by electronic means.

2. For the purposes of this Chapter, covered procurement means procurement for governmental purposes:

(a) of goods, services, or any combination thereof:

(i) as specified in each Party's [EU: Annexes X-1 to 7] [US: Schedules to Annex X]; and

(ii) not procured with a view to commercial sale or resale, or of use in the production or supply of goods or services for commercial sale or resale;

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(b) by any contractual means, including purchase, lease, rental, or hire purchase, with or without an option to buy [EU: , and public-private partnership (“PPP”)] [US: , build-operate-transfer contracts, and public works concession contracts];

(c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party's [EU: Annexes X-1 to 7] [US: Schedules to Annex X], at the time of publication of a notice in accordance with Article [X.6];

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage [EU: in paragraph 5 or in a Party's Appendix I] [US: under this Agreement].

[EU: 3. With regard to procurement funded fully or in part by grants of public funds:

(a) the Parties shall not introduce market access restrictions or any form of offsets in the context of procurement which is covered;

(b) the Parties shall ensure that already existing domestic preferences and offsets in the context of procurement funded by grants of public funds, where applicable, are applied in a non-discriminatory manner to each Party and its suppliers and service providers;

(c) the contract will become subject to the provisions of this Chapter where the procurement is above threshold values and carried out by entities subject to public procurement rules (for the EU by entities and activities regulated in EU Public Procurement Directives, Annex [...], and for the US by entities and activities regulated in Procurement Statutes, Annex [...]) irrespective of whether or not the entities are listed in Annexes X-1 to X-3 of this Chapter.

4. Where a public entity (in the EU a contracting authority as defined in the Directives) finances more than 50 percent of the estimated contract value through a grant of public funds to a project undertaken by an entity which is not a procuring entity, the Parties shall ensure through appropriate legal means that the disciplines of this Chapter apply to the contract in question. This provision applies only to procurement of certain specific works and service contracts as specified in Annex [...] when the total estimated value of the contract exceeds the thresholds as specified in Annex [...].]

5. Except where provided otherwise in a Party's [EU: Appendix 1 to Annex X] [US: Schedules to Annex X] to [EU: Annex X], this Chapter does not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes

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and other securities;

(d) public employment contracts;

(e) procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid;

(ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.

6. Each Party shall specify the following information in its [EU: Annexes X-1 to 7] [US: Schedules to Annex X]:

(a) in [EU: Annex X-1] [US: Section A], the central government entities whose procurement is covered by this Chapter;

(b) in [EU: Annex X-2] [US: Section B], the subcentral government entities whose procurement is covered by this Chapter;

(c) in [EU: Annex X-3] [US: Section C], all other entities whose procurement is covered by this Chapter;

(d) in [EU: Annex X-4] [US: Section D], the goods covered by this Chapter;

(e) in [EU: Annex X-5] [US: Section E], the services, other than construction services, covered by this Chapter;

(f) in [EU: Annex X-6] [US: Section F], the construction services covered by this Chapter; and

(g) in [EU: Annex X-7] [US: Section G], any General Notes.

[EU/GPA: 7. Where a procuring entity, in the context of covered procurement, requires persons not listed in Annexes X-1 to X-3 to procure in accordance with particular requirements, [...] shall apply *mutatis mutandis* to such requirement. ¹]

¹ [EU: For reasons of clarification, it should be noted that this provision applies also to procurement intended for a covered procuring entity as defined in Annexes X-1 to X-3, for example by entities such as central purchasing bodies, designated purchasing agents or cooperative purchasing organizations, including through multi-use lists or other instruments for aggregated procurement.]

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Valuation

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

(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this [EU/GPA: Agreement] [US: Chapter]; and

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions and interest; and

(ii) where the procurement provides for the possibility of options, the total value of such options.

[EU: (iii) in the case of aggregated procurement, the maximum estimated value of all the contracts envisaged on the basis of contractual arrangements.]

9. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as “recurring contracts”), the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

10. In the case of procurement by lease, rental, or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) where the term of the contract exceeds 12 months, the total estimated maximum value including any estimated residual value;

(b) where the contract is for an indefinite period, the estimated monthly installment multiplied by 48; and

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(c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

Article X.3: [EU/GPA: Security and] General Exceptions

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

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between [US: the] Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this

[EU/GPA: Agreement] [US: Chapter] shall be construed to prevent any Party from imposing or enforcing measures:

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

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

Article X.4: General Principles

[EU: *National Treatment and*] *Nondiscrimination*

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the [EU: goods, services and suppliers of the other Party, treatment no less favorable than that accorded by the Party or, where applicable, the various jurisdictions within a Party, including their procuring entities, to domestic goods, services and suppliers] [US: goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favorable than the treatment the Party, including its procuring entities, accords to its domestic goods, services and suppliers].

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

- (a) treat a locally established supplier less favorably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services

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offered by that supplier for a particular procurement are goods or services of the other Party.

[EU: 3. With respect to any measure subject to each Party's law applicable to procurement applied by public entities which qualify either as central government entities or subcentral government entities, other than those specifically covered under Annexes X1-X2, each Party shall accord, within the thresholds, immediately and unconditionally to the goods, services and suppliers of the other Party, treatment no less favorable than that accorded by that Party to domestic goods, services and suppliers.]

Use of Electronic Means

4. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Conduct of Procurement

5. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering, and limited tendering;

(b) avoids conflicts of interest; **[US: and]**

(c) prevents corrupt practices **[EU: ; and]**

(d) avoids practices that unnecessarily restrict competition.]

Rules of Origin

6. For purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services.

Offsets

7. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose, or enforce any offset.

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Measures Not Specific to Procurement

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

[EU: 9. The Parties agree that where access has been granted for procurement purposes through this Chapter, corresponding commitment is automatically granted in relation to services and investment to ensure there is no impediment or restriction to the supply of the service.]

Article X.5: Information on the Procurement System

1. Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, [US/GPA: in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public]; and

(b) provide an explanation thereof to the other Party, on request.

[EU: 2. Each Party shall list in Annex X:

(a) the electronic or paper media in which the Party publishes the information described in paragraph 1;

(b) the electronic or paper media in which the Party publishes the notices required by Articles 6, 8 and 15.2.]

[US: 2. Each Party shall list in Annex X the paper or electronic means through which the Party publishes the information described in paragraph 1 and the notices required by Articles X.6, X.8:9 and X.15:2].

[EU: 3. Each Party shall promptly notify the relevant Committee established pursuant to Article (Institutional) of any modification to the Party's information listed in Annex X.]

Article X.6: Notices

Notice of Intended Procurement

[EU: 1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, which shall be directly accessible by electronic means free of charge through a single point of access, except in circumstances described in Article 12 (limited tendering). The notice of intended procurement shall remain readily accessible to the public, at least until the expiration of the time period indicated in the notice. The appropriate electronic medium shall be listed by each Party in Annex X.]

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[US: 1. For each covered procurement, a procuring entity shall publish, in English and the official language of the Party of the procuring entity if different than English, a notice of intended procurement in the appropriate paper or electronic medium listed in Annex X, Section X, except in the circumstances described in Article X.12. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time period indicated in the notice. The notices shall:

- (a) for procuring entities covered under Section A, be accessible by electronic means free of charge through a single point of access; and
- (b) for procuring entities covered under Section B or C, where accessible by electronic means, be provided at least through links in a gateway electronic site that is accessible free of charge.

Parties, including their procuring entities covered under Section B or C, are encouraged to publish their notices by electronic means free of charge through a single point of access.]

2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

- (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
- (b) a description of the procurement, including the nature and quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;
- (c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;
- (d) a description of any options;
- (e) the time frame for delivery of goods or services, or the duration of the contract;
- (f) the procurement method that will be used, and whether it will involve negotiation or electronic auction;
- (g) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (h) the address and final date for the submission of tenders;
- (i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;
- (j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in

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connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

(k) where pursuant to Article X.8 a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

(l) an indication that the procurement is covered by this Chapter.

Summary Notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible at the same time as the publication of the notice of intended procurement, in [EU: one of the WTO languages] [US: English and the official language of the Party of the procuring entity if different than English]. The summary notice shall contain at least the following information:

(a) the subject matter of the procurement;

(b) the final date for the submission of tenders or, where applicable, any final date for the submission or requests for participation in the procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the procurement may be requested.

Notice of Planned Procurement

4. Procuring entities are encouraged to publish [EU: by electronic means through the single point of access used for the publication of notices of intended procurement] [US: in English and the official language of the Party of the procuring entity if different than English and in the appropriate paper or electronic medium listed in Annex X] as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as “notice of planned procurement”). The notice of planned procurement should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.

[EU: Preliminary Market Consultation

6. Before launching a procurement procedure, procuring entities may conduct market consultations with a view to the preparation of the procurement and to inform economic operators of their procurement plans and requirements. For this purpose, contracting authorities may, for example, seek or accept advice from independent experts or authorities or from market participants which may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of nondiscrimination and transparency.

7. Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the

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procuring entity, or has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer. Such measures shall include communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or the tenderer in the preparation of the procurement procedure. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.]

Article X.7: Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

[EU: 2. Suppliers that, under the law of a Party in which they are established, are entitled to provide a service, shall not be rejected solely on the ground that under the law of the Party in which a procurement contract is awarded, they would be required to be either natural or legal persons.]

[US: 2. If the procuring entity of a Party covered under Section A requires a supplier of the other Party to provide a document attesting the supplier's legal or financial capacities issued by a competent authority of a Party or a competent authority recognized by a Party, and if the supplier is ineligible to obtain such a document from the Party of the procuring entity:

(a) the procuring entity shall accept such a document issued by a competent authority of the other Party or by a competent authority recognized by the other Party; or

(b) if the other Party does not issue such a document, or cannot do so within the time period required, the procuring entity shall accept self-certification by the supplier attesting such capacities.]

3. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party [EU: or that the supplier has prior experience in the territory of that Party, nor give this any weight]; and

(b) may require relevant prior experience where essential to meet the requirements of the procurement.

4. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

(a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

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

- (a) bankruptcy;
- (b) false declarations;
- (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- (d) final judgments in respect of serious crimes or other serious offenses [EU: such as terrorist offenses, money laundering, child labor or human trafficking];
- (e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or
- (f) failure to pay taxes.

Article X.8: Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Each Party shall ensure that:

- (a) its procuring entities make efforts to minimize differences in their qualification procedures; and
- (b) where its procuring entities maintain registration systems, the entities make efforts to minimize differences in their registration systems.

3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of another Party in its procurement. [EU: Information on registration systems or lists shall be easily available to interested suppliers.

4. Interested suppliers shall be able to request their registration at any time. They shall be informed within a reasonably short period of time of the decision of the authority competent to decide on their application for registration.

5. All requirements shall be related and proportionate to the subject matter of the contracts, taking into account the need to ensure genuine competition. The criteria have to be identified, and they have to be related to the subject matter and not be nondiscriminatory in nature.]

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Selective Tendering

6. Where a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in Article X.6:2 (a), (b), (f), (j), (k) and (l) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time period for tendering, at least the information in Article X.6:2 (c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article X.10:3 (b).

7. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender the criteria for selecting the limited number of suppliers. [EU: In any case, the number of suppliers permitted to submit a tender shall be sufficient to ensure competition.]

8. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 6 (a), the procuring entity shall ensure that those documents are made available at the same time to all qualified suppliers selected in accordance with paragraph 7.

Multi-use Lists

9. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:

(a) published annually [US: in English and the official language of the Party of the procuring entity if different than English;] and

(b) where published by electronic means, made available continuously

in the appropriate medium listed in Annex X.

10. The notice provided for in paragraph 9 shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be

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given of the termination of use of the list; and

(e) and indication that the list may be used for procurement covered by this [EU/GPA: Agreement] [US: Chapter].

11. Notwithstanding paragraph 9, a multi-use list will be valid for three years or less. A procuring entity may publish the notice referred to in paragraph 9 only once at the beginning of the period of validity of the list, provided that the notice:

(a) states the period of validity and that further notices will not be published; and

(b) is published by electronic means and is made available continuously during the period of its validity.

12. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time. [EU: A procuring entity shall ensure that also the procedure used to select suppliers from a multi-use list for the award of the specific procurement, ensures sound and fair competition.]

13. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time period provided for in Article X.10:2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

[EU: *Aggregated procurement*

14. The term of contractual arrangements in aggregated procurement, such as framework agreements or multiple award contracts, shall be indicated in the notice for intended procurement. The term should be duly justified by the subject matter of the contract and not be indefinite.

15. The contract award criteria shall be specified in the notice for intended procurement. If all the terms of contract award are not known at that time, the contract award criteria shall be communicated subsequently to all economic operators which are party to the contractual arrangement on the basis of which contracts will be awarded. For every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract. Contracts shall be awarded only between those procuring entities clearly identified for this purpose in the call for competition and those suppliers originally party to the contractual arrangement.]

[EU: *Annexes X-2 and X-3*] [US: *Section B and Section C*] Entities

16. A procuring entity covered under [EU: Annex X-2 or X-3] [US: Section B or C of a Party's Schedule] may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

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(a) the notice is published in accordance with paragraph 9 and includes the information required under paragraph 10, with as much of the information required under Article X.6:2 as is available, and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article X.6:2, to the extent such information is available.

17. A procuring entity covered under [EU: Annex X-2 or X-3] [US: Section B or C of a Party's Schedule] may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 12 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

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

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

Article X.9: Technical Specifications and Tender Documentation

Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade. [EU: Specifications shall promote full and open competition wherever and should not be unduly restrictive and must be sufficiently clear and unambiguous to provide a common basis for competition.]

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specifications on international standards, [EU: and other international reference systems, where such exist, including for commercial information technology and cloud computing services] [US/GPA: where such exist], or otherwise, on national technical regulations, recognized national standards or building codes.

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3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfill the requirements of the procurement by including words such as “or equivalent” in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as “or equivalent” in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adaptation of any technical specifications for a specific procurement from a person that may have commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote

[US: (a)] the conservation of natural resources or protect the environment [US: ; or

(b) compliance with laws relating to internationally recognized labor rights, as defined in Chapter X, Article X (Labor Chapter Definitions), in the territory in which the good is produced or the service is performed.]

[EU: 7. When procuring entities formulate technical specifications in terms of performance or functional requirements, including environmental or social characteristics, parameters shall be sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow procuring entities to award the contract.

8. Where the procurement concerned refers to specific environmental or social characteristics, procuring entities may, in the technical specifications, award criteria or contract performance conditions, consider using detailed specifications or, if necessary, parts thereof, as defined by a specific label existing within the EU, and in the US provided that:

(a) those specifications are appropriate to define the characteristics of supplies or services that are the subject matter of the contract;

(b) they are based on objectively verifiable and nondiscriminatory criteria;

(c) each reference to a national or local standard, if any, shall include the words “or equivalent”;

(d) they are accessible to all interested parties.

9. Procuring entities requiring a specific label shall accept all equivalent labels that fulfill the requirements of the label indicated by the procuring entities. For products that do not bear the label, procuring entities shall also accept a technical dossier of the manufacturer or other appropriate means of proof, if the supplier had demonstrably no possibility of obtaining the specific label or

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equivalent label.

Test Reports and Means of Proof

10. The Parties, including their procuring entities, may require that interested suppliers provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the evaluation criteria or any other terms or conditions.

11. Where the Parties, including their procuring entities, require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent conformity assessment bodies shall also be accepted by them.

12. The Parties, including their procuring entities, shall accept other appropriate means of proof than those referred to in paragraph 10 above, such as a technical dossier of the manufacturer where the interested supplier has no access to the certificates or test reports referred to in paragraph 10 above, or no possibility of obtaining them within the relevant time limits, provided the lack of access is not attributable to the supplier concerned.]

Tender Documentation

13. A procuring entity shall make available to suppliers tender documentation that includes all information necessary [EU: and be sufficiently clear and specific to allow tenders to determine the subject matter of the contract, as well as] to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

- (a) the procurement, including the nature and quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;
- (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;
- (c) all evaluation criteria the entity will apply in the awarding of the contract [EU: (including criteria referring to qualitative, environmental and social aspects applied in contract award)], and, except where price is the sole criterion, the relative importance of such criteria;
- (d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;
- (e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

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(f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorized to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

14. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated, and the realistic time required for production, destocking and the transport of goods from the point of supply or for supply of services.

15. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery. **[EU: When the procuring entity intends to lay down conditions relating to the performance of the contract, these must be indicated in the tender documentation, unless already indicated in the notice of intended procurement.]**

16. A procuring entity shall promptly:

(a) **[EU: offer unrestricted and full direct access free of charge by electronic means the procurement documents from the date of publication of the notice and] [US/GPA: make available tender documentation to]** ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

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

(a) to all suppliers that are participating at the time of the modification, amendment or reissuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow such suppliers to modify and resubmit amended tenders, as appropriate.

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Article X.10: Time Periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

- (a) the nature and complexity of the procurement;
- (b) the extent of subcontracting anticipated; and
- (c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.

Such time periods, including any extension of the time periods, shall be the same for all interested or participating suppliers.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

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

4. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 to not less than 10 days where:

- (a) the procuring entity has published a notice of planned procurement as described in Article X.6:4 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:
 - (i) a description of the procurement;
 - (ii) the approximate final dates for the submission of tenders or requests for participation;
 - (iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

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(iv) the address from which documents relating to the procurement may be obtained;
and

(v) as much of the information required for the notice of intended procurement under Article X.6:2 as is available;

(b) the procuring entity, [EU: for procurement of a recurring nature] [US/GPA: for recurring contracts], indicates in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 3 impracticable.

5. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the entity accepts tenders by electronic means.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time period for tendering [EU: set out in] [US/GPA: established in accordance with] paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering established in accordance with paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time period established in accordance with paragraph 3 to not less than 10 days.

8. Where a procuring entity covered under [EU: Annex X-2 or X-3] [US: Annex X Section B or C] has selected all or a limited number of qualified suppliers, the time period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

Article X.11: Negotiation

1. A Party may provide for its procuring entities to conduct negotiations:

(a) where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article X.6:2; or

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(b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article X.12: Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply [Article X.6 through X.8, X.9 (paragraphs 13 through 17), X.10, X.11, X.13 and X.14] only under any of the following circumstances:

(a) where:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive;

provided that the requirements of the tender documentation are not substantially modified:

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:

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(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

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

Article X.13: Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

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(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

Article X.14: Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under processes that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
2. A procuring entity shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.
3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.
5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:
 - (a) the most [EU: economically] advantageous tender; or
 - (b) where price is the sole criterion, the lowest price.
6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.
7. A procuring entity shall not use options, cancel a procurement, or modify awarded contracts in a manner that circumvents the obligations under this [EU/GPA: Agreement] [US: Chapter].
- [EU: 8. Each Party shall ensure that its procuring entities are aware of the respective merits of choosing the most economically advantageous tender or the lowest price, taking into account the principle of best value for money.
9. The contracting authority shall specify in the procurement documents the relative weighting which is given to each of the criteria chosen to determine the most economically advantageous

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tender, except where this is identified on the basis of price alone.

10. Evaluation criteria can refer to qualitative, environmental and social aspects linked to the subject matter of the public contract in question.

11. Where a procuring entity establishes that a tender is abnormally low because it does not comply with environmental, social and labor law, or because the supplier has obtained subsidies, the tender can be rejected on that ground alone only after consultations with the supplier where the latter is unable to prove, within a sufficient time fixed by the procuring entity, that the evidence supplied does not satisfactorily account for the low level of price proposed or that the subsidy in question was granted in compliance with the disciplines relating to subsidies laid down in this Agreement.

12. Procuring entities may lay down conditions relating to the performance of a contract, provided that they are linked to the subject matter of the contract and indicated in the notice of intended procurement or in the tender documentation. These conditions may include economic, innovation-related, environmental or social considerations.

13. After the award decision has been communicated to participating suppliers pursuant to Article X.15:1, a procuring entity shall not conclude the contract before the expiry of a period of time that shall be not less than 10 days from the date the information award decision has reached the participating suppliers or reasonably should have become known to the participating suppliers.

14. In case an interested or participating supplier has submitted a challenge with the competent authority referred to in Article X.17:4 and X.17:6, a procuring entity shall not conclude the contract until that authority has taken a decision or recommendation on the challenge, either with regards to interim measures or corrective action as referred to in Article X.17:8 and X.17:9.]

Article X.15: Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article X.16, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. Not later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in [US: English and the official language of the Party of the procuring entity if different than English and in] the appropriate paper or electronic medium listed in Annex X. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

- (a) a description of the goods or services procured;

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- (b) the name and address of the procuring entity;
- (c) the name and address of the successful supplier;
- (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
- (e) the date of award; and
- (f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article X.12, a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

- (a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article X.12; and
- (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Collection and Reporting of Statistics

[EU: 4. The Parties shall cooperate on all issues relating to the sharing of data required by the GPA. Each party agrees to communicate to the other Party the available and comparable statistical data relevant to the procurement covered by this Chapter. In this context, the Parties should seek to develop a common method for the collection of statistics and standardization of classification in the statistical data.]

[US: 4. The Parties shall endeavor to cooperate on issues relating to the sharing of data required by the revised GPA. This includes work undertaken in the revised GPA Work Program on the Collection and Reporting of Statistical Data.]

Article X.16: Disclosure of Information

Provision of Information to Parties

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

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Non-Disclosure of Information

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

[EU/GPA: 3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to disclose confidential information where disclosure:

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

Article X.17: Domestic Review Procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

- {a} a breach of the Chapter; or
- (b) where the supplier does not have a right to challenge directly a breach of the Chapter under the domestic law of a Party, a failure to comply with a Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or has had, an interest [EU: and who has been or risks being harmed by an alleged breach.] The procedural rules for all challenges shall be in writing and made generally available.

[EU: 2. The Parties shall ensure that upon a challenge by a supplier, the review body can examine decisions taken by their respective procuring entities on whether a particular procurement falls under the scope of this Chapter.]

3. In the event of a complaint by a supplier [EU: alleging a breach or a failure as referred to in paragraph 1 and] arising in the context of covered procurement in which the supplier has, or has had, an interest [EU: and who has been harmed by an alleged breach] [US/GPA: and where there has been a breach or a failure as referred to in paragraph 1], the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

[EU: 4. Parties should make information on the review system available. Each supplier shall be

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communicated the relevant information on the basis of which an appeal can be filed and the instance where it can be filed. Each supplier should also be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.]

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

5. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement. [EU: All steps of procedure shall be subject to the domestic review system.

Where an impartial administrative authority is designated by a Party, the Party shall ensure that:

(a) the members are appointed and leave office under the same conditions as members of judicial authorities as regards the authority responsible for their appointment, their period of office, and their removal;

(b) at least the President of this impartial administrative authority has the same legal and professional qualifications as members of judicial authorities.]

6. Where a body other than an authority referred to in paragraph 5 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

7. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings (hereinafter referred to as “participants”) shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

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[EU: 8. Each Party shall adopt or maintain procedures that provide for rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account. When appropriate, in duly justified cases, such interim measures may not be granted. The reasons for a negative decision shall be provided in writing.]

[US/GPA: 8. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

(b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.]

[EU: 9. Where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, each Party shall adopt or maintain procedures that provide for

(a) corrective action consisting of:

(i) either setting aside or ensuring the setting aside of decisions taken unlawfully by a procuring entity, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents, or any other document relating to the tendering procedure, and in the case of Annex X-3's entities, adopting any other measures with the aim of remedying the breach to this Chapter, in particular in order to pay a particular sum as long as the breach has not been remedied;

(ii) where a contract has been concluded by a procuring entity, the contract declared ineffective.

10. Where a contract has already been concluded for cases other than those provided for in paragraph 9, the Parties may provide that measures provided in subparagraphs (i) and (ii) are not available: compensation for the loss or damages suffered.

11. A contract shall be declared ineffective pursuant to paragraph 9 (ii) in any of the following cases:

(a) the procuring entity has awarded the contract pursuant to a limited tendering without this being permissible under the provisions of Article X.12;

(b) where the procuring entity has concluded a contract without observing the mandatory standstill periods referred to in paragraph 9, such a violation has prevented the interested

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supplier from submitting a challenge before the conclusion of the contract, and the review body has found a breach of this Chapter other than such violation of the standstill period.

12. Each Party may provide that the review body may decide that ineffectiveness does not apply if the review authority finds that overriding reasons relating to a general interest require that the effects of the contract should be maintained.

13. Each Party shall ensure that the decisions or recommendations taken by the review bodies can be effectively enforced.]

Article X.18: Modifications and Rectifications to Coverage

[EU: Notification of Proposed Modifications

1. A Party shall notify the other Party of any proposed rectification, transfer of an entity from one Annex to another, withdrawal of an entity, or other modification (referred to in this Article as “modification”) of Annexes X-1 through X-7.

2. For any proposed withdrawal of an entity from Appendix 1 in exercise of its rights on the grounds that government control or influence over it has been effectively eliminated, the Party proposing the modification (“modifying Party”) shall include in the notification evidence that such government control or influence has been effectively eliminated.

3. The other Party shall not be entitled to compensatory adjustments if government control and influence over the entity's covered procurement have been effectively eliminated.

4. For any other proposed modification, the modifying Party shall include in the notification information on the likely consequences of the change for the mutually agreed coverage provided in the Agreement. Where the modifying Party proposes to make minor amendments or technical rectifications of a purely formal nature not affecting covered procurement, modifications of this kind shall be notified at least every two years.

Resolution of Objection

5. In case of objection by the other Party (“objecting Party”) to the notification by the modifying Party, the Parties shall seek to resolve the objection through bilateral consultations. In such consultations, the Parties shall consider:

(a) evidence pertaining to the effective elimination of government control or influence over an entity's covered procurement in the case of a notification under paragraph 2;

(b) evidence that the proposed modification does not affect coverage in the case of a notification under paragraph 3; and

(c) any claims, relating to the need for or level of compensatory adjustments, arising from modifications notified according to paragraph 1. The adjustments may consist of either compensatory expansion of coverage by the modifying Party or a withdrawal of equivalent coverage by the objecting Party, with a view to maintaining a balance of rights and

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obligations and a comparable level of mutually agreed coverage provided in this Chapter.

6. Where the objecting Party considers that, after bilateral consultations under paragraph 5:

(a) in the case of paragraph 5 (a), government control or influence over an entity's covered procurement has not been effectively eliminated;

(b) in the case of paragraph 5 (b), a modification does not meet the criteria in paragraph 3 and which affects coverage, and should be subject to compensatory adjustments; and/or

(c) in the case of paragraph 5 (c), compensatory adjustments proposed during the consultation between the Parties is not adequate to maintain a comparable level of mutually agreed coverage,

the Parties may use the dispute settlement mechanism under the Chapter of the Agreement.

Implementation

7. A proposed modification shall become effective only where:

(a) the other Party has not submitted to the modifying party a written objection to the proposed modification within 45 days from the date of the notification of the proposed modifications;

(b) the Parties have reached an agreement after due consultations under paragraph 6; or

(c) the objection has been resolved through the dispute settlement mechanism under paragraph 6.]

[US: 1. A Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules in Annex X, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Party.

2. A Party may otherwise modify its coverage under this Chapter provided that the Party:

(a) notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification; and

(b) offers, within 30 days of the notification, acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to the level of coverage that would exist if the modification is not made.

3. A notification under paragraph 2 shall include:

(a) for any proposed withdrawal of an entity from Annex X on the grounds that government control or influence over the entity's covered procurement has been effectively eliminated,

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evidence that such government control or influence has been effectively eliminated; or

(b) for any other proposed modification, an explanation of the reason for the proposed modification and information on how the proposed modification is likely to affect benefits accruing to the other Party under this Chapter.

4. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. Where a Party objects to the assertion that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

5. The Parties shall seek to resolve any objections to a proposed modification through consultations.² In such consultations, the Parties shall consider the proposed modification and, in the case of notification described in paragraph 3 (b), any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a level of mutually agreed coverage comparable to the level that would exist under this Chapter if the modification is not made.

6. The [...] shall modify Annex X to reflect any rectifications or modifications made pursuant to this Article.]

Article X.19: [EU: Responsibilities of the Relevant Committee] [US: Committee on Government Procurement]

[EU: The Relevant Committee established pursuant to Article [...] may:

- (a) adopt modalities of the reporting of statistical data pursuant to Article X.15;
- (b) endorse the compensatory adjustments resulting from modifications affecting coverage;
- (c) revise, when required, indicative criteria that demonstrate the effective elimination of government control or influence over an entity's covered procurement;
- (d) adopt criteria for deciding on the level of compensatory adjustments of coverage;
- (e) make proposals to the FTA Committee in order to adopt adjustments resulting from the modifications occurring in the GPA provisions;
- (f) consider issues regarding government procurement that are referred to it by a Party;
- (g) exchange information relating to government procurement opportunities, including those at subcentral levels, in each Party; and
- (h) discuss any other matters related to the operation of this Chapter.]

² [US: For greater certainty, nothing in this Article shall be construed to affect a Party's rights and obligations under Chapter XX [...].]

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[US: 1. The Parties hereby establish a Committee on Government Procurement comprising representatives of each Party. On request of a Party, the Committee shall meet to address matters related to the implementation and operation of this Chapter, such as:

- (a) issues regarding government procurement that are referred to it by a Party;
- (b) any other matter related to the operation of this Chapter.

2. The Committee on Government Procurement shall be the designated forum for the Dialogue on Regulatory Procurement Issues and the Dialogue on International Procurement Issues established under the 2011 Bilateral Government Procurement Forum.]

Article X.20 Adjustment to GPA provisions

[EU: If the revised GPA text-based provisions are amended or superseded by another agreement, the Parties shall consider amending this Chapter, as appropriate, after due consultations.]

[US: Article X.21: Ensuring Integrity in Procurement Practices

1. Further to [Article X.2 of the Chapter on Anti-Corruption³ - Measures to Combat Corruption], for the entities listed in Section A, each Party shall adopt or maintain procedures to declare ineligible for participation in the Party's procurements a supplier that the Party has determined to have engaged in corruption, fraud, or other illegal acts in relation to procurement.

2. Each Party shall provide to a supplier of the other Party directly affected by a proceeding that applies procedures adopted or maintained under paragraph 1:

- (a) reasonable notice that such a proceeding was initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding was initiated, and a general description of any issues in controversy; and
- (b) reasonable opportunity to present facts and arguments in support of its position.

3. Each Party shall publish the names of the suppliers determined ineligible under paragraph 1.

4. A Party may request the other Party to provide information about a supplier that the other Party has declared ineligible under paragraph 1. The Party receiving the request shall provide information about the supplier, including the reason why the Party declared the supplier ineligible, no later than 45 days after the date it receives the request.]

³ See separate paper explaining the US-proposed Anti-Corruption Chapter.

Government Procurement Chapter

Additional Information About US-proposed Chapter on Anti-Corruption

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During the ninth round of the TTIP negotiations, the US proposed that the Parties include the article “Ensuring Integrity in Procurement Practices” in the chapter on government procurement. The article as proposed indicated that it was “{f}urther to [Article X.2 of the chapter on Anti-Corruption – Measures to Combat Corruption].” This paper provides information about the US-proposed chapter on anti-corruption.

The US-proposed chapter on anti-corruption starts by having each Party affirm its resolve to eliminate corruption in matters affecting international trade and investment, and recognizes the need to build integrity within both the public and private sectors. Each Party further recognizes the importance of regional and multilateral initiatives to eliminate corruption in matters affecting international trade and investment, and commits to work jointly on encouraging and supporting appropriate initiatives to combat such corruption. Finally, each Party affirms its obligations under the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the *United Nations Convention against Corruption*, and agrees to ratify or accede to the *United Nations Convention against Corruption*.

The chapter then defines the measures that each Party must take to combat corruption in matters affecting international trade and investment. For example, the chapter requires each Party to adopt or maintain measures to establish as a criminal offense under its law, when committed intentionally, by any person subject to its jurisdiction, the promise, offering, or giving to a domestic public official, directly or indirectly, of an undue advantage for the official or another person in order that the official act or refrain from acting in relation to the performance of official duties. It dictates a similar requirement with respect to foreign public officials, but adds that such a promise, offering, or giving would also be wrongful if meant to obtain or retain business or other undue advantage in relation to the conduct of international business. The chapter also requires each Party to adopt or maintain measures to establish as a criminal offense, by any person subject to its jurisdiction, the solicitation or acceptance by a domestic public official, directly or indirectly, of an undue advantage for the official or another person, in order that the official act or refrain from acting in relation to the performance of official duties. The aiding or abetting, or conspiracy in, the commission of any of these offenses would be a criminal offense as well. In relating back to the applicable measures, the chapter further requires that each Party:

- adopt or maintain effective, proportionate, and dissuasive criminal penalties and procedures to enforce criminal measures;
- disallow the tax deductibility of bribes and other illegal expenses incurred in connection with the commission of an offense;
- adopt or maintain measures enabling the identification, tracing, freezing, seizure, and confiscation in both criminal and civil proceedings of proceeds, including any property, derived from an offense, and property, equipment, or other instrumentalities used in or destined for use in such offenses; and
- adopt or maintain such measures as may be necessary regarding accounting and auditing standards, the maintenance of books, records and internal controls, and financial statement disclosures by issuers, to prohibit or prevent the following acts carried out for the purpose of committing any of the described offenses.

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Finally, the chapter requires each Party to adopt or maintain such measures as may be necessary regarding accounting and auditing standards, the maintenance of books, records and internal controls, and financial statement disclosures by issuers, to prohibit or prevent the following acts carried out for the purpose of committing any of the following offenses: the establishment of off-the-book accounts; the making of off-the-book or inadequately identified transactions; the recording of non-existent expenditure; the incorrect identification of liabilities; and the use of false documents.

The chapter similarly requires, in matters affecting international trade or investment, that each Party adopt or maintain such measures as may be necessary to establish as a criminal offense under its law, when committed intentionally, by any person subject to its jurisdiction, the embezzlement, misappropriation, or other diversion by a public official for the benefit of the public official, or for the benefit of another person, of any property, public or private funds or securities, or any other thing of value entrusted to the public official by virtue of the public official's position. In this regard, each Party is required to provide effective, proportionate, and dissuasive penalties and procedures to enforce the measures adopted or maintained.

The chapter thereafter focuses on protections that each Party must afford persons that report corruption offenses. Each Party shall adopt or maintain publicly available procedures for persons to report to its competent authorities, including anonymously, any incidents that may be considered to constitute a covered offense or act. Each Party also shall adopt or maintain appropriate measures to protect against any discriminatory or disciplinary treatment, any person who, in good faith and on reasonable grounds, reports to the competent authorities any suspected acts concerning a covered offense or act. Each Party should consider requiring external auditors of an issuer's financial statement to report any suspected acts to the competent authorities concerning a covered offense or act, and shall ensure that the external auditors making such reports reasonably and in good faith are protected from legal action.

The chapter further outlines steps that each Party should adopt to promote integrity among public officials. It indicates that to combat corruption in matters affecting international trade and investment, each Party shall endeavor to promote, among other things, integrity, honesty, and responsibility among its public officials. To this end, each Party shall adopt or maintain measures to:

- provide adequate procedures for the selection and training of public officials for positions considered especially vulnerable to corruption and the rotation, where appropriate, of such public officials to other positions;
- require senior and other appropriate public officials to make publicly available declarations to the appropriate authorities regarding, among other things, their outside activities, employment, investments, assets, and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as a public official; and
- facilitate and require reporting by public officials acts of corruption to competent authorities, when such acts come to their notice in the performance of their functions.

In addition, each Party shall adopt or maintain codes or standards of conduct for the correct, honorable, and proper performance of public functions and the avoidance of conflicts of interest by

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public officials. Each Party shall also adopt or maintain measures providing for disciplinary or other actions, where warranted, against public officials who violate these codes or standards. Each Party shall establish procedures through which a public official accused or convicted of a covered offense may be removed, suspended, or reassigned by the appropriate authority. Finally, without prejudice to judicial independence, each Party shall adopt or maintain measures to strengthen integrity and prevent opportunities for corruption of public officials that are members of its judiciary in matters affecting international trade and investment.

The chapter likewise recognizes the important role that the private sector and civil society play in combating corruption. It requires each Party to take appropriate measures to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption in matters affecting international trade and investment and to raise public awareness regarding the existence, causes, and gravity of and the threat posed by such corruption, including, for example, undertaking public information activities and education programs that contribute to non-tolerance of corruption; encouraging professional associations and other nongovernmental organizations to assist enterprises in developing codes, standards of conduct, and compliance programs, for preventing and detecting corruption, etc. Each Party should also encourage enterprises to develop and adopt adequate codes, standards of conduct, and compliance programs for preventing and detecting, at a minimum, offenses that violate covered measures. And each Party should encourage enterprises to establish monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards, in order to prevent and detect offenses or acts that violate covered measures.

Under the chapter, each Party commits to enhancing the effectiveness of law enforcement actions to combat a covered offense or act. The chapter underscores that a Party shall not fail to effectively enforce the laws or other measures adopted or maintained to comply with certain provisions through a sustained or recurring course of action or inaction, in a manner affecting international trade and investment. That said, each Party retains the right for its law enforcement, prosecutorial, and judicial authorities to exercise appropriate discretion with respect to the enforcement of the Party's measures adopted or maintained to combat such corruption. Each Party also retains the right to take bona fide decisions with regard to the allocation of resources.

Finally, in respect of consultation and dispute settlement, the Parties shall endeavor to make every effort through dialogue, exchange of information, and cooperation to address any matter that might affect the operation of the chapter. But no Party shall have recourse to the arbitration procedure set forth in the chapter on state-to-state dispute settlement for matters involving the effectiveness of the law enforcement actions taken to combat covered offenses or act. A Party may request of the committee established under the administrative provisions of the TTIP Agreement for supervision of the implementation and operation of the Agreement to meet and consider any matter under the anti-corruption chapter and publish a written report indicating the position of each Party and any relevant facts.

Transatlantic Trade and Investment Partnership (TTIP)

Chapter []

Consolidated Proposed Customs And Trade Facilitation Text

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US Note: The proposed text for this chapter is put forth without prejudice to revisions that may be needed in light of further discussions regarding the respective competences of the European Union and its Member States in the substantive areas covered by this Chapter and the question of whether Member States will be “Parties” to the overall agreement.

Article []: Internet Publication

1. Each Party shall make available to the public on the Internet the following information and update such information as necessary:

- (a) a description of its procedures for import into, export from, or transit through its [EU: customs] territory that informs interested parties of the practical steps they need to follow for import into, export from, and transit through its [EU: customs] territory;
- (b) the documentation and data it requires for import into, export from, or transit through its [EU: customs] territory;
- (c) its laws, regulations, and procedures for import into, export from or transit through its [EU: customs] territory;¹ and
- (d) [EU: further trade related information, including relevant trade-related legislation;]
- (e) contact information for its inquiry point or points designated or maintained pursuant to Article [] (Inquiry Points).

Article []: Inquiry Points

1. Each Party shall establish or maintain one or more inquiry points to respond to reasonable inquiries by interested persons concerning import, export, and transit procedures [EU: , including providing required forms and documents].
2. [EU: A Party shall not require the payment of a fee for answering inquiries under paragraph 1.]
3. Each Party shall ensure that its inquiry points respond to inquiries within reasonable period of time which may vary depending on the nature or complexity of the request.

Article []: Advance Rulings

1. An advance ruling means a written decision provided by a Party to an applicant prior to the importation of good covered by the application that sets forth the treatment that the Party shall provide to the good at the time of import. An applicant means an exporter, importer [US: , or produce] [EU: or any person with a justifiable cause or representative thereof].
2. Each Party shall provide for advance rulings with regard to:

¹ For greater certainty, measures subject to this subparagraph shall include applied rates of customs duties, taxes, fees, and other charges imposed by a Party that are imposed on or in connection with import, into export from, or transit through its [EU: customs] territory.

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- (a) the good's tariff classification; [EU: and]
- (b) the origin of the good [EU: .] [US: ;
- (c) application of criteria it uses to determine the customs value of the good, in accordance with the WTO Customs Valuation Agreement;
- (d) application of duty drawback, deferral, or other types of relief that reduce, refund, or waive customs duties;
- (e) the preferential treatment for which the good qualifies;
- (f) country of origin marking requirements, including placement and method of marking;
- (g) whether the good is subject to a quota or tariff-rate quota; and
- (h) such other matters as the Parties may decide.]

[EU: 3. Parties are encouraged to provide advance rulings on:

- (a) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
- (b) the applicability of the Party's requirements for relief or exemption from customs duties, where appropriate;
- (c) the application of the Party's requirements for quotas, including tariff quotas, where appropriate.]

4. Each Party shall issue, prior to the import of a good into its [EU: customs] territory, a written advance ruling to an applicant that has submitted a written [EU: request] [US: application] containing all necessary information within a reasonable period of time not to exceed [EU: X] [US: 90] days from receipt of all necessary information.

5. Notwithstanding paragraph 4, a Party may decline to issue an advance ruling where the question or facts and circumstances raised are the subject of administrative or judicial review [EU: , or where the application does not relate to any intended use of the advance ruling].

6. If a Party declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

7. [EU: The advance ruling shall be valid for at least a three-year period of time after its issuance unless the law, facts, or circumstances supporting the original advance ruling have changed.]

[US: Each Party shall provide that an advance ruling shall take effect on the date issued, or on another date specified in the ruling, and shall remain in effect until it is modified or revoked.]

8. Each Party shall publish:

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- (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
- (b) the time period by which it will issue an advance ruling; and
- (c) [EU: the length of time for which the advance ruling is valid].

9. Where a Party revokes, modifies, [US: or] invalidates [EU: , or annuls] an advance ruling, it shall provide written notice to the person to whom it provided the ruling, setting out the relevant facts and the basis for its decision. Where the Party revokes, modifies, [US: or] invalidates [EU: , or annuls] an advance ruling with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.

10. Each Party shall provide, upon written request of an applicant, an administrative review of the advance ruling or of the decision to revoke, modify, [US: or] invalidate [EU: , or annul] it.

11. An advance ruling issued by a Party shall be binding throughout its [EU: customs] territory.

12. Each Party shall make [EU: information on] [US: its] advance rulings publicly available on the Internet [EU: , taking into account the need to protect commercially confidential information]. A Party may redact portions of an advance ruling in accordance with its laws, regulations, and procedures.

Article []: Release of goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods that are otherwise eligible for release upon completion of such procedures.

2. Each Party shall

(a) adopt or maintain procedures that provide for the prompt release of goods within a period no greater than that required to ensure compliance with its laws, regulations, and procedures, [US: and to the extent possible, within 48 hours of the goods' arrival,] provided that the goods are otherwise eligible for release; and

(b) promptly inform the importer where a Party does not release goods [US: within 48 hours of arrival.]

3. Each Party shall:

(a) adopt or maintain procedures that provide for the electronic submission of documentation and data required for importation, including manifests, prior to the arrival of the goods;

(b) begin processing such submission prior to the arrival of the goods with a view to enabling the release of goods on their arrival; and

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(c) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities, provided that the goods are otherwise eligible for release.

4. Each Party shall adopt or maintain procedures that provide for the release of goods prior to a final determination and payment of any customs duties, taxes, fees, and charges imposed on or in connection with importation of the goods, provided that the goods are otherwise eligible for release.

5. As condition for the release of goods prior to a final determination and payment of such customs duties, taxes, fees, and charges, a Party may require that an importer provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument subject to the following conditions:

(a) such guarantee shall not be greater than the amount required to ensure that the obligations arising from the importation of the goods will be fulfilled, including payment of any customs duties, taxes, and fees due for the goods covered by the guarantee; and

(b) the guarantee shall be discharged as soon as possible after the Party is satisfied that the obligations arising from the importation of the goods have been fulfilled.

Article []: International Standards

[1. **EU:** The Parties agree that their respective customs provisions and procedures shall be based upon international instruments and standards applicable in the area of customs and trade, including the substantive elements of the International Convention on the Simplification and Harmonization of Customs Procedures, the International Convention on the Harmonized Commodity Description and Coding System, the SAFE Framework of the WCO, the WCO Data Model and related WCO recommendations, and the WTO Agreement on Sanitary and Phytosanitary Measures.]

[1. **US:** Each Party shall share relevant information, and best practices, on the implementation of international standards for import, export, or transit procedures as appropriate. The Parties shall, as appropriate, discuss specific standards for import, export, or transit procedures and whether they contribute to trade facilitation.

2. Each Party shall endeavor to implement common standards and elements for import and export data consistent with the World Customs Organization (WCO) Data Model.]

Article []: Use of Information Technology and Electronic Payment

1. Each Party shall use information technology that expedites procedures for the release of goods [EU: in order to facilitate trade between the Parties].

2. Pursuant to paragraph 1, each Party shall:

(a) make available by electronic means [EU: a customs declaration] [US: any declaration or other form] that is required for the import, export, or transit through its [EU: customs] territory of goods;

(b) [EU: allow [EU: a customs declaration] [US: documentation for import, export, or

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transit through its [EU: customs] territory] to be submitted in electronic format];

(c) [EU: establish [EU: a means] of providing for the electronic exchange of trade-related information between the Party and importers, exporters, and persons engaged in the transit of goods through its [EU: customs] territory;]

(d) make [EU: electronic systems] accessible to importers, exporters, and persons engaged in the transit of goods through its [EU: customs] territory;

(e) [EU: promote the electronic exchange of data between their respective traders and customs administrations, as well as other related agencies];

(f) adopt or maintain procedures allowing the option of electronic payment of duties, taxes, fees, and charges imposed on or in connection with import or export;

(g) [EU: use electronic risk management systems for assessment and targeting that enable its customs authorities to focus their inspections on high-risk goods and that facilitate the release and movement of low-risk goods]; and

(h) work towards developing electronic systems that are compatible with the other Parties' systems, in order to facilitate the government exchange of international trade data.

[US: Article []: Single Window

1. Each Party shall establish or maintain a single window no later than 1 January 2017 that enables importers, exporters, and persons engaged in the transit of goods, or representatives thereof, to submit through a single entry point documentation and data the Party requires for import into, export from, or transit through its [EU: customs] territory.

2. Once a Party establishes its single window, it shall notify importers, exporters, or persons engaged in the transit of goods, or representatives thereof, of the status of the release of the goods and any determination with respect to the goods through the single window in a timely manner.

3. Where a Party receives documentation or data for a good or shipment of goods through its single window, the Party shall not otherwise request the same documentation or data for that good or shipment of goods, except in urgent circumstances or pursuant to other limited exceptions set out in its laws, regulations, or procedures.]

Article []: [EU: Data and] Documentation

1. Each Party shall, subject to paragraph 2, apply uniform import, export, and transit procedures and uniform documentation requirements for release [US: and clearance] of goods throughout its [EU: customs] territory.

2. Nothing in this Article shall prevent a Party from differentiating its import, export, and transit procedures and documentation requirements:

(a) based on the nature and type of goods, or their means of transport;

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(b) for goods, based on risk management; and

(c) in a manner consistent with the WTO Agreement on Sanitary and Phytosanitary Measures.

3. Each Party shall review, and based on the results of the review, ensure, as appropriate, that import, export, and transit procedures [EU: , data,] and documentation requirements are:

(a) adopted and applied with a view to a rapid release [US: and clearance] of goods;

(b) adopted and applied in a manner that aims at reducing the time and cost of compliance with such procedures [EU: , data,] and documentation requirements;

(c) the least trade-restrictive measure chosen, where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and

(d) not maintained, including parts thereof, if no longer required to fulfill the policy objective or objectives in question.

4. Each Party shall accept electronic copies of documents required for import into, export from, or transit through its [EU: customs] territory, unless the electronic copy does not provide the necessary information to insure compliance with its law.

5. Where a Party holds the original of a document submitted for the import into, export from, or transit through its [EU: customs] territory, the Party shall not require an additional submission of the same document.

Article []: Data Requirements

1. The Parties shall work jointly to develop common requirements concerning data elements [US: for import and export data] with a view to facilitate the advance screening of cargo. [US: Each Party shall limit its data elements [US: for import and export data] to those required for effective, risk-based enforcement.]

[US: 2. The Parties shall work towards developing a set of common data elements and processes for import and export data consistent with WCO Data Model and related WCO recommendations and guidelines.]

Article []: Fees and Charges

1. [EU: Each Party shall ensure, in accordance with Article VIII of the GATT 1994 that all fees and charges of whatever character other than customs duties imposed on or in connection with import or export shall be limited in amount to the approximate cost of services rendered, which shall not be calculated on an *ad valorem* basis, and shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. Each Party may impose charges or recover costs only where specific services are rendered, in

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particular:

(a) attendance, where requested, by customs staff outside official hours or at premises other than customs premises;

(b) analyses or expert reports on goods and postal fees for return of goods to an applicant, particularly with respect to decisions relating to binding information, or the provision of information concerning the application of the customs legislation;

(c) the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved; and

(d) exceptional control measures, where these are necessary due to the nature of goods or to a potential risk.]

1. [US: Fees and charges for customs processing shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question, but are not required to be linked to a specific import or export operation, provided they are levied for services that are closely connected to the customs processing of goods.]

3. No Party shall apply consular transactions fees [EU:, merchandise processing fees {and ...} or any equivalent fees or charges, on or in connection with the import or export of goods originating under this Agreement].

4. Each Party shall publish a list of fees and charges it imposes on or in connection with import or export. In order to provide an adequate time period for interested persons to become familiar with them, each Party shall publish new or amended fees imposed on, or in connection with, importation or exportation in an adequate period of time before their application, except in urgent circumstances [EU: , or where precluded by law].

5. A Party shall not apply fees and charges imposed on, or in connection with, importation until it has published the amount, method for calculation, and available methods of payment of such fees and charges.

6. Each Party shall periodically review fees and charges that it imposes on, or in connection with, importation.

Article []: Risk Management

1 . Each Party shall adopt or maintain a risk management system for customs [EU: and other relevant border controls] [US: control], based on assessment of risk through appropriate selectivity criteria.

2. Each Party shall use its risk management system for assessment and targeting to enable its customs authority to concentrate its controls, inspection, and other enforcement activities on high-risk consignments, and simplify the clearance and movement of low-risk consignments. [EU: Each Party may also select, on a random basis, consignments for such controls as part of its risk management.]

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3. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.
4. Each Party shall use information technology systems, as appropriate, to apply its risk management system in order to facilitate trade while ensuring customs control.
5. In order to facilitate trade, each Party shall periodically review and update, as appropriate, its risk management systems for customs control.

Article []: Post-clearance Audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit procedures [US: among other risk-based procedures,] to ensure compliance with customs and related laws, and regulations procedures.
2. Each Party shall conduct post-clearance audits in a risk-based manner.
3. Each Party shall conduct post-clearance audits in a transparent manner. Where a Party conducts an audit and reaches a final determination, the Party shall, without delay, notify the person whose record is audited of the determination, the person's rights and obligations with respect to determination, and the basis for the determination.
4. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.
5. The Parties shall, wherever practicable, use the result of post-clearance audit in applying risk management.

Article []: Review and Appeal

- [EU: 1. Each Party shall provide effective, prompt, non-discriminatory, and easily accessible procedures to guarantee the right of appeal against the administrative actions, rulings, and decisions of customs or other competent authorities affecting import or export of goods or goods in transit.
2. Appeal procedures may include administrative review by the supervising authority and judicial review of decisions taken at the administrative level according to the legislation of the Parties.]

[US: 1. Each Party shall ensure that any person to whom it issues a determination on a customs matter has access to:

- (a) administrative review, independent² of the employee or office that issued the determination; and
- (b) judicial review of the determination.]

² The level of administrative review may include any authority supervising the customs administration.

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[EU: 3. Any person who has applied to the customs authorities for a decision and has not obtained a decision on that application within the relevant time limits shall also be entitled to exercise the right of appeal.]

[US: 4. Each Party shall ensure that an authority conducting a review under paragraph 1 notifies the parties to the matter in writing of its decision in the review and the reasons for the decision.]

5. Each Party shall provide a person to whom it issues an administrative decision [US: on a customs matter] with the reasons for the administrative decision, so as to enable the person to have recourse to appeal procedures [US: , as provided in paragraph 1].

[US: 6. Where a person receives a decision on administrative or judicial review as provided under paragraph 1, that decision shall be applicable in the same manner throughout the [EU: customs] territory of the Party with respect to the same goods. The decisions of administrative and judicial tribunals under paragraph 1 shall govern the practice of the Party throughout its [EU: customs] territory.]

Article []: Custom Brokers

1. A Party shall not require [EU: the mandatory use of] [US: the owner of goods to use] a customs broker [US: or other agent with a commercial presence in the territory of the Party] to file import documentation, data, and other information.

2. Where a Party requires licensing of customs brokers, it shall apply transparent and objective requirements [US: for such licensing].

Article []: Pre-shipment inspection

1. A Party shall not require the use of pre-shipment inspection [US: in relation to tariff classification or customs valuation].

[US: Article []: Expedited Shipments

1. Each Party shall adopt or maintain customs procedures that provide for expedited release of certain shipments while maintaining appropriate customs control. These procedures shall:

- (a) provide a separate customs procedure for expedited shipments;
- (b) provide for information necessary to release an expedited shipment to be submitted electronically and processed before the shipment arrives;
- (c) minimize the documentation required for the release of expedited shipments and, to the extent possible, allow release based on a single submission of information, such as a manifest, covering all goods contained in an expedited shipment;
- (d) under normal circumstances, provide for expedited shipments to be cleared within four hours after arrival, provided that all required customs documentation and data are submitted;

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and

(e) apply to shipments of any weight or value.]

Article []: [EU: Facilitation/simplification and] *De Minimis*

1. [EU: Each Party shall allow low-value consignments to benefit from simplifications as determined by that Party.]
2. [US: Each Party shall provide that no customs duties or taxes shall be assessed on, and no formal entry documents shall be required for, shipments valued at US\$ 800 or less.
3. Notwithstanding paragraph 1, for shipments valued at less than US\$ 800, a Party may assess:
 - (a) customs duties and taxes on goods within a shipment that are subject to excise taxes; and
 - (b) customs duties and taxes on goods within a shipment where it considers the shipment to be part of a series of importations carried out or planned for the purpose of evading duties and taxes.]

Article []: Transit and Transshipment

1. [EU: Each Party shall ensure the facilitation and effective control of transshipment operations and transit movements through its [EU: customs] territory.]
2. [EU: Each Party shall ensure cooperation and coordination among all its concerned authorities and agencies to facilitate traffic in transit through its [EU: customs] territory.]
- [EU: 3. Each Party shall allow goods intended for import to be moved under customs control from a customs office of entry to another customs office in its customs territory where the goods would be released.]
4. Each Party's customs controls in connection with traffic in transit shall not be more burdensome than necessary to:
 - (a) identify the goods in transit; and
 - (b) verify that the Party's transit requirements have been met.
5. After a Party has authorized the goods to proceed from the point of entry through a Party's [EU: customs] territory, the Party shall not apply customs charges, customs procedures, or inspections other than those necessary for specific law enforcement purposes with respect to that traffic in transit, until the goods arrive at the point of exit from its [EU: customs] territory.
6. Each Party shall provide for advance filing and processing of documentation and data required for transit prior to the arrival of goods.
7. Once traffic in transit has reached the point of exit from the [EU: customs] territory of a Party

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and transit requirements have been met, the Party shall promptly terminate the transit operation.

8. A Party may require a guarantee, surety, or other instrument for traffic in transit through its [EU: customs] territory, provided the use of the guarantee is limited to ensuring that obligations arising from such traffic in transit are fulfilled.

9. Each Party shall allow comprehensive guarantees for multiple transactions by the same operators.

10. Where a Party requires a guarantee, surety, or other instrument for traffic in transit, it shall discharge the guarantee without delay once it determines that its transit requirements have been satisfied.

11. Each Party shall make available to the public the methodology it uses to set the amount of guarantee for traffic in transit through its [EU: customs] territory.

12. Where a Party limits the time for transiting its [EU: customs] territory, it shall ensure that the time it allows is sufficient to accomplish the transit operation.

13. Each Party shall allow goods in transit to enter its [EU: customs] territory where:

(a) the goods and appropriate information are presented to its customs authorities for examination; and

(b) all duties, taxes, and fees are paid or sufficient security is provided.

14. A Party shall not require the use of customs convoys or customs escorts for traffic in transit.

15. [US: Each Party shall allow goods for importation to be moved within its [EU: customs] territory under customs control from the point of entry into the Party's [EU: customs] territory to another customs office in its [EU: customs] territory from where the goods are intended to be released.]

16. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the [EU: customs] territory of a Party when the passage across such [EU: customs] territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the Party across whose [EU: customs] territory the traffic passes. Traffic of this nature is termed in this Article "traffic in transit."

17. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

[EU: Article []]. Goods re-entered after Repair

1. For the purpose of this Article, repair means any processing operation undertaken on goods to remedy operating defects or material damage and entailing the re-establishment of goods to their original function, or to ensure their compliance with technical requirements for their use, without which the goods could no longer be used in the normal way for the purpose for which they were

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intended. Repair of goods includes restoring and maintenance. It shall not include an operation or process that either:

- (a) destroys the essential characteristics of goods or creates new or commercially different goods;
- (b) transforms the unfinished goods into finished goods; or
- (c) is used to improve the technical performance of goods.

2. A Party shall not apply customs duty to goods, regardless of their origin, that re-enter its customs territory after those goods have been temporarily exported from its customs territory to the customs territory of the other Party for repair, regardless of whether the repair could be performed in the customs territory of the Party from which the goods were exported for repair.

3. Paragraph 2 does not apply to goods imported in bond, into free trade zones, or zones of similar status, that are exported for repair, and are not re-imported in bond, into free trade zones, or zones of similar status.

4. A Party shall not apply customs duty to goods, regardless of their origin, imported temporarily from the customs territory of the other Party for repair.]

Article []: Penalties

[US: 1. Each Party shall adopt or maintain measures that allow for the imposition of penalties for breaches of its customs laws, regulations, or procedures, including those governing tariff classification, customs valuation, transit procedures, country of origin, and claims for preferential treatment. Each Party shall ensure that such measures are administered in a uniform manner throughout its [EU: customs] territory.]

2. Each Party shall ensure that [EU: its respective customs laws and regulations provide that] any penalties imposed for breach of its customs laws, regulations, or [US: procedure] [EU: procedural requirements] are non-discriminatory and [EU: proportionate] to the degree and severity of the breach.

3. Each Party shall ensure that penalties for a breach of a customs law, regulation, or procedure are imposed only on the person(s) legally responsible for the breach.

4. Each Party shall ensure that any penalty imposed for breach of a customs law, regulation, or procedure shall depend on the facts and circumstances of the case, [US: including the record of the person in its dealings with the Party's customs authority,] and shall be commensurate with the degree and severity of breach.

5. [EU: Each Party shall avoid incentives for the assessment or collection of a penalty or conflicts of interest in the assessment and collection of penalties.] [US: Each Party shall adopt or maintain procedures to avoid conflicts of interest in the assessment and collection of penalties regarding a breach of customs law, regulation, or procedure. No portion of the remuneration of a government

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official shall be calculated as a fixed portion or percentage of any such penalties or duties assessed or collected.]

[**US:** 6. Each Party shall provide that a penalty on a person for a clerical error or other minor breach of a customs law, regulation, or procedure shall be no greater than necessary to serve merely as a warning to avoid future breaches, unless the breach is part of a consistent pattern of such errors by that person.]

7. Each Party shall ensure that when it imposes a penalty for a breach of a customs law, regulation, or procedure, it provides an explanation in writing to the person(s) upon whom the penalty is imposed, specifying the nature of the breach [**EU:** and the applicable law, regulation, or procedure under which the amount or range of penalty for the breach has been prescribed] [**US:**, including the specific law, regulation, or procedure concerned, and the basis for determining the penalty amount, if not set forth specifically in such law, regulation, or procedure].

8. [**EU:** In case of voluntary prior disclosure to a customs administration of circumstances of a breach of a customs law, regulation, or procedural requirement, each Party is encouraged to consider this as a potential mitigating factor when establishing a penalty.]

[**US:** Where a person voluntarily discloses to a Party the circumstances of a breach of a customs law, regulation, or procedure prior to the discovery of the breach by the Party, the Party shall consider this fact as a mitigating factor when determining liability for a penalty. Where the disclosing person can correct the breach, the Party may require, as a condition for using the disclosure as a mitigating factor, that the person correct it within a reasonable period of time, including paying any duties, taxes, or fees owed.]

[**US:** 9. Each Party shall specify a fixed, finite period within which it may initiate proceedings to impose a penalty for breach of a customs law, regulation, or procedure.]

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EUROPEAN COMMISSION
Directorate-General for Trade

Directorate F – WTO, Legal Affairs and Trade in Goods
Tariff and Non-Tariff Negotiations, Rules of Origin

Brussels, 20 November 2015
TRADE/CH

Subject: EU – US revised tariff offers, October 2015.

Background

The EU and the US exchanged revised¹ tariff offers on 15 October, 2015, in which both parties increased the number of tariff lines offered for duty elimination to 97%. Within the 97%, a new staging category called “T” was introduced for 2% of tariff lines with staging modalities to be agreed during the course of negotiations.

In addition to the 97% and 2% “T” benchmarks, the EU also sought to address imbalances in the front-loading of duty elimination. The US gave however no assurances on front-loading. The EU therefore took precautionary measures by back-loading a number of tariff lines from entry into force to its 7-year category. The EU stated however that it was ready to reverse the backtracking on a reciprocal basis.

In the end, the US offer included, despite reluctance to agree on a front-loading benchmark, a large improvement on front-loading. Compared to its initial offer, the US offered an improvement of 13.1 percentage points at entry into force (87.5% vs 74.4% in the initial offer), close to the initial offer of 89.6%.

The EU therefore reversed most of its backtracking during the 11th negotiation round and matched the US offer of 87.5% entry into force coverage. This has had the very positive effect of creating numeric balance between the US and EU offers in the entry into force, T and OT/U categories, and will facilitate subsequent tariff negotiations.

1. Summary

The two tariff offers are now globally balanced in terms of tariff line coverage, with an ambitious entry into force and overall high duty elimination coverage. The situation is thus more stable and equally ambitious from several perspectives. Total trade value coverage is however still unbalanced

1 Initial tariff offers were exchanged on 10 February, 2014.

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and will remain so until the US commits to tariff elimination for motor vehicles. The US has signaled on a number of occasions that it will offer full duty elimination for automobile tariff lines. However it has also underlined that for them it's an endgame issue. So while balance of concession measured on trade value will be achieved in the end, balance cannot be a useful benchmark of achievement during negotiations leading up to the endgame.

When adjusting for the motor vehicles on both sides, the offers appear however much more balanced, also in value terms. Full liberalization is offered on 99.3% of US exports to the EU and 98% on EU exports to the US in absence of motor vehicles.

The outcome for other product sectors (such as EU defensiveness on energy-intensive chemicals) may counter the trade value imbalance but only to a small extent, by one or two percentage points. Other products such as textiles might however be fully balanced, with potentially all trade receiving duty free treatment at entry into force. The US is also likely to stage a number of glass and ceramic lines at extended staging, together with footwear and some mechanical products such as ball bearings and motor vehicle parts. As regards agricultural products, the main sensitive issues in the EU offer concern bovine meat, rice and sugar, while the US will maintain wine, sugar and cheese as leverage.

2. Global comparison

2.1 Comparison of tariff line coverage

Both offers are now comparable in terms of ambition on tariff line coverage, with 97% of tariff lines offered duty elimination. Both offers have 87.5% of tariff lines in the immediate duty elimination basket (EIF). The EU offer at year 3 is at 3.7% some 1.7 percentage points higher than the US offer. Consequently, the EU offer in the 7-year category is 1.7 percentage points lower than the US.

Table 1. Comparison of tariff line coverage

All sectors	Tariff lines		
Modality	EU	US	Difference
Liberalized	97.0%	97.0%	0.0 pp
EIF	87.5%	87.5%	0.0 pp
- of which MFN zero	25.0%	36.1%	-11.2 pp
- of which additional EIF	62.6%	51.3%	11.2 pp
Y3	3.7%	2.0%	1.7 pp
Y7	3.8%	5.5%	-1.7 pp
T basket	2.0%	2.0%	0.0 pp
Not fully liberalized	3.0%	3.0%	0.0 pp
OT/U	3.0%	3.0%	0.0 pp

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2.2. Comparison of trade value coverage

In terms of value coverage, the offers are however still unbalanced. The EU liberalizes 10 percentage points more trade in total and 14 percentage points more at entry into force. This is due to the high concentration of EU exports of passenger cars. In total, some 8.9% of total EU exports are located in 10 US tariff lines (of which 2 lines alone account for 8.5%) for which the US has not yet offered a concession. This has of course a large impact when comparing the two offers, as the US has indicated that these tariff lines are only up for discussion in the so-called endgame, which therefore will leave the current imbalance in place until the endgame.

Table 2. Comparison of value coverage

All sectors	Trade value (2010-2012)		
	EU	US	Difference
Modality			
Liberalized	99.3%	89.2%	10.1 pp
EIF	91.7%	77.7%	-14.0 pp
- of which MFN zero	66.6%	53.4%	13.2 pp
- of which additional EIF	25.0%	24.3%	0.8 pp
Y3	3.3%	5.7%	-2.5 pp
Y7	2.5%	3.4%	-0.9 pp
T basket	1.8%	2.3%	-0.5 pp
Not fully liberalized	0.7%	10.8%	-10.1 pp
OT/U	0.7%	10.8%	-10.1 pp

2.3 Comparison on value coverage when adjusted for motor vehicles

When adjusting for car, bus and truck trade on both sides (i.e. removing them from total trade and respective staging categories), the offers appear much more balanced. Full liberalization is offered on 99.3% of US exports to the EU and 98% on EU exports to the US.

EU entry into force value coverage is however considerably higher even in this scenario, by 6.8 percentage points. Consequently, the EU offer keeps less trade in the remaining staging categories compared to the US offer.

Table 3. Comparison of value coverage excluding cars and trucks

All sectors minus cars & trucks	Trade value (2010-2012)		
	EU	US	Difference
Modality			
Liberalized	99.3%	98.0%	1.3 pp
EIF	92.2%	85.3%	6.8 pp
- of which MFN zero	67.0%	58.7%	8.3 pp

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- of which additional EIF	25.2%	26.7%	-1.5 pp
Y3	3.3%	6.3%	-3.0 pp
Y7	2.6%	3.8%	-1.2 pp
T basket	1.2%	2.6%	-1.3 pp
Not fully liberalized	0.7%	2.0%	-1.3 pp
OT/U	0.7%	2.0%	-1.3 pp

3. Composition of Other Treatment (OT), Undefined, “T” and the 7 category

3.1 OT and Undefined

The EU offer uses all OT lines (3% or 281 TLs) for agricultural goods. The bulk (128 TLs) is meat products (bovine, swine and poultry) in Chapter 02, dairy lines, fertilized chicken eggs, vegetables and fruit, rice, maize flour/grouts/flakes/oil, starch, poultry and swine meat preparations, sugar and sugar-related products, ethyl alcohol, and rum.

The US offer includes a mix of NAMA and AG products in its Undefined category. Some 285 are AG lines and 36 are NAMA products out of the total of 321² tariff lines. In NAMA, 17 lines are textile products and 19 are motor vehicles (car, bus and truck). In AG, the bulk is dairy products, including cheese (144 TLs), and the rest is comprised of bovine meat (6 TLs), citrus fruits (2 TLs), olives and olive oil (11 TLs), animal feeding and other food preparations (6TLs), wine and sparkling wine (10 TLs), refined sugar (2 TLs), raw tobacco, miscellaneous (79 TLs), chocolate (10 TLs), and food preparations (25 TLs).

3.2 The “T” category

The EU offer uses roughly half of the 2% “T” lines for AG products which were previously in the OT category. These include poultry meat (23 TLs), hams and swine meat preparations (4 TLs), barley/maize/wheat and wheat flour (8 TLs), rice (9 TLs), bakery and food preparations (2 TLs), fertilized eggs (other than chicken), and miscellaneous products (51 TLs). NAMA products included in this category are energy-intensive chemicals (36 TLs), passenger cars and trucks (36 TLs), ball bearings (8 TLs), motorcycles and bicycles (2 TLs), glass and ceramics (2 TLs), non-ferrous metals (titanium) (4 TLs), and batteries (1 TL).

The US use of the “T” category includes mainly industrial (122 TLs) and fishery products (14 TLs). The use for AG products stays at 78 TLs. In the NAMA sector, 52 TLs of glass are dominant, next are footwear with 18 TLs, car parts (17 TLs), ceramics (15 TLs), ball bearings (14 TLs), titanium (3 TLs), glass fiber (1 TL), steel (1 TL), and trucks (1 TL). The 14 lines in fishery products include sturgeon roe, sardines, tuna, fish sticks and caviar.

In the AG sector, the US keeps 19 swine and lamb/sheep lines in the “T” category, 17 lines of dairy and cheese products, 13 chocolate lines, and olives (4 TLs), and the remainder is food preparations and miscellaneous products.

² The difference in the number of tariff lines, 321 vs. the EU figure of 281, is due to the larger total number of tariff lines (US 10,741 vs. EU 9,376) in the US 2013 nomenclature.

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3.3 The 7-year category

The US offer contains 5.5% tariff lines, while the EU offers 3.8%. The number of lines are too numerous (the EU with 353 and the US with 589) to provide a detailed readout. However, the most important lines in each offer include the following:

The EU offer uses 43 lines for engines, 24 lines for aluminum, 34 lines for consumer electronics, 34 lines for textiles, 12 bus and truck lines, and 12 wood lines. Four lines are fishery products (caviar and shrimps). Some 175 tariff lines are AG lines with miscellaneous products (live cattle, goat meat, milk and cream, nuts, fruit jam and fruit juice, animal feeding and glues).

The US offer contains 49 lines of car parts, 27 textile lines, 14 steel lines, 13 jewelery lines, 3 chemicals, 5 leather articles, 4 glass, 4 ceramics, 10 footwear, and 2 aluminum , to name the economically largest groups.

4. Conditionalities

Both sides maintained their respective initial conditionalities linked to the tariff offers. The EU added two new conditionalities. One is for car tariff lines, for which it only committed to discuss these when the US is ready to offer duty elimination on its car tariff lines. The second new conditionality is a link to animal welfare for egg-laying hens on a few egg tariff lines (other poultry than chicken). A more general language on EU expectations of an “economically meaningful” procurement offer by the US in February 2016 is also added. The full set of conditionalities is annexed (Annex 1) in a comparative table.

5. Comparison of main sectors

The EU defines its three main sectors as follows: Agricultural (basic and processed), Fishery, and Industrial. The US defines its negotiation clusters, except for agricultural goods, somewhat differently. The US industrial sector definition includes fishery but excludes textiles, which has a slightly broader scope of products the EU would consider industrial products (e.g. suitcases, bags and the like with textile outers, plastic with man-made fiber, a few footwear products, hats, glass fiber, diapers, and other products with a component of textile materials).

5.1 Industrial goods (EU definition)

Tariff line comparison shows a balanced situation with full duty elimination in the sector, with the US exception of 19 car, bus and truck tariff lines and 17 textile tariff lines, which are placed in the US Undefined category. The US offers some 2.7 percentage points more at entry into force while the EU keeps 2.4 percentage points more in the 3-year category. The remaining differences are less than a percentage point in the other categories.

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Table 4. Comparison of the industrial goods sector in tariff lines

Industrial	Tariff lines		
Modality	EU	US	Difference
Liberalized	100.0%	99.6%	0.4 pp
EIF	92.6%	95.4%	-2.7 pp
- of which MFN zero	28.1%	38.0%	-9.9 pp
- of which additional EIF	64.5%	57.3%	7.2 pp
Y3	3.5%	1.1%	2.4 pp
Y7	2.6%	1.7%	0.9 pp
T basket	1.3%	1.4%	-0.1 pp
Not fully liberalized	0.0%	0.4%	-0.4 pp
OT/U	0.0%	0.4%	-0.4 pp

Value coverage is however unbalanced, as explained above, as car tariff lines have a large impact with close to a 10 percentage-point difference. The EU offer at entry into force is also substantially better, with close to 14 percentage points more trade liberalized. The bulk of this difference, excluding cars, is located in the 3-year category.

Table 5. Comparison of the industrial goods sector in value

Industrial	Trade value (2010-2012)		
Modality	EU	US	Difference
Liberalized	100.0%	90.2%	9.8 pp
EIF	92.8%	79.0%	13.8 pp
- of which MFN zero	68.3%	53.5%	14.8 pp
- of which additional EIF	24.6%	25.5%	-0.9 pp
Y3	3.3%	6.0%	-2.7 pp
Y7	2.0%	3.1%	-1.1 pp
T basket	1.8%	2.1%	-0.2 pp
Not fully liberalized	0.0%	9.8%	-9.8 pp
OT/U	0.0%	9.8%	-9.8%

5.2. Agricultural goods

Tariff line comparison shows that the EU offers slightly more (1.5 pp) tariff lines but substantially more at entry into force (16.5 pp). Both parties keep roughly the same share of tariff lines in the OT / Undefined categories. The US focus in its Undefined category is on dairy, food preparations, and wine, while the EU keeps mostly meats and rice in its Other Treatment category. The “T” and 3-year category is also roughly the same in both offers. However, the US offer is heavily back-

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loaded with 14.4 percentage points more tariff lines in the 7-year category. The US AG tariff lines in the 7-year category include rather limited trade due to prohibitive duties, NTBs or SPS measures. In this group there are poultry (24 TLs), dairy (25 TLs), fruits and vegetables (88 TLs), wheat and rice (4 TLs), peanuts (7 TLs), oils from various seeds (17 TLs), sugar-related products (25 TLs), chocolate (38 TLs), food preparations, tobacco, wool and cotton.

Table 6. Comparison of the agricultural goods sector in tariff lines

Agricultural	Tariff lines		
	EU	US	Difference
Modality			
Liberalized	86.4%	85.0%	1.5 pp
EIF	68.1%	51.7%	16.5 pp
- of which MFN zero	18.6%	20.8%	-2.2 pp
- of which additional EIF	49.6%	30.9%	18.7 pp
Y3	5.0%	6.3%	-1.3 pp
Y7	8.5%	22.9%	-14.4 pp
T basket	4.8%	4.1%	0.7 pp
Not fully liberalized	13.6%	15.0%	-1.5 pp
OT/U	13.6%	15.0%	-1.5 pp

A comparison of trade value is, for the above reasons (prohibitive duties, NTBs or SPS measures), not an indication of real economic interests. However, having said that, the EU offer is, on what is actually traded, despite NTBs, SPS and prohibitive duties, still substantially better, with 12 percentage points more trade liberalized. The main culprit in the US Undefined category is wine, which accounts for 58% of all trade in the Undefined category. Other products affected are olive oil (14% of the “U” category) and dairy products (12% of the “U” category).

Table 7. Comparison of the agricultural goods sector in value

Agricultural	Trade value (2010-2012)		
	EU	US	Difference
Modality			
Liberalized	85.2%	73.3%	11.9 pp
EIF	70.4%	57.8%	12.6 pp
- of which MFN zero	40.6%	51.1%	-10.5%
- of which additional EIF	29.8%	6.7%	23.2 pp
Y3	0.2%	1.6%	-1.3 pp
Y7	13.8%	7.7%	6.2 pp
T basket	0.7%	6.3%	-5.6 pp
Not fully liberalized	14.8%	26.7%	-11.9 pp
OT/U	14.8%	26.7%	-11.9 pp

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5.3 Fish and fishery goods

Both offers provide full duty elimination for the sector. However, the US offer keeps some 4.4% of fishery tariff lines in the “T” category and close to 4% in the 7-year category. The EU keeps no lines in the OT or “T” basket. The EU offer at EIF is also better, despite the rather large share of US MFN zero rates (75% of tariff lines are already duty-free). Further improvements need to come from the US side in order to restore some balance of concessions.

Table 8. Comparison of the fishery goods sector in tariff lines

Fishery	Tariff lines		
	EU	US	Difference
Modality			
Liberalized	100.0%	100.0%	0.0 pp
EIF	98.0%	90.3%	7.6 pp
- of which MFN zero	8.1%	75.2%	-67.1 pp
- of which additional EIF	89.9%	15.1%	74.8 pp
Y3	1.2%	1.5%	-0.3 pp
Y7	0.8%	3.9%	-3.1 pp
T basket	0.0%	4.2%	-4.2 pp
Not fully liberalized	0.0%	0.0%	0.0 pp
OT/U	0.0%	0.0%	0.0 pp

Trade value coverage shows a similar picture, with high shares of already duty-free trade in the US offer and a substantially better effort (despite a lower EIF rate) made by the EU at entry into force as it has more trade subject to positive MFN duties. Main back-loaded lines in the US offer include sturgeon roe, tuna, sardines, caviar, fish sticks, crabmeat, swordfish and salmon. The EU back-loaded lines include caviar and shrimps.

Table 9. Comparison of the fishery goods sector in value

Fishery	Trade value (2010-2012)		
	EU	US	Difference
Modality			
Liberalized	100.0%	100.0%	0.0 pp
EIF	74.2%	85.5%	-11.3 pp
- of which MFN zero	5.3%	81.5%	-76.2 pp
- of which additional EIF	68.9%	4.0%	64.9 pp
Y3	21.9%	2.5%	19.4 pp
Y7	3.9%	9.8%	-5.9 pp
T basket	0.0%	2.1%	-2.1 pp
Not fully liberalized	0.0%	0.0%	0.0 pp
0.0 pp OT/U	0.0%	0.0%	0.0 pp

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Annex 1. Head notes and conditionalities in the respective revised tariff offers.

Initial Provisions for

CHAPTER []

**[EU: REGULATORY COOPERATION] [US: REGULATORY COHERENCE,
TRANSPARENCY, AND OTHER GOOD REGULATORY PRACTICES]**

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[EU: Section I: Objectives, Definitions and Scope]

[Article X.1:] [EU: General Objectives and Principles]

1. The general objectives of this Chapter are:

(a) To reinforce regulatory cooperation thereby facilitating trade and investment in a way that supports the Parties' efforts to stimulate growth and jobs, while pursuing a high level of protection of, *inter alia*, the environment, consumers, working conditions, human, animal and plant life; health and safety, personal data, cybersecurity, cultural diversity, or preserving financial stability;

(b) To reduce unnecessarily burdensome, duplicative or divergent regulatory requirements affecting trade or investment, particularly given their impact on small and medium-sized enterprises, by promoting the compatibility of envisaged and existing EU and US regulatory acts;

(c) To promote an effective, pro-competitive regulatory environment which is transparent and predictable for citizens and economic operators;

(d) To further the development, adoption and strengthening of international instruments, and their timely implementation and application, as a means to work together more effectively with each other and with third countries to strive toward consistent regulatory outcomes.

2. The provisions of this Chapter do not restrict the right of each Party to maintain, adopt and apply measures to achieve legitimate public policy objectives, such as those mentioned in paragraph 1, at the level of protection that it considers appropriate, in accordance with its regulatory framework and principles.

3. The Parties reaffirm their shared commitment to good regulatory principles and practices, as laid down in the OECD Recommendation of 22 March 2012 on Regulatory Policy and Governance.]

[Article X.2:] Definitions

[EU: For the purposes of this Chapter the following definitions shall apply:

(a) “regulatory acts at central level“ means:

for the EU:

i. Regulations and Directives within the meaning of Article 288 of the Treaty on the Functioning of the European Union, including:

ii. Regulations and Directives adopted under a legislative procedure in accordance with that Treaty;

iii. Delegated and Implementing acts adopted pursuant to Articles 290 and 291 of that Treaty.

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for the US:

- i. Federal Statutes;
- ii. (A) Rules as defined in 5 USC § 551 (4);
(B) Orders, as defined in 5 USC § 551 (6); and
(C) Guidance documents. As defined in Executive Order 12,866 §3(g) issued by any federal agency, government corporation, government controlled corporation or establishment in the executive branch of government covered by 5 USC § 522 (f) (1) of the Administrative Procedures Act, as amended;
- iii. Executive Orders and {other executive documents that lay down general rules or mandate conduct by government bodies}.

(b) “regulators and competent authorities at central level“ means:

- i. for the EU, the European Commission;
- ii. for the US, US Federal agencies {defined by the Administrative Procedures Act (APA); 5 U.S.C. § 552 (f)}.

(c) {Placeholder: “regulatory acts, regulators and competent authorities at non-central level: means: “to be defined”}

(d) “**international instruments**” means document adopted by international bodies or fora in which both Parties' regulators and competent authorities at central level participate, including as observers, and which provide requirements or related procedures, recommendations or guidelines on the supply or use of a service, such as for example authorization, licensing, qualification or on characteristics or related production methods, presentation or use of a product.]

[US: For Purpose of this Chapter: “ **final administration decision and regulation**” have the meaning assigned to those terms as set out in Annex X-A].

[Article X.3:] Scope

[EU: 1. The provisions of Section II apply to regulatory acts at central level which:

{a} determine requirements or related procedures for a supply, or use of a service in the territory of a Party, such as for example authorization, licensing; or qualification; or qualification; or

{b} determine requirements or related procedures applying to goods marketed in the territory of a Party concerning their characteristics or related production methods, their presentation or their use; and

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2. The provisions of Section III apply to regulatory acts at central level that fulfill the criteria in paragraph 1 and that have or are likely to have a significant impact on trade or investment between the Parties.

3. Regulatory acts at central level concerning the matters covered by {specific or sectoral provisions concerning goods and services, to be identified} fall in any event within the scope of this Chapter.]

[US: This Chapter applies with respect to regulations (as defined in Annex X-A) and regulatory authorities of each Party (as specified in Annex X-B).]

[Article X.4:] [EU: Relationship with Sectoral Provisions

1. In case of any inconsistency between the provisions of this Chapter and the provisions laid down in {specific or sectoral provisions concerning goods and services, to be identified}, the latter shall prevail.

2. Regulatory cooperation in financial services shall follow specific provisions set out in {to be identified – FS chapter/section....}.]

[EU: Section II: Good Regulatory Practices]

[Article X.5:] [US: Internal Coordination of Regulatory Development

Each Party shall maintain processes or mechanisms to facilitate internal coordination, consultation, and review of regulations being developed by its regulatory authorities to pursue the following objectives:

- (a) identifying and avoiding potential unnecessary duplication and potentially inconsistent requirements among the Party's regulatory authorities;
- (b) complying with the international trade and investment obligations;
- (c) considering the special concerns of small entities;
- (d) sharing relevant available scientific and technical information among regulatory authorities; and
- (e) fostering good regulatory practices, including with respect to the provisions of this Chapter.]

[EU: Subsection II.1. Transparency]

[Article X.6:] [EU: Early information on Planned Acts

1. Each Party shall make publicly available at least once a year a list of planned regulatory acts at

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central level, providing information on their respective scope and objectives.

2. For planned regulatory acts at central level undergoing impact assessment, each Party shall make publicly available, as early as possible, information on planning and timing leading to their adoption, including on planned stakeholder consultations and potential for significant impacts on trade or investment.]

[Article X.7:] [EU: Stakeholder Consultations

1. When preparing regulatory acts at central level that are undergoing impact assessment, the regulating Party shall offer a reasonable opportunity for any interested natural or legal person, on a non-discriminatory basis, to provide input through a public consultation process, and shall take into account the contributions received in the finalization of their regulatory acts. The regulating Party should make use of electronic means of communication and seek to use dedicated single access web portals, where possible.

2. *{Placeholder – a provision on the publication and entry into force of adopted regulatory acts may be envisaged in this Chapter, taking into account whether a horizontal provision is included elsewhere in the TTIP text}*

[Article X.8:] [US: Transparent Development of Regulations

1. During the period described in paragraph 2, when a regulatory authority of a Party is developing a regulation, it shall, under normal circumstances, make publicly available:

(a) the text of the regulation it is developing;

(b) an explanation of the regulation, including its objectives, how the regulation achieves those objectives, the rationale for the material features of the regulation, and any major alternatives being considered;

(c) data, other information, and scientific and technical analyses it relied upon in support of regulation, including any regulatory impact assessment, risk assessment or technical dossier, and explanation for how such data, other information and analyses support the regulation; and

(d) the name and contact information of an individual official who may be contacted to address questions regarding the regulation.

2. Each Party shall make publicly available the information described in paragraph 1:

(a) after the regulatory authority of the Party has developed a text for the regulation that contains sufficient detail so as to allow persons to evaluate how the regulation, if adopted, would affect their interests; and

(b) before the regulatory authority of the Party that is developing the regulation issues or submits any final administrative decision with respect to the regulation so that this authority may take into account comments it receives and, as appropriate, revise the regulation.

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3. Where regulatory authority of a Party is developing a regulation and makes publicly available the information described in paragraph 1, the Party shall ensure that any person regardless of domicile has an opportunity, on no less favorable terms than any person of the Party, to submit comments on the regulation, including by providing written comments and other input with respect to the information described in paragraph 1, to the regulatory authority.

4. Each Party should normally provide a time period to submit comments and other input on the information described in Paragraph 1 that is:

(a) not less than 60 days from the date the information described in paragraph 1 is made publicly available; or

(b) such longer period as is appropriate due to the nature and complexity of the regulation, to provide interested persons adequate opportunity to understand how the regulation may affect their interests.

Each Party shall consider reasonable requests to extend the comment period.

5. Each Party shall promptly make publicly available any comments it receives on the regulation, except to the extent necessary to protect confidential information or withhold personal identifying information or inappropriate content, in which case the Party shall ensure it makes publicly available a version that redacts such information, or a summary of the comment.

6. Where a regulatory authority of a Party issues or submits any final administrative decision with respect to a regulation, it shall promptly make publicly available:

(a) the text of the regulation;

(b) the regulatory authority's views on substantive issues raised in the comments; and

(c) an explanation of the nature and the reason for any significant revisions to the regulation since the Party made it available for public comment.

7. Each Party shall publish at least annually a plan that identifies the major regulations that it reasonably expects to make publicly available for comment, or on which it expects to issue or submit a final administrative decision, within a period of at least twelve months commencing on the date it makes the plan publicly available.

8. Each Party shall maintain a single, freely accessible Internet website¹ that, to an extent practicable, contains anything that it is required to make publicly available under this Chapter. Each Party shall also provide for the electronic submission of comments and other input on this website in accordance with paragraph 5. If it is impracticable to post on the Internet all comments that a Party is required to make publicly available under paragraph 5, the Party shall ensure that its regulatory authorities maintain freely accessible public dockets where comments that have not been

¹[US: A Party may comply with the obligation regarding a single Internet website by making publicly available information on, and providing for the submission of comments via, more than one website, provided the information can be accessed, and submissions can be made, from a single web domain (e.g., from one website via links to another website).]

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posted can be viewed.]

[Article X.9:] [US: Trade Effects

When developing a regulation, a regulatory authority of a Party shall evaluate any information provided in comments by the other Party or a person of the other Party regarding the potential trade effects of the regulation that it receives during the comment period and, in accordance with paragraph 6 of Article X.8, provide its views on substantive issues raised.]

[Article X.10:] [US: Access to Government Documents

1. Each Party shall make publicly available the following:

(a) a description of each of its regulatory authorities' functions and organization, including the appropriate offices through which the public can obtain information, make submissions or requests, or obtain decisions; and

(b) any rules of procedure or forms utilized or promulgated by any of its regulatory authorities, as well as any associated fees.

2. Each Party shall adopt or maintain laws or procedures that allow for persons to request access to documents from a regulatory authority of a Party. Such laws or procedures shall provide no less favorable treatment to persons of the other Party than it provides to persons of the Party.]

[Article X.11:] [US: Description of Regulatory Processes

Each Party shall make publicly available a detailed description of the processes and mechanisms employed by its regulatory authorities to develop regulations. The description shall identify:

(a) the applicable guidelines or rules for providing the public with opportunities to participate in the development of regulations;

(b) the procedures for ensuring that regulatory authorities have considered public input;

(c) the judicial or administrative procedures available to challenge regulations or the procedures by which they were developed; and

(d) the processes or mechanisms referred to in Article X.5.]

[Article X.12:] [US: Regulatory Compilation

1. Each Party shall ensure that its regulations that are in effect are published in a designated compilation. The compilation shall be organized logically to promote easy access to relevant regulations. To that end, the compilation should clearly identify regulations by the topic they address.

2. Each Party shall make its respective compilation publicly available on a single, freely accessible Internet website that is capable of performing searches for regulations by citation or by word search.

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3. Each Party shall ensure that its compilation is periodically updated.]

[EU. Subsection II.2: Regulatory Policy Instruments]

[Article X.13:] [EU: Analytical Tools] [US: Regulatory Impact Assessment]

[EU: 1. The Parties affirm their intention to carry out, in accordance with their respective rules and procedures, an impact assessment for planned regulatory acts at central level.

2. Whenever carrying out impact assessments on regulatory acts at central level, the regulating Party shall, among other aspects, assess how the options under consideration:

- (a) relate to relevant international instruments;
- (b) take account of the regulatory approaches of the other Party, when the other Party has adopted or is planning to adopt regulatory acts on the same matter;
- (c) impact international trade or investment.

3. With regard to regulatory acts at central level:

- (a) the findings of impact assessments shall be published no later than the proposed or final regulatory acts;
- (b) the Parties shall promote the exchange of information on available scientific and economic evidence and data as well as on the methodology and economic assumptions applied in regulatory policy analysis;
- (c) the Parties shall promote the exchange of experience and share information on planned ex-post evaluations and retrospective reviews.]

[US: 1. Each Party shall maintain procedures that promote the consideration of the following factors when conducting a regulatory impact assessment (RIA) for a regulation:

- (a) the need for a proposed regulation, including the nature and the significance of the problem the regulation is intended to address;
- (b) the examination of reasonably feasible and appropriate regulatory and non-regulatory alternatives (including the option of not regulation), if any, that would achieve the objective of the regulation; and
- (c) the anticipated costs and benefits (quantitative, qualitative, or both) of such alternatives, including, as appropriate and to the extent information is available, potential social, economic, environmental, public health, safety, and distributive impacts, equity, and impacts on innovation (recognizing that some costs and benefits are difficult to quantify).

2. Where a regulatory authority concludes that the regulation would have a significant effect on a

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substantial number of small entities, it should consider the estimated adverse economic impacts on them and any steps taken by the regulatory authority to minimize such impacts.

3. With respect to any regulatory impact assessment it conducts for a regulation, each Party shall prepare and make publicly available for comment in accordance with Article X.8 a report detailing the factors it considered and how they support the assessment's conclusions.]

[Article X.14:] [US: Decision-Making Based on Evidence

1. Each Party recognizes the need for regulations to be based upon information that is reliable and of high quality. To that end, each Party should adopt or maintain publicly available guidance or mechanisms that encourage a regulatory authority when it is developing a regulation to:

(a) seek the best reasonably obtainable information, including scientific, economic, technical, or other information relevant to the regulation it is developing; and

(b) rely on information that is of high quality (including with respect to utility, objectivity, integrity, clarity and accuracy).

2. When publishing any final administrative decision with respect to a regulation, the Party shall make publicly available an explanation of:

(a) the regulation, including its objectives, how the regulation achieves those objectives, and the rationale for the material features of the regulation (to the extent different than the explanation provided in accordance with paragraph 1(b) of Article X.8); and

(b) the relationship between the regulation and the key evidence, data, and other information the regulatory authority considered in preparing the final administrative decision.

Such explanation should also identify any major alternatives that the regulatory authority considered in developing the regulation and provide an explanation supporting the alternative that is selected for the final administrative decision.

3. Each Party shall prepare, on an annual basis, a public report setting forth:

(a) an estimate, to the extent feasible, regarding the total annual costs and benefits of major final regulations issued in that period by its respective regulatory authorities;

(b) any proposals for systemic regulatory improvements; and

(c) any updates on changes to relevant processes and mechanisms.]

[Article X.15:] [US: Petitions

1. Each Party shall provide for any interested person to petition any regulatory authority of the Party for the issuance, amendment, or repeal of a regulation. The basis for such petitions may include, for

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example, that in the view of the person submitting the petition, the regulation has become ineffective at protecting health, welfare, or safety, has become more burdensome than necessary to achieve its objective (including with respect to its impact on trade), fails to take into account changed circumstances (such as fundamental changes in technology, or relevant scientific and technical developments), or relies on incorrect or outdated information.

2. Each Party should normally make such petitions it receives publicly available.]

[Article X.16:] [US: Retrospective Review of Regulations

1. Each Party shall maintain procedures or mechanisms to promote periodic reviews of regulations that are in effect in order to determine whether they are in need of revision or repeal, including on a regulatory authority's own initiative or in response to a petition filed pursuant to Article X.15.

2. Each Party shall make publicly available the results of any such retrospective reviews or analyses conducted by its regulatory authorities, including any supporting data whenever practicable.

3. Each Party shall include in procedures or mechanisms adopted pursuant to paragraph 1 provisions addressing regulations that it considers to have a significant economic impact on a substantial number of small entities.]

[Article X.17:] [US: Reducing Information Collection Burdens Associated with Regulation

Each Party shall provide that, to the extent regulatory authorities use surveys to request or compel information from the public in developing a regulation, these regulatory authorities should endeavor to do so in a manner that minimizes unnecessary burdens and avoids duplication.]

[EU: Section III: Regulatory Cooperation]

[Article X.18:] [EU: Bilateral Cooperation Mechanism

1. The Parties hereby establish a bilateral mechanism to support regulatory cooperation between their regulators and competent authorities at central level to foster information exchange and to seek increased compatibility between their respective regulatory frameworks, where appropriate.

2. The mechanism would further aim at identifying priority areas for regulatory cooperation to be reflected in the Annual Regulatory Cooperation Program referred to paragraph 2(a) of Article X.21.

3. Each Party shall designate an office in its central administration to act as a Focal Point responsible for exchanging information about envisaged and existing regulatory acts at central level. Those exchanges include submissions concerning acts that are being prepared or reviewed by each Party's legislative authorities.]

[Article X.19:] [EU: Information and Regulatory Exchanges

1. When a Party publishes a list of planned regulatory acts referred to in Article X.6.1, it shall identify those acts that are likely to have a significant impact on international trade or investment, including trade and investment between the Parties, and it shall inform the other Party through their

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respective Focal Points.

2. A Party shall also regularly inform the other Party about proposed regulatory acts that are likely to have a significant impact on international trade or investment, including trade or investment between the Parties, where those proposed acts do not originate from the Executive Branch and were not included in the most recent list published pursuant to Article X.6.1.

3. Upon a request of a Party made via the respective Focal Points, the Parties shall enter into an exchange on planned or existing regulatory acts at central level.

4. Regulatory exchanges shall be held by the regulators and competent authorities at central level responsible for the regulatory acts concerned.

5. The Parties shall participate constructively in regulatory exchanges. In addition to the information made available in accordance with Article X.6, a Party shall provide to the other Party, if the other Party so requests, any additional available information related to the planned regulatory acts under discussion.

6. *{Placeholder for Article on exchange of confidential information between regulators and competent authorities at central level}*

7. The cooperation may take the form of meetings, written exchanges or any other appropriate means of direct communication. Each point of substance raised by one Party shall be addressed and answered by the other Party.

8. Each Party shall communicate without delay to its legislative authorities and via its Focal point specific written comments or statements received from the other Party concerning regulatory acts at central level which are being prepared or reviewed by those bodies.]

[Article X.20:] [EU: Timing of Regulatory Exchanges

1. When a regulatory exchange on a planned or existing regulatory act at central level is requested under Article X.19 paragraph 3, it shall start promptly.

2. With regard to planned regulatory acts at central level, regulatory exchanges may take place at any stage of their preparation². Exchanges may continue until the adoption of the regulatory act.

3. Regulatory exchanges shall not prejudice the right to regulate in a timely manner, particularly in cases of urgency or in accordance with deadlines under domestic law. Nothing in this Chapter obliges a Party to suspend or delay steps envisaged under its domestic regulatory procedure.]

[Article X.21:] [EU: Promoting Regulatory Compatibility

1. This Article shall apply to areas of regulation where mutual benefits can be realized without

2 [EU: For a greater certainty, a dialogue may take place after the regulating Party has announced, through the publication of the list envisaged in Article 4.1, its intention to regulate, and: (a) in the case of the US, before the publication of a draft for consultation or (b) in the case of the EU, before the adoption of a Commission proposal. This note is not applicable to the regulatory acts referred to in Article 17.2.]

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compromising the achievement of legitimate public policy objectives such as those covered by Article 1.

2. When a regulatory exchange has been initiated pursuant to Article X.19 with regard to a planned or existing regulatory act at central level, a Party may propose to the other Party a joint examination of possible means to promote regulatory compatibility, including through the following methods:

(a) Mutual recognition of equivalence of regulatory acts, in full or in part, based on evidence that the relevant regulatory acts achieve equivalent outcomes as regards the fulfillment of the public policy goals pursued by both Parties;

(b) Harmonization of regulatory acts, or of the essential elements, through:

(i) Application of existing international instruments or, if relevant instruments do not exist, cooperation between the Parties to promote the development of new international instrument;

(ii) Approximation of rules and procedures on a bilateral basis or

(c) Simplification of regulatory acts in line with shared legal or administrative principles and guidelines.

3. A proposal under paragraph 1 shall be duly substantiated, including as regards the choice of the method. The Party receiving a proposal for a joint examination shall respond to the requesting Party without undue delay informing the latter of its decision. Every response should be substantiated.

4. In addition to regulatory exchanges pursuant to Article X.19, the Parties agree to cooperate, in areas of common interest, with respect to pre-normative research, and to exchange scientific and technical information relevant to this purpose.]

[Article X.22:] [EU: Promoting International Regulatory Cooperation

1. The Parties agree to cooperate between themselves, and with third countries, with a view to strengthening, developing and promoting the implementation of international instruments, inter alia, by presenting joint initiatives, proposals and approaches in international bodies or fora, especially in areas where regulatory exchanges have been initiated or concluded pursuant to this Chapter and in areas covered by {specific or sectoral provisions – to be identified} of this Agreement.

2. The Parties reaffirm their intention to implement within their respective domestic systems those international instruments they have contributed to, as provided for in those international instruments.]

[Article X.23:] [EU: Establishment of the Regulatory Cooperation Body

1. The Parties hereby establish a Regulatory Cooperation Body (hereafter “RCB”) in order to monitor and facilitate the implementation of the provisions set out in this Chapter and of the {specific or sectoral provisions concerning goods and services – to be identified} of this Agreement.

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2. The functions of the RCB shall be:

- (a) The preparation and publication of an Annual Regulatory Cooperation Program reflecting common priorities of the Parties and the outcomes of past or ongoing regulatory cooperation initiatives under section III of this Chapter, including information on the follow-up, the steps envisaged and time frames proposed in relation to these identified common priorities;
- (b) The monitoring of the implementation of the provisions of this Chapter, including the {specific or sectoral provisions concerning goods and services} of this Agreement, and reporting to the Joint Ministerial Body on the progress in achieving agreed cooperation programs;
- (c) {Placeholder on technical preparation of proposals for the update, modification or addition of sectoral provision. The RCB will not have the power to adopt legal acts}
- (d) The consideration of new initiatives for regulatory cooperation, on the basis of input from either Party or its stakeholders, as the case may be, including of proposals for increased regulatory compatibility in accordance with Article X.19;
- (e) The preparation of joint initiatives or proposals for international regulatory instruments in line with Article X.20, paragraph 1;
- (f) Ensuring transparency in regulatory cooperation between the Parties;
- (g) The examination of any other issue concerning the application of this Chapter or of {specific or sectoral provisions concerning goods and services} raised by a Party.

3. In the domain of financial services as set out under paragraph 2 shall be performed by the {Joint EU/US Financial Regulatory Forum (FRF)}, which shall ensure that appropriate information is given to the RCB. Any decisions concerning financial services should be taken by the competent authorities acting within the framework of the FRF.

4. The RCB may create sectoral working groups {as defined in Annex X-} and delegate certain tasks to them or to such other working groups that may set up by the Joint Ministerial body.

5. The agenda and the minutes of the meetings of the RCB shall be made public.

6. {Placeholder – provisions on the interaction of the RCB with legislative bodies}]

[Article X.24:] [EU: Participation of Stakeholders

1. The RCB shall hold, at least once a year, a meeting open to the participation of stakeholders to exchange views on the Annual Regulatory Cooperation Program.

2. The annual meeting shall be prepared jointly by the co-chairs of the RCB and shall involve the

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co-chairs of the Civil Society Contact Groups, including a balanced representation of business, consumer, trade unions, environmental groups and other relevant public interest associations {to be agreed in more detail in the Rules of Procedures of the RCB, see Article X.25 paragraph 3}. Participation of stakeholders shall not be conditional on them being directly affected by the items on the agenda of each meeting.

3. Each Party shall provide for means to allow stakeholders to submit their general views and observations or to present to the RCB concrete suggestions for further regulatory cooperation between the Parties. Any concrete suggestion received from stakeholders by one Party shall be referred to the other Party and shall be given careful consideration by the relevant sectoral working group that shall present recommendations to the RCB. If a relevant sectoral working group does not exist, the suggestion shall be discussed directly by the RCB. A written reply shall be provided to stakeholders who presented their general views and observations or concrete suggestions without undue delay. These written replies shall also be published as part of the Annual Regulatory Cooperation Program referred to in Article X.23, paragraph 2(a).]

[Article 25:] [EU: Composition and Rules of Procedures

1. The RCB shall be composed of representatives of both Parties. It shall be co-chaired by senior representatives of regulators and competent authorities, regulatory coordinating activities and international trade matters.

2. Each Party shall nominate their representatives to the RCB by (date) and provide relevant information and contact details.

3. {Placeholder for more detailed provisions on the composition and Rules of Procedure of the RCB}.]

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[US: Annex X-A

final administrative decision means:

- (a) for the United States, a final regulation (as defined below); and
- (b) for the EU Party:
 - (i) a European Commission proposal for a regulation (as defined below), including any submitted to the European Parliament, Council, or relevant committees of Member State representative; or
 - {(ii) a final regulation (a defined below) of an EU Member State; and}

regulation means:

- (a) for the United States, a rule of general applicability that prospectively prescribes legally enforceable requirements to an entire class or category of persons, entities, or things issued by a regulatory authority specified in paragraph 1(a) of Annex X-B; and
- (b) for the EU Party
 - (i) at the EU level, a regulation, directive, implementing act or delegated act, {within the meaning of Articles 288, 290 and 291 of the Treaty of the Functioning of the European Union) or other measure of general applicability that prospectively prescribes legally enforceable requirements to an entire class or category of persons, entities or things, developed by a regulatory authority specified in paragraph 1(b)(i) of Annex X-B, or
 - {(ii) at the EU Member state level, a measure of general applicability developed by a regulatory authority specified in paragraph 1(b)(ii) of Annex X-B that prospectively prescribes legally enforceable requirements to an entire class or category of persons, entities or things, be it a regulatory measure or a proposal for a legislative measure,}

other than a measure concerning (i) a military or foreign affairs function, (ii) agency management, personnel, or rules of organization, procedure or practices, (iii) public property, loans, grants, benefits or contracts, or (iv) financial services or anti-money laundering measures. For greater certainty, the term regulation does not include guidance or general statements of policy. Any reference to a regulation shall be understood to apply to amendments to a regulation.]

[US: Annex X-B

1. This Chapter applies to regulatory authorities of each Party as follows:

- (a) for the United States, any agency at central level of government, including any Executive Branch or independent agency, that develops regulations; and

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(b) for the EU Party:

(i) the European Commission (including any component thereof) and any independent agency at the EU level that develops regulations or provides data, other information or analysis relied upon in developing regulations;
and

{(ii) any agency or ministry at the central level of government of a Member State that develops regulations.}

2. This Chapter does not apply to any legislature of any Party.]

Chapter []

Technical Barriers to Trade

November 30, 2015

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[EU: Article 1

Objective and Scope

1. The objective of this Chapter is to promote convergence in regulatory approaches by reducing or eliminating conflicting technical requirements as well as redundant and burdensome conformity assessment requirements.
2. This Chapter applies to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures that may affect trade in goods between the Parties.
3. This chapter does not apply to:
 - (a) purchasing specifications prepared by a governmental body for production or consumption requirements of governmental bodies; or
 - (b) sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.
4. All references in this Chapter to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof.]

[US: Article 1: Scope and Coverage

1. This Chapter applies to the preparation, adoption, and application of standards, technical regulations, and conformity assessment procedures of covered bodies that may, directly or indirectly, affect trade in goods between the Parties, including any amendments thereto and any additions to their rules or product coverage, except amendments and additions of an insignificant nature.
2. Notwithstanding paragraph 1, this chapter does not apply to: (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; or (b) sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.]

[EU: Article

Definitions

P.M.]

[US: Article 2: Definitions

For purposes of this Chapter:

central government body¹, local government body, conformity assessment procedures, standard, and technical regulation have the meanings assigned to those terms in Annex 1 of the TBT Agreement; and

¹ [US: A non-governmental entity that a Party has requested or directed to prepare, adopt, or apply standards, technical regulations, or conformity assessment procedures on its behalf or for use in connection with compliance with the Party's domestic requirements, shall be considered a body subject to the control of a covered body for purposes of this Chapter in respect of such activity.]

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covered body means a central government body of a Party or a body of the EU, its ministries, and departments or any body subject to its control.

proposed technical regulation or conformity assessment procedure means a proposal for a technical regulation or conformity assessment procedure that provides sufficient detail about the likely content of the measure so as to adequately inform persons about whether and how the measure might affect them and, in normal circumstances, includes a draft legal text.]

[EU: Article 2

Incorporation of the WTO Agreement on Technical Barriers to Trade

1. The WTO Agreement on Technical Barriers to Trade (hereinafter referred to as “the TBT Agreement”) is hereby incorporated into and made part of this Agreement.
2. References to “this Agreement” in the TBT Agreement, as incorporated into this Agreement are to be read, as appropriate, as references to this Agreement (the TTIP).
3. The term “Members” in the TBT Agreement, as incorporated into this Agreement, shall have the same meaning in this Agreement as it has in the TBT Agreement.
4. Terms referred to in this Agreement, shall have the same meaning in this Agreement as they have in the TBT Agreement.]

[US: Article 3: Affirmation of the WTO TBT Agreement

1. The Parties affirm their rights and obligations with respect to each other under the *TBT Agreement*.]

[EU: Article 4

1. The Parties undertake to co-operate as far as possible to ensure that their technical regulations are compatible with one another.
2. If a Party expresses an interest in developing a technical regulation of equivalent scope to one existing in or being prepared by the other Party, that other Party shall on request provide to the interested Party, to the extent practicable, relevant data upon which it has relied in the preparation of the technical regulation, and on request discuss the possibility of developing harmonized or compatible technical regulations. The Parties recognize that it may be necessary to clarify and agree on the scope of a specific request, and that confidential information may be withheld. A Party planning to introduce a technical regulation shall, on request of the other Party, discuss the possibility of the elaboration of compatible technical regulations, or the enhancement of the compatibility of existing technical regulations by the Parties.
3. The Parties undertake to co-operate towards global harmonization of technical requirements in the framework of existing or planned international agreements or organizations in which the US and the EU or its Member States participate.
4. Each Party shall endeavor to ensure that products originating in the other Party that are subject to technical regulation can be marketed or used across all the territory of each Party on the basis of a single authorization, approval or certificate of conformity]

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[EU: Article 5

Transparency

1. In line with Articles 2.9.2, 5.6.2 and 3.2 of the TBT Agreement, the Parties agree: (I) to notify all relevant draft technical regulations and conformity assessment procedures to the WTO, regardless of the kind or form of the legal act, the level of government (central or local), or the authority adopting them, (ii) to make the draft text publicly available; (iii) in principle, to allow a period of no less than 60 calendar days following notification for the other Party to provide comments in writing to the proposal.

2.

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

(b) Where a Party has received comments on proposed technical regulations or conformity assessment procedures from the other Party, it shall (i) upon request of the other Party, discuss written comments made by the other Party on such proposed technical regulations or conformity assessment procedures, with the participation of its competent regulatory authority, at a time when they can be taken into account; and (ii) provide written replies to such comments to the other Party no later than the date of publication of the final technical regulation or conformity assessment procedure.

3.

(a) From the date of entry into force of this Agreement, each Party shall make publicly available all new technical regulations, adopted either at central level or by entities at a lower level than Federal (US) or Union (EU).

(b) Within [...] years of the date of entry into force of this Agreement, each Party shall make publicly available a complete registry of all its applicable technical regulations, new or existing, adopted either at a central level or by entities at a lower level than Federal (US) or Union (EU).

(c) Within [...] years of the date of entry into force of this Agreement, each Party shall make publicly available a complete registry of the titles and references of standards that have been selected for reference in, or use in connection with, technical regulations.

(d) The Parties agree to make the information referred to in (a), (b) and (c) of this paragraph accessible to the public through a single information point and to keep it up to date.

4. Where a Party detains at a port of entry a good imported from the territory of the other Party on the grounds that the good has failed to comply with a technical regulation, it shall without undue delay notify the importer of the reasons for the detention of the good, and provide an opportunity for the importer to appeal against the decision to detain the good.]

[US: Article 4: Transparency

1. Each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures.² Each Party shall permit persons of the other Party to

2 [US: ² A Party shall comply with this obligation with respect to technical regulations and conformity assessment procedures by complying with the obligations contained in paragraph 6 of this Article. A Party may satisfy this obligation with respect to standards, by, for example, providing persons of the other Party with an opportunity to submit comments on the standard to the body preparing the standard at a point when that body may still revise the

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participate in the development of these measures on terms no less favorable than those it accords to its own persons.

2. Each Party shall encourage non-governmental bodies in its territory to observe paragraph 1 in developing standards and voluntary conformity assessment procedures.

3. Each Party shall observe the obligations set out in Articles 2.9.1 through 2.9.4 and 5.6.1 through 5.6.4 of the TBT Agreement with respect to proposed technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides, or recommendations.

4. For purposes of implementing Articles 2.9 and 5.6 of the TBT Agreement and Article 4.3 of this Chapter, each Party shall:

(a) comply with the obligation in Article 2.9.2 and 5.6.2 to notify proposed technical regulations and conformity assessment procedures at an early appropriate stage, when amendments can still be introduced and comments taken into account, by ensuring that it notifies the measure when the body responsible for proposing the measure has sufficient time to review any comments received and is able to revise the measure to take into account such comments;

(b) include with its notifications an explanation of the objectives of the proposed technical regulation or conformity assessment procedure and how the measure would address those objectives; and

(c) include with its notifications a copy of the proposed technical regulation or conformity assessment procedure or an Internet address where the proposed measure may be viewed.

5. For purposes of implementing Articles 2.10 and 5.7 of the TBT Agreement and Article 5.3 of this Chapter, each Party shall include with its notifications a copy of the technical regulation or conformity assessment procedure or an Internet address where the measure may be viewed.

6. Where a Party prepares or proposes to adopt a technical regulation or conformity assessment procedure, it shall:

(a) publish, in print or electronically, the proposed technical regulation or conformity assessment procedure;

(b) allow any person to comment in writing on the proposed technical regulation or conformity assessment procedure;

(c) publish and allow for comment on the proposed technical regulation or conformity assessment procedure in accordance with subparagraphs (a) and (b) when the body proposing the measure has had sufficient time to review any comments received from another Party or any person of a Party and is able to revise the measure to take into account such comments;

(d) review and consider comments it receives on the proposed technical regulation or conformity assessment procedure and do so on no less favorable terms with respect to persons of the other Party than it accords its own persons; and

[Note: We intend to include a general exception that ensures that nothing in the Agreement requires a Party to disclose confidential business information]

(e) publish, in print or electronically, any written comments it receives on the proposed technical

measure, and by ensuring that the body takes those comments into account in revising the measure or deciding not to revise the measure.]

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regulation or conformity assessment procedure.

7. Each Party shall publish, in print or electronically, all proposed and final technical regulations and conformity assessment procedures in a single official journal or website.

8. No later than the date of publication of a final technical regulation or conformity assessment procedures, each Party shall make publicly available, preferably by electronic means:

(a) an explanation of the objectives and how the final technical regulation or conformity assessment procedure achieves them;

(b) a description of alternative approaches that the Party considered in developing the final technical regulation or conformity assessment procedure, if any, and the merits of the approach that the Party selected;

(c) the Party's evaluation of significant issues raised in comments it received from persons of the other Party, or evaluation of the substantive issues presented in those comments; and

(d) an explanation of any significant revisions that the Party made to the proposal for a technical regulation or conformity assessment procedure, including those made in response to comments.

9. Paragraphs 6, 7 and 8 and the footnote to paragraph 1 do not apply, for the United States, to any measure of the US Congress or, for the EU, any measure initiated within the European Parliament or a parliament of a Member State.]

[EU: Article 7

Conformity Assessment Procedures

1. The Parties undertake to co-operate with a view to reducing unnecessary burdens arising from differences in their respective conformity assessment requirements.

2. To that end, the Parties undertake to review within [*timeline to be discussed*] their conformity assessment procedures in order to move progressively towards the least burdensome possible procedures, commensurate with the risk that the underlying technical regulations are intended to address. Priority areas for consideration shall include electrical safety, electro-magnetic compatibility, machinery and telecommunications.

3. [*Placeholder for referencing specific outcomes on conformity assessment resulting from the negotiations in individual sectors*]

4. Where Parties require third party conformity assessment of products as a condition of compliance with technical regulations applicable on their respective territories, the Parties undertake to give consideration to mechanisms to facilitate the mutual acceptance of the results of conformity assessment conducted by conformity assessment bodies (CABs) located on the territory of the exporting Party.

5.

(a) The Parties shall take measures sufficient to avoid actual or potential conflicts of interest between conformity assessment bodies and standardization bodies, notably by establishing a clear separation of functions between them in cases where a standard referenced in technical regulations or otherwise allowed to be used to achieve compliance with technical regulations is set by an entity that also operates in the conformity assessment market.

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(b) The Parties shall ensure that standards referenced in technical regulations do not contain technical requirements that limit the choice of CABs or that refer to specific CABs.

6. The Parties agree that, where a class of products is subject to conformity assessment procedures, and where components or parts of such products are also subject to conformity assessment procedures (and thus constitute products in their own right), CABs approved by the regulator to assess products that include such components or parts shall be obliged by the regulator not to require as a condition of assessing the product as a whole, that such components or parts be re-assessed by the CABs themselves, independently of the final product.

7. The Parties shall take appropriate steps to prevent the establishment or abuse of dominant positions by any CAB in the market of its territory for the assessment of a specific product or class of risks.

8. In those areas where registration or authorization procedures or similar requirements apply in both Parties, the Parties undertake to co-operate with a view to making such procedures and related requirements as compatible as possible and to identify opportunities for administrative simplification that would alleviate burdens for economic operators and facilitate bilateral trade in the products concerned.]

[US: Article 5: Conformity Assessment Procedures

1. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than those it accords to conformity assessment bodies in its territory.

2. In order to ensure that it accords no less favorable treatment pursuant to paragraph 1, each Party shall treat conformity assessment bodies located in the territory of the other Party as follows:

(a) No Party shall require a conformity assessment body to be located within its territory as a condition to accredit, approve, license or otherwise recognize the conformity assessment body or impose requirements on the conformity assessment body that would effectively require it to operate an office in the Party's territory.

(b) Each Party shall apply no less favorable procedures, criteria or other conditions to accredit, approve, license or otherwise recognize conformity assessment bodies located in the other Party's territory as it applies to accredit, approve, license or otherwise recognize conformity assessment bodies located in its territory, including by permitting conformity assessment bodies located in the other Party's territory to apply to be accredited, approved, licensed or otherwise recognized by a body located in the Party's territory.

(c) Each Party shall permit any conformity assessment body located in the territory of the other Party to apply to the Party, or any body that it has recognized or approved for this purpose, to be accredited, approved, licensed or otherwise recognized under any procedures, criteria and other conditions the Party applies to accredit, approve, license or otherwise recognize conformity assessment bodies.

3. For greater certainty, paragraphs 1 and 2 shall not preclude a Party from limiting recognition of conformity assessment bodies in relation to specific products to specified government bodies of the Party located within the Party's territory or the territory of the other Party.

4. Where a Party does not accept the results of a conformity assessment procedure conducted by a conformity assessment body located in the territory of the other Party, it shall provide the person that submitted the results, and upon request of the other Party, with an explanation of the reasons for not

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accepting the results.

5. Where a Party refuses to accredit, approve, license, or otherwise recognize a conformity assessment body located in the territory of the other Party, it shall inform the other Party. In addition, the Party shall provide the conformity assessment body, and upon request, the other Party, with an explanation of the reasons for its refusal. Furthermore, the Party shall ensure a procedure exists to review complaints regarding the refusal and to take corrective action when a complaint regarding the refusal is justified.

6. In relation to any technical regulation or standard for which a Party requires third-party conformity assessment, each Party shall make publicly available a list of the bodies that it has accredited, approved, licensed or otherwise recognized to perform such conformity assessment and relevant information on the scope of each such body's accreditation, approval, license or recognition.

7. Where a Party undertakes conformity assessment in relation to specific products within specified government bodies located in its own territory or the other Party's territory, the Party shall, upon the request of the other Party or the applicant, explain:

- (a) the order in which conformity assessment procedures are undertaken and completed;
- (b) how fees for its conformity assessment procedures are calculated;
- (c) how the information it requires is necessary to assess conformity and determine fees;
- (d) how the Party ensures that the confidentiality of the information is respected in a manner that ensures the protection of legitimate commercial interests; and
- (e) the procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action when a complaint is justified.

8. Where a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation or standard, it shall not prohibit a conformity assessment body from using subcontractors, or refuse to accept the results of conformity assessment on account of the conformity assessment body using subcontractors, to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party. For greater certainty, nothing in this paragraph shall be construed to prohibit a Party from requiring subcontractors to meet the same requirements that the conformity assessment body to which it is contracted would be required to meet in order to perform the contracted tests or inspection itself.

9. With respect to an accreditation body located in the territory of the other Party, no Party shall refuse to accept, or take actions which have the effect of, directly or indirectly, requiring or encouraging the refusal of acceptance of conformity assessment results performed by a conformity assessment body in the other Party's territory because the accreditation body that accredited the conformity assessment body:

- (a) operates in the territory of a Party where there is more than one accreditation body;
- (b) is a non-governmental body;
- (c) is domiciled in the territory of a Party that does not maintain a procedure for recognizing accreditation bodies;
- (d) does not operate an office in the Party's territory; or

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(e) is a for-profit entity.

10. Each Party shall ensure that its authorities may adopt, or have the discretion to adopt, procedures to accredit, approve, license or otherwise recognize conformity assessment bodies through international accreditation agreements or arrangements.

11. Each Party shall issue guidance to encourage its authorities to rely on international accreditation agreements or arrangements to accredit, approve, license or otherwise recognize conformity assessment bodies where effective and appropriate to fulfill the Party's legitimate objectives.

12. Each Party shall ensure where it accredits, or entrusts, or directs a non-governmental body to accredit a conformity assessment body located in its territory to conduct conformity assessment procedures in its territory, it recognizes that accreditation throughout the Party's territory.

13. The Parties recognize that the choice of conformity assessment procedures in relation to a specific product covered by a technical regulation or standard should include an evaluation of the risks involved, the need to adopt procedures to address those risks, relevant scientific and technical information, incidence of non-compliant products and possible alternative approaches.

14. Any conformity assessment fees imposed by a Party shall be limited in amount to the approximate cost of services rendered.

15. Upon the request of an applicant for conformity assessment, each Party shall explain how any fee it imposes for such conformity assessment are limited in amount to the approximate cost of services rendered.

16. No Party shall apply a new or modified conformity assessment fee until the fee and the method for assessing the fee is published. Each Party shall provide an opportunity for interested persons to comment on its proposed introduction or modification of a conformity assessment fee.

17. No Party shall require consular transactions, including related fees and charges, as a condition of marketing, distribution, or sale of the product in the Party's territory.

18. No Party shall require that a product be accompanied by a certificate of free sale as a condition of marketing, distribution, or sale of the product in the Party's territory.]

[EU: Article 6 Standardization

1. The Parties shall promote closer cooperation between the standardization bodies located within their respective territories with a view to facilitating, *inter alia*:

(a) the exchange of information about their respective *activities*,

(b) the harmonization of standards based on mutual interest and reciprocity, according to modalities to be agreed directly by the standardization bodies concerned,

(c) the development of common standards, and

(d) the identification of suitable areas for such co-operation, in particular in new technologies.]

2. The Parties shall use their best endeavors to ensure that standardization bodies located within their

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respective territories (i) provide information in advance on their planned standardization activities that concern the development of new, or the review of existing, standards intended to support public policies, including the scope and purpose of the planned standards, and the prospective timetable procedures for their adoption, and (ii) publish drafts for public comment before finalizing or adopting such standards.

3. If a Party intends to select an existing or planned voluntary standard for reference in technical regulations, such selection shall be subject to objective, clear and transparent criteria, which shall be published before the selection is made. Standards for reference in technical regulations applicable on all or part of the territory of the Parties shall be selected following consideration of relevant international standards and other standards developed through an open and transparent process, including standards developed by standardization bodies located within the territory of the other Party.

4. The Parties undertake to keep references to standards in support of technical regulations up to date with the latest version of the standard and the latest review of the technical regulation.

5. The Parties shall endeavor to ensure that, in using standards to achieve compliance with the requirements of technical regulations or parts thereof, suppliers are free to use standards other than those chosen by domestic regulators for reference in such technical regulations, without prior authorization from the regulator, provided that such suppliers can demonstrate (e.g., through adequate technical documentation) that the applied alternative solution complies with the requirements of the technical regulation, or parts thereof.]

[US: Article 6: Standards

1. Each Party shall apply the Decision of the TBT Committee on Principles for the Development of the International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the TBT Agreement (the „Committee Decision“), issued by the WTO Committee on Technical Barriers to Trade (G/TBT/1Rev.10) in determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement or Article 4 of this Chapter exists.

2. Each Party shall treat any standard, guide or recommendation that is developed in accordance with the principles set forth in the Committee Decision as an international standard, guide, or recommendation for purposes of Articles 2, 5 and Annex 3 of the TBT Agreement. Accordingly, no Party shall refuse to treat a standard as an international standard based on:

(a) the domicile of the body that developed the standard;

(b) whether the body that developed the standard is an intergovernmental body; or

(c) whether the body that developed the standard provides for participation in its standards activities through national delegations or limits participation in its standards activities to persons affiliated with a government.

3. Where a Party requests or directs a body or bodies to prepare a standard with a view to mandating that a product comply with that standard, establishing a generally applicable presumption that a product complies with a technical regulation or conformity assessment procedure if it conforms to that standard, or otherwise allowing the standard to be used as a basis for or in support of compliance with technical regulation or conformity assessment procedure it shall observe, *mutatis mutandis*, the obligations set out in Articles 2.9.1 through 2.9.4 and 5.6.1 through 5.6.4 of the TBT Agreement and Article 4 of this Chapter.

4. For purposes of implementing paragraph 3, a Party shall carry out the steps set out in Articles 2.9.1 through 2.9.4 and 5.6.1 through 5.6.4 of the TBT Agreement and Article 4 of this Chapter with respect to any document in which the Party requests or directs a body or bodies to develop the standard and any related

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documents describing the standard to be developed. For greater certainty, the Party shall ensure that it allows any request or direction to develop a standard to be amended to take into account any discussions or comments received.

5. Where a Party requests a body to develop a standard that may be used for purposes of complying in whole or part with technical regulation or conformity assessment procedure, the Party shall specify in the request that the body shall:

(a) allow persons of the other Party with relevant technical expertise to participate in any of its technical bodies, including by accessing working documents, attending meetings, submitting technical proposals and advice concerning development of the standard, and ensuring prompt consideration of any such proposals and advice;

(b) not impose conditions on such participation that impede persons of the other Party with relevant technical expertise from participating, such as obligations to adopt or implement the standard, to withdraw an existing standard, to be affiliated with a national standards body or other entity that includes persons of the Party, or represent a national position or view;

(c) make publicly available, at least upon request, a list of persons and their affiliations that are participating or have participated in the development of the standard; and

(d) consider any relevant standard developed in accordance with the Committee Decision, as the basis for the standard it is requested to develop.

6. Prior to adopting any standard developed by a body in response to a request subject to paragraph 5, the Party shall verify that the body complied with the requirements of the request as specified in subparagraphs (a)-(d) when it developed the standard.

7. If a Party systematically gives preference, for purposes of complying with technical regulations and conformity assessment procedures, to standards that are developed through processes that do not allow persons of the other Party to participate on terms no less favorable than persons of the Party or that do not consider using as a basis for the standard any relevant standard developed in accordance with the Committee, the Party shall:

(a) maintain a process for persons of the other Party to submit an assessment to the Party that a standard other than the standard given preference for purposes of complying with the technical regulation or conformity assessment procedure fulfills the relevant requirements of that technical regulation or conformity assessment procedure; and

(b) no later than {30} days from the date it receives an assessment under subparagraph (a):

(i) decide whether to accept the assessment based on whether the standard fulfills the relevant requirements of the technical regulation or conformity assessment procedure and notify the person of its decision and the reasons therefor; and

(ii) publish its decision, including its reasons therefor, and transmit instructions to its customs and market surveillance authorities that any product from any supplier that conforms to the standard, or for which a conformity assessment procedure was performed in accordance with the standard, shall be presumed to be in conformity with the relevant requirements of the technical regulation or conformity assessment procedure.

8. For purposes of paragraph {7}, a Party:

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(a) may require that an assessment contain supporting documentation adequate to make the decision provided for in subparagraph 7(b)(i);

(b) shall permit an assessment to be conducted by any of the following: a producer, independent expert, or body that developed the standard.

9. Where an administrative authority of a Party incorporates by direct reference a standard in a technical regulation or conformity assessment procedure, it shall:

(a) prior to incorporating the standard into the technical regulation or conformity assessment procedure, consider whether additional standards raised in comments on the proposed technical regulation or conformity assessment procedure could fulfill relevant requirements and therefore also be incorporated or otherwise allowed for purposes of complying with the technical regulation or conformity assessment procedure; and

(b) after adopting the technical regulation or conformity assessment procedure, provide for the consideration of petitions for a rulemaking or a retrospective review to amend the technical regulation or conformity assessment procedure to allow the use of a standard other than the one referenced in the original regulation for purposes of compliance with the regulation.]

[EU: Article 3

Cooperation

The Parties shall strengthen their co-operation in the areas of technical regulations, standards, metrology, conformity assessment procedures, accreditation, market surveillance and monitoring and enforcement activities in order to facilitate the conduct of trade between the Parties, as laid down in Chapter [...] (*Regulatory Cooperation*). This may include promoting and encouraging cooperation between their respective public or private organizations responsible for standardization, metrology, conformity assessment, accreditation, market surveillance and conformity assessment bodies to participate in cooperation arrangements that promote the acceptance of conformity assessment results.]

[US: Article 7: Cooperation

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures to reduce and eliminate unnecessary technical barriers to trade, including costs associated with unnecessary regulatory differences, while achieving the levels of health, safety and environmental protection that each side deems appropriate and otherwise meeting legitimate regulatory objectives. To this end, the Parties shall seek to identify, develop, and promote trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that address particular cross-cutting or sector-specific issues. These initiatives may include cooperation on regulatory issues, such as promoting the adoption of good regulatory practices, establishing procedures to recognize as equivalent standards used as a basis for or in support of compliance with regulations, and instituting mechanisms to facilitate the acceptance of conformity assessment results.

2. The Parties shall encourage cooperation between their respective organizations responsible for standardization, conformity assessment, accreditation and metrology, whether they be public or private, to address matters arising under this Chapter.

3. The Parties shall strengthen opportunities for public input into their cooperation activities, including by making information regarding cooperation activities publicly available and by soliciting public comments

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and taking such comments into account with respect to cooperation activities.]

[US: Article X: Agreements with Third Countries

1. Recognizing that the purpose of an agreement or understanding establishing a customs union or free trade area or providing trade-related technical assistance should be to facilitate trade between the parties' territories and not raise barriers to the trade of non-parties with such territories; and that in their formation or enlargement the parties to such agreements or understandings should to the greatest possible extent avoid creating adverse effects on the trade of other WTO Members:

(a) Each Party shall promote through such agreements and understandings the adoption and use, as the basis for standards, technical regulations and conformity assessment procedures, of any relevant standards, guides or recommendations developed in accordance with the Committee Decision; and

(b) no Party shall include provisions in such agreements and understandings that require a party to the agreement or understanding (“third party”) to: (i) withdraw, or otherwise not use³ any relevant standard, guide or recommendation developed in accordance with the Committee Decision that the third party had used prior to conclusion or entry into force of the agreement or understanding; or (ii) otherwise take action that results in the third party not accepting for import or sale in its market products that conform to any such standard, guide or recommendation.⁴]

[EU: Article 8

Marking and Labeling

1. In accordance with Article 2.2 of the *TBT Agreement*, with respect to technical regulations relating to labeling or marking requirements, the Parties shall ensure they are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, such labeling or marking requirements shall not be more trade restrictive than necessary to fulfill a legitimate objective, taking account of the risks that non-fulfillment would create. Compulsory marking requirements, while continuing to provide the necessary information to the user or consumer as well as to public authorities regarding compliance or products with specific requirements, should be limited as far as possible to what is essential and to what is the least trade restrictive to achieve the legitimate objective pursued.

2. The Parties undertake to engage in a review of their marking and labeling requirements with a view to identifying sectors and areas where divergences could be reduced.

3. The Parties undertake to take administrative measures against misleading marking applied by suppliers on their territory. In particular, they undertake to apply measures against products on the market of their territory that bear marking that falsely purports to indicate origin in the territory of the other Party.

4. If a Party applies obligatory country of origin marking or labeling requirements, a marking designating the whole territory of a Party shall be accepted by the other Party as compliant with such requirements.]

3 [US: ³ For purposes of this paragraph, “use” refers to the use of a standard, guide or recommendation for purposes of complying with a technical regulation or conformity assessment procedure, for example, through indirect reference in a technical regulation or otherwise allowing persons to use the standard as a means of complying with a technical regulation.]

4 [US: ⁴ This paragraph shall not apply with respect to agreements for the accession of a country to the European Union.]

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[US: Article 8: Technical Discussions and Resolution of Trade Concerns

1. Each Party may request technical discussions to discuss any standard, technical regulation or conformity assessment procedure of the other Party that it considers might adversely affect trade. The request shall be made in writing and identify:

(a) the measure at issue;

(b) the provisions of the Chapter or the WTO TBT Agreement to which the concerns relate; and

(c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure.

2. A Party shall deliver its request to the Chapter Coordinator of the other Party designated pursuant to paragraph 5 of Article 10.

3. The Party to which the request is made shall promptly reply to the request in writing. The Parties shall meet to discuss the concerns raised in the request, in person or via video or teleconference, within {60} days of the date of the request and shall endeavor to resolve the matter as expeditiously as possible. The Parties may convene the Committee as appropriate for this purpose. If a requesting Party believes that the matter is urgent, it may request that a meeting take place within a shorter time frame. In such cases, the responding Party shall give positive consideration to such a request.

4. Unless the Parties otherwise agree, the discussions and any non-publicly available information exchanged in the course of the discussions, shall be confidential and, for greater certainty, without prejudice to a Party's rights and obligations under Chapter XX (Dispute Settlement).]

[EU: Article 9

Management of the Technical Barriers to Trade Chapter

P.M.]

[US: Article 9: Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the Chapter Coordinator of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may convene the Committee as appropriate for this purpose.

2. For greater certainty, this Article is without prejudice to a Party's rights and obligations under Chapter XX (Dispute Settlement).]

[US: Article 10: Committee on Technical Barriers to Trade

1. The Parties hereby establish a Committee on Technical Barriers to Trade, comprising representatives of each Party.

2. The Committee's functions shall include:

(a) seeking to resolve concerns regarding any matter arising under this Chapter;

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- (b) monitoring and identifying ways to strengthen implementation of this Chapter;
- (c) identifying any potential amendments to, or issues of interpretation regarding, the Chapter for referral to the {Joint Committee/FTA institutional body};
- (d) monitoring any technical discussions on matters arising under the Chapter requested pursuant to Article XX.8 (Technical Exchange and Resolution of Trade Concerns);
- (e) providing a regular forum for exchanging information relating to each Party's standards, technical regulations and conformity assessment procedures and related policies;
- (f) enhancing cooperation between the Parties regarding standards, technical regulations, and conformity assessment procedures, including by:
 - (i) facilitating improved understanding between the Parties related to the implementation of the WTO TBT Agreement and promoting cooperation between the Parties on TBT issues under discussion in multilateral fora, including the WTO TBT Committee and bodies that develop standards in accordance with the WTO TBT Committee Decision principles for the development of international standards, as appropriate;
 - (ii) identifying, developing, and promoting trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures addressing particular cross-cutting or sector-specific issues such as those specified in Article 7 as well as identifying opportunities for greater bilateral engagement which may include technical exchanges;
- (g) discussing at an early stage changes to, or proposed changes to, standards, technical regulations or conformity assessment procedures of either Party;
- (h) encouraging cooperation between non-governmental bodies in the Parties' territories, as well as cooperation between governmental and non-governmental bodies in the Parties' territories in matters pertaining to this Chapter;
- (i) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;
- (j) exchanging information, at a Party's request, on the Parties' respective views regarding third country issues concerning standards, technical regulations, and conformity assessment procedures so as to foster a common approach to their resolution;
- (k) providing opportunities for the public to participate in the work of the Committee, such as soliciting and taking into account comments on matters related to the implementation of this Chapter;
- (l) reporting to the Joint Committee on the implementation of this Chapter as appropriate; and
- (m) taking any other steps that the Parties consider will assist them in implementing this Chapter.

3. The Committee shall meet at least once a year unless the Parties otherwise decide.

4. The Committee may, as it considers appropriate, establish and determine the scope and mandate of working groups, including *ad hoc* working groups, comprising representatives of each Party. Subject to

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decision of the Committee and as the Parties may decide, each working group, including an *ad hoc* working group, may:

(a) as it considers necessary and appropriate, include or consult with non-governmental experts and stakeholders; and

(b) determine its work program, taking into account relevant international activities.

5. Each Party shall designate a Chapter Coordinator, and shall provide the other Party with the name of its designated Chapter Coordinator, along with the contact details of the relevant officials in that organization, including telephone, email, and other relevant details.

6. A Party shall notify the other Party promptly of any change of its Chapter Coordinator or any amendments to the details of the relevant officials.

7. The responsibilities of each Chapter Coordinator shall include:

(a) communicating with the other Party's Chapter Coordinator including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;

(b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this Chapter;

(c) consulting and, where appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter; and

(d) additional responsibilities as the Committee may specify.]

CHAPTER []
SANITARY AND PHYTOSANITARY MEASURES
CONSOLIDATED PROPOSALS

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CHAPTER X

SANITARY AND PHYTOSANITARY MEASURES

[Note: Consistent with the recommendations of the US-EU High Level Working Group Report on Jobs and Growth, the Parties seek to establish an “SPS-plus” chapter that builds upon the key principles of the World Trade Organization (WTO) SPS Agreement, including with respect to science, while preserving each Party's ability to achieving its appropriate level of protection as it relates to human, animal or plant life or health.]

[EU: Objectives

The objectives of this chapter are to:

1. Facilitate trade between the Parties to the greatest extent possible while preserving each Party's right to protect human, animal or plant life and health in its territory and respecting each Party's regulatory systems, risk assessment, risk management and policy development processes;
2. Ensure that the Parties' sanitary and phytosanitary (SPS) measures do not create unnecessary barriers to trade;
3. Further the implementation of the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures* (WTO SPS Agreement);
4. Build upon and extend the scope of the *Veterinary Agreement* which is fully integrated in this Chapter;
5. Improve communication and cooperation on sanitary and phytosanitary measures between the Parties;
6. Improve consistency, predictability and transparency of each Party's SPS measures;
7. Provide a framework for dialogue and cooperation with a view to enhancing the protection and welfare of animals and reaching a common understanding concerning animal welfare standards.]

Article X.1: Scope [and Coverage]

This Chapter [US: , unless otherwise specified,] applies to all SPS measures that may, directly or indirectly, affect trade between Parties.

[EU: This Chapter shall also apply to collaboration on animal welfare matters.]

Article X.2 [EU: Rights and Obligations /] Affirmation of the SPS Agreement

The Parties affirm their rights and obligations [US: with respect to each other] under the [WTO] SPS Agreement.

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[EU: Nothing in this Chapter shall limit the rights or obligations of the Parties under the Agreement established by the World Trade Organization and its Annexes.

The Parties shall avail themselves of the necessary resources to effectively implement this Chapter.]

Article X.3: Competent Authorities [US: and Contact Points]

[EU: For the purpose of this Chapter, the competent authorities of each Party are those listed in {Annex 2}. The Parties shall inform each other of any change of these competent authorities.]

[US: Upon entry into force of this Agreement, each Party shall provide the other Party with the following information in writing:

(a) with respect to each of the Parties' competent authorities that have responsibility for developing, implementing, and enforcing SPS measures that may affect trade between the Parties;

(i) a description of each authority, including the authority's specific responsibilities, and

(ii) a point of contact within each authority; and

(b) the name and contact information for a representative of the Party with authority to accept correspondence or inquiries from the other Party regarding matters arising under this Chapter.

Each Party shall promptly transmit to the other Party any material changes to this information.]

Article X.4: Equivalence

[EU: 1. The importing Party shall accept sanitary and phytosanitary measures of the exporting Party as equivalent to its own if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of protection.]

[EU: 2. Equivalence may be recognized in relation to an individual measure and/or groups of measures and/or systems applicable to a sector or part of a sector. For the determination, recognition and maintenance of equivalence the Parties shall follow the principles set out in the available guidance of international standard-setting bodies¹ recognized by the WTO SPS Agreement, as well as in the provisions of {Annex IV}, where applicable.]

[US: 1. Each Party recognizes that determining that SPS measures of the other Party achieve an equivalent level of sanitary or phytosanitary protection as its own SPS measures can facilitate trade

¹ [EU: Internationally agreed guidelines include, but are not limited to Guidelines of Codex Alimentarius on the Judgment of Equivalence of Sanitary Measures associated with Food Inspection and Certification Systems CAC/GL 53-2003; International Standard for Phytosanitary Measures ISPM 24 Guidelines for the determination and recognition of equivalence of phytosanitary measures.]

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between the Parties. Each Party shall permit such determinations of equivalence to be made with respect to a specific measure, on the basis of a product or category of products or on a system-wide basis.

2. Each Party, in determining whether an SPS measure of the other Party achieves the Party's appropriate level of protection, shall take into account the following, where relevant:

- (a) decisions of the WTO SPS Committee;
- (b) the work of the relevant international organizations; and
- (c) knowledge acquired through experience with the other Party's relevant competent authorities.

3. Each Party shall follow the process set forth in Annex X-A with respect to determinations of equivalence.]

[EU: 3. The final determination whether a sanitary measure maintained by an exporting Party achieves the importing Party's appropriate level of sanitary protection rests solely with the importing Party acting in accordance with its administrative and legislative framework.

4. Where the importing Party has concluded a positive equivalence determination, the importing Party shall take the necessary legislative and/or administrative measures to implement it without undue delay and normally within six months.

5. If necessary and objectively justified, the Parties may identify special conditions which, in combination with the exporting Party's measures, will achieve the importing Party's appropriate level of protection.

6. {Annex V} sets out:

- (a) The areas for which the importing Party recognizes that the measures of the exporting Party are equivalent to its own, and
- (b) The areas for which the importing Party recognizes that the fulfillment of the specified special conditions, combined with the exporting Party's measures, achieve the importing Party's appropriate level of protection.

7. The Parties may agree on simplified sanitary or phytosanitary certificates for products for which equivalence has been recognized.]

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[US: Article X.5: Science and Risk²

Note: additional provisions aimed at improving the use of science in SPS decision-making to be considered.

1. In undertaking a risk assessment appropriate to the circumstances, each Party shall ensure that it takes into account:

(a) relevant available scientific evidence, including quantitative or qualitative data and information; and

(b) relevant guidance from the WTO SOS Committee and international standards, guidelines, and recommendations concerning the risk at issue.

2. Prior to adopting an SPS regulation, each Party shall evaluate – in light of the results of any risk assessment that it undertook or relied upon in developing the SPS regulation – any alternatives to achieve the appropriate level of protection being considered by the Party or identified through timely submitted public comments, including where raised, the alternative of not adopting any regulation. Each Party shall conduct such evaluation with a view to ensuring compliance with the Party's obligation under 5.6 of the SPS Agreement.

3. Each Party shall ensure that any risk assessment that it undertakes related to developing or reviewing an SPS regulation is under normal circumstances³ made available on the Internet for public review and comment. Each Party shall ensure that any of its competent authorities responsible for undertaking a risk assessment take into account any relevant comments the Party receives during the period afforded for interested parties to provide public comment, including where appropriate by revising the risk assessment. Each Party shall also ensure that any of its competent authorities that are responsible for undertaking the risk assessment or that may use it in connection with developing or reviewing an SPS regulation, shall, upon request, discuss with the other Party in a timely manner any matters the other Party raises in its comments related to the risk assessment, including possible alternatives to achieve the Party's appropriate level of protection.

4. At the time a Party makes a risk assessment available for public comment, it shall include the following explanations:

(a) how the assessment is appropriate to the circumstances of the particular risk at issue and takes into account relevant scientific evidence, including quantitative or qualitative data and information;

(b) how, if at all, the assessment takes into account the relevant international standards, guidelines, and recommendations concerning the risks at issue; and

2 [US: This Article shall not apply with respect to any SPS measure that conforms to international standards, guidelines, or recommendations.]

3 [US: {Note: Specific exceptional circumstances to be discussed}]

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(c) how the assessment takes into account any risk assessment techniques developed by the relevant international organizations.

5. When issuing or submitting any final administrative decision for an SPS regulation, the Party shall make publicly available on the Internet an explanation of:

(a) the relationship between the regulation and the scientific evidence and technical information, including any risk assessment and any other analyses or information the regulatory authority considered in preparing the regulation, as well as how the specific requirements set out in the regulation address the risks the regulation seeks to address;

(b) any alternative identified through public comments, including by a Party, as significantly less restrictive to trade; and

(i) whether any of those alternatives are significantly less restrictive to trade;

(ii) whether such alternatives were able to achieve the Party's appropriate level of protection or were technically or economically feasible; and

(iii) its reasons for selecting the measure set out in the final administrative decision.

6. Where a regulatory authority of a Party submits a proposal for an SPS measure for approval by a committee comprising national representatives and:

(a) the committee rejects or modifies the proposal; or

(b) the regulatory authority of a Party modifies the proposal in response to feedback, including any rejection, from the committee

each member of the committee or the regulatory authority of the Party, as the case might be, shall make publicly available an explanation of the basis for rejecting or modifying the proposal, including the extent to which it is supported by relevant scientific evidence and technical information and analysis, including any risk assessment.

7. Each Party that provisionally adopts an SPS measure pursuant to Article 5.7 of the SPS Agreement that affects trade between Parties shall, upon request, explain:

(a) to the extent possible, any alternatives significantly less restrictive to trade it considered and why it considered that any such alternatives do not achieve the Party's appropriate level of protection or are not technically or economically feasible;

(b) its view on any comments and information submitted by the other Party;

(c) the additional information it believes **[US: This Article shall not apply with respect to any SPS measure that conforms to international standards, guidelines, or recommendations necessary for a more objective assessment of risk and plans for obtaining such information;** and

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(d) under what circumstances, and if possible when, it will review whether to maintain or modify the measure.]

Article X.6: Adaption to Regional [US: Pest or Disease] Conditions

[EU: Animals, animal products and animal by-products]

[EU: 1. The Parties recognize the principle of zoning which they agree to apply in their trade.]

[EU: 6. The Parties also recognize the concept of compartmentalization and agree to cooperate on this matter.]

[US: 1. Each Party recognizes that adaption of SPS measures to regional pest or disease conditions can facilitate trade. Each Party shall provide that such adaption may be made on the basis of an area or zone, place of production, or subpopulation. {not limited to animal products}]

[EU: 2. The importing Party shall recognize the health status of zones as determined by the exporting Party, with respect to the animal and aquaculture diseases specified in {Annex II}.

3. Without prejudice to Article X.18 {Emergency measures}, the importing Party shall recognize zoning decisions taken by the exporting Party in accordance with the criteria set out in Annex III where an area is affected by one or more of the diseases listed in {Annex II}.]

[US: 2. The competent authorities of each Party shall work together to establish the risk management measures that would apply to trade between the Parties in the event either Party has made any change with respect to disease or pest status of a demarcation in its territory. {not limited to animal products}

3. Each Party shall normally recognize the demarcations of the other Party located in the other Party's territory. {not limited to animal products}]

[EU: 4. The exporting Party shall, if requested by the importing Party, provide full explanation and supporting data for the determinations and decisions covered by this Article and may request technical consultations in accordance with Article 15 {Technical Consultation}. The importing Party shall assess the information within 15 working days following receipt. Any verification the importing Party may request shall be carried out in accordance with Article [] {Audit and verification} and within 25 working days of receipt of the request for verification. The Parties shall endeavor to avoid unnecessary disruption to trade.

5. Where a Party considers that a specific region has a special status with respect to a specific disease other than those in {Annex II} and which fulfills the criteria laid down in the OIE Terrestrial Code Chapter 1.2, it may request recognition of this status. The importing Party may also request additional guarantees in respect to imports of live animals and animal products appropriate to the agreed status. The guarantees for specific diseases are specified in {Annex IV}.]

[US: 4. Each Party, in determining the pest or disease status respect to a particular demarcation

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located in the other Party, shall take into account the following where applicable:

- (a) decisions of the WTO SPS Committee;
- (b) the work of the relevant international organizations; and
- (c) knowledge acquired through experience with the exporting Party's relevant sanitary or phytosanitary authorities.

5. Each Party shall follow the procedures set forth in Annex X-B with respect to a request from the other Party to determine that a particular demarcation is free of a particular pest or disease.]

[US: *Note: Annex X-B will be tabled at a later date.*]

[EU: Plants and plant products

7. Without prejudice to Article X.18 {Emergency measures} each Party shall recognize the phytosanitary status of the exporting Party as determined by the exporting Party in accordance with the following provisions:

- (a) The Parties recognize the concepts of Pest Free Areas, Pest Free Places of Production and Pest Free Production Sites, as well as areas of low pest prevalence as specified in relevant FAO/IPPC International Standards for Phytosanitary Measures (ISPM), and of Protocol Zones according to Council Directive 2000/29/EC, which they agree to apply in their trade.
- (b) When establishing or maintaining phytosanitary measures, the importing Party shall take into account pest free areas, pest free places of production, pest free production sites, areas of low pest prevalence, as well as protected zones established by the exporting Party.
- (c) The exporting Party shall identify Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites, Protected Zones or areas of low pest prevalence to the other Party and, upon request, provide a full explanation and supporting data as provided for in the relevant ISPMs or otherwise deemed appropriate. Unless the importing Party raises an objection and requests consultations within 90 days, the regionalization decision so notified shall be understood as accepted.
- (d) Consultations referred to in subparagraph (c) shall take place in accordance with Article 15 {Technical consultations}. The importing Party shall assess additional information requested within 90 days after receipt. Any verification the importing Party may request shall be carried out in accordance with {Article [] Audit and verification} and within 12 months following receipt of the request for verification, taking into account the biology of the pest and the crop concerned.]

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Article X.7: Transparency [US: of Sanitary and Phytosanitary Regulations]

[EU: Notification:

1. Each Party shall notify the other Party without undue delay of:

(a) significant changes in pest/disease status, such as the presence and evolution of diseases in {Annex II Process of Recognition of Regional Conditions};

(b) changes in their respective sanitary or phytosanitary measures;

(c) findings of epidemiological importance with respect to animal diseases which are not in Annex II, or which are new diseases;

(d) significant food safety issues relating to products traded between the Parties; and

(any significant changes to the structure and organization of their competent authorities.

Information exchange:

2. The Parties will endeavor to exchange information on other relevant issues including:

(a) on request, the results of a Party's official controls and a report concerning the results of the controls carried out;

(b) the results of import checks provided for in Article 13 {Import Checks and Fees} in case of rejected or non-compliant consignments of products;

(c) on request, risk analyses and scientific opinions relevant to this Chapter and produced under responsibility of a Party.

3. Unless otherwise decided by the Committee referred to in Article 18 {Joint Management Committee}, when the information referred to in paragraph 1 or 2 has been made available via notification to the WTO or another relevant international standard-setting body in accordance with the relevant rules, the requirements in paragraph 1 and 2 as they apply to that information are fulfilled.]

[US: 1. During the time period described in paragraph 2, when a regulatory authority of a Party is developing an SPS regulation, it shall, under normal circumstances,⁴ make publicly available on the Internet:

(a) the text of the regulation it is developing;

(b) any risk assessment, as well as the scientific evidence and technical information and any other analyses and information the regulatory authority relied upon in support of the regulation and an explanation of how such evidence, information and analyses support the

4 [US: Note: Specific exceptional circumstances to be discussed]

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regulation;

(c) an explanation of how the regulation, including its objectives, achieves those objectives, the rationale for the material features of the regulation, and any major alternatives being considered; and

(d) the name and contact information of an official who may be contacted for questions regarding the regulation.

2. Each Party shall make publicly available the information described in paragraph 1:

(a) after the relevant authority of the Party has developed a text for the regulation that contains sufficient detail so as to allow persons to evaluate how the regulation, if adopted, would affect their interests; and

(b) before the relevant authority of the Party that is developing the measure issues or submits any final administrative decision with respect to the regulation so that this authority may take into account timely received comments and, as appropriate, revise the regulation.

3. Where a regulatory authority of a Party is developing an SPS regulation and makes publicly available the information described in paragraph 1, the Party shall ensure that any person, regardless of domicile, has an opportunity, on no less favorable terms than any person of the Party, to submit comments on the regulation, including by providing written comments and other input with respect to the information described in paragraph 1, to the regulatory authority. The Party shall promptly make publicly available any comments it receives on the regulation, except to the extent necessary to protect confidential information or withhold personal identifying information or inappropriate content, in which case the Party shall ensure it makes publicly available a version that redacts such information or a summary of the comment that does not contain such information.

4. In determining the time period during which interested persons may submit comments on the regulation, each Party shall take into account the relevant decisions of the WTO SPS Committee.

5. Where a regulatory authority of a Party issues any final administrative decision for an SPS regulation, each Party shall also make publicly available:

(a) the text of the regulation;

(b) an explanation of the regulation, including its objectives, and how the regulation achieves those objectives, and the rationale for the material features of the regulation (to the extent different from the explanation provided in accordance with paragraph 1 (c));

(c) the regulatory authority's views on substantive issues raised in the comments; and

(d) an explanation of the nature and the reason for any significant revisions to the regulation since the Party made it available for public comment.

6. Each Party shall publish, in print or electronically, all final SPS regulations in a single official journal or website. Each Party shall publish in this single official journal or website the text of any

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SPS regulation it is developing and that it makes publicly available in accordance with paragraphs 1 and 2.]

[EU: Article X.8: Elimination of Redundant Control Measures

1. The Parties recognize each other's competent authorities as responsible to ensure that establishment, facilities and products eligible for exports meet the applicable sanitary or phytosanitary requirements of the importing Party.
2. The importing Party shall accept establishments or facilities that were authorized and listed by the exporting Party without re-inspection, third party certification or any other additional guarantees.]

Article X.9 [EU: Audits and Verification] [US: Audit and Inspections]

[EU: 1. In order to maintain confidence in the effective implementation of the provisions of this Chapter, each Party has the right to carry out an audit or verification, or both, of all or part of the other Party's control system. Audits shall follow a systems based approach which relies on the examination of a sample of system procedures, documents or records and, where required, a selection of sites.

2. The nature and frequency of audits and verifications shall be determined by the importing Party taking into account the inherent risks of the product the track record of past import checks and other available information, such as audits and inspections undertaken by the competent authority of the exporting party.

3. For the purpose of paragraph 1, the importing Party shall endeavor to rely on audits and verifications undertaken by the competent authority of the exporting Party.

4. Audits and verifications shall be conducted in accordance with {Annex VII} and in line with internationally agreed guidelines⁵.

5. Verification procedures may include, but are not limited to:

(a) an assessment of all or part of the exporting Party's total control program, including, where appropriate, reviews of the exporting Party's inspection and audit programs, and

(b) on-site checks and inspections of a selection of sites within the scope of the audit.

6. For the European Union, the European Commission will carry out the verification procedures provided for in paragraph 1. The US agencies identified in {Annex I} shall facilitate the performance of these verification procedures by the Commission.

5 [EU: Internationally agreed guidelines include, but are not limited to Codex Guidance document for the design, operation, assessment and accreditation of food import and export inspection and certification systems (CAC/GL 26-1997); International Standards for Phytosanitary Measure ISPM 20: Guidelines for a phytosanitary import regulatory system.]

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7. The US agencies identified in Annex I will carry out the verification procedures provided for in paragraph 1 for the US. The European Union shall facilitate the performance of these verification procedures by those agencies.

8. Any measures taken as a consequence of audits and verifications shall be proportionate to risks identified. If so requested, technical consultations regarding the situation shall be held in accordance with Article X.17 {Technical Consultation}. The Parties shall consider any information provided through such consultations.

9. Either Party may publish the results and conclusions of its verification procedures.

10. Each Party shall bear its own costs associated with the audit or verification.]

[US: 1. Each Party shall conduct any audits of the other Party's competent authorities in accordance with Annex X-C.

Note: Annex X-C will be tabled at a later date.

2. Each Party recognizes that, in order to verify compliance with applicable SPS measures and any applicable requirements agreed upon by the Parties, a Party may inspect premises, laboratories, and other relevant facilities in the other Party's territory.]

[US: Note: provisions to prevent the release of personal privacy and business confidential information, to be considered.]

Article X.10: [EU: Export Certificates] [US: Certification]

[EU: 1. When a party requires an export certificate for the importation of a product, this shall be based on the principles laid down in the international standards of the Codex Alimentarius, the IPPC and the OIE.

2. In respect of the certification of plants, plant products and regulated commodities, the competent authorities shall apply the principles laid down in the FAO International Standards for Phytosanitary Measures No. 7 “Export Certification System” and No. 12 “Guidelines for Phytosanitary Certificates”.

3. When an official health certificate is required for the importation of a consignment of live animals or animal products and if the importing Party has accepted the measures of the exporting Party as equivalent to its own, the Parties shall use simplified model health attestations prescribed in {Annex VIII}, unless the Parties jointly decide otherwise. The Parties may also define model attestations for other products if they so jointly decide in accordance with Article X.15 {Joint Management Committee}.

4. Original certificates or other original documents may either be transmitted by mail or by secure methods of electronic data transmission that offer equivalent certification guarantees. The Parties

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shall cooperate in the implementation of electronic certification procedures in accordance with the provisions described in {Annex VIII}.]

[US: 1. Each Party shall endeavor to use means other than certification to demonstrate that imports from the other Party satisfy its appropriate level of protection or meet its applicable SPS requirements. To help ensure that any certification requirements, including any attestation or information requirements, are applied only to the extent necessary to protect human, animal, or plant life or health, each Party shall ensure that its certification forms:

(a) are prepared in a manner that avoids imposing unnecessary burdens on the other Party's regulatory and certification authorities, including duplicative attestations;

(b) are adapted to recognize the competent authorities of the other Party and facilitate their ability to make the requested certifications; and⁶

(c) take into account relevant decisions of the WTO SPS Committee, international standards, guidelines and recommendations, and determinations made by the Parties related to regional conditions and equivalence.

2. Each Party shall, on request, assist the other Party in determining the authenticity of specific certificates.

3. No later than {15} days after the date of entry into force of this Agreement, the Parties shall establish model certificates that take into account the circumstances of trade between the Parties. To the extent feasible, each Party shall base its certification requirements for imports from the other Party on these model certificates.]

[EU: Article X.11: Trade Facilitation/Conditions

Sanitary and phytosanitary import procedures

1. Sanitary and phytosanitary procedures shall be established with the objective of minimizing negative trade effects and simplifying and expediting the approval and clearance process while ensuring the fulfillment of the importing Party's requirements.

2. The Parties shall ensure that all sanitary and phytosanitary procedures affecting trade between the parties are undertaken and completed without undue delay and that they are not applied in a manner which would constitute an arbitrary or unjustifiable discrimination against the other Party.

General sanitary and phytosanitary import requirements

3. The importing Party shall make available information about sanitary and phytosanitary import requirements and conditions and about the import authorization process, including complete details about the mandatory administrative steps, expected timelines, and authorities in charge of receiving

⁶ **[US:** For greater certainty, each Party recognizes that the other Party is entitled to designate the competent authorities that may make the requested certifications and that those authorities may, as appropriate, delegate their authority to other government entities.]

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import applications and of processing them.

4. In accordance with applicable standards agreed under the International Plant Protection Convention (IPPC) the Parties undertake to maintain adequate information on their pest status (including surveillance, eradication and containment programs and their results) in order to support the categorization of pests and to justify import phytosanitary measures.

5. The Parties shall establish lists of regulated pests for commodities where a phytosanitary concern exists. The list shall contain:

- (a) the pests not known to occur within any part of its own territory;
- (b) the pests known to occur within any part of its own territory and under official control;
- (c) the pests known to occur within any part of its own territory, under official control and for which pest-free areas are established.

6. For commodities for which a phytosanitary concern exists, import requirements shall be limited to measures ensuring the absence of regulated pests of the importing Party. Such import requirements shall be applicable to the entire territory of the exporting Party.

Specific sanitary and phytosanitary import requirements

7. The Parties shall ensure that tolerances and maximum residue levels adopted by the Codex Alimentarius Commission will be applied by each Party after the entry into force of this Agreement without undue delay unless the importing Party signals a reservation in the Codex Alimentarius Commission. Such tolerances and maximum residue levels shall apply between the Parties within 12 months after their adoption.

8. Where it is necessary to establish specific import requirements, such as model certificates, the importing Party shall take the necessary legislative and administrative steps to allow trade to take place without undue delay and normally within one year. In order to establish specific import requirements, the exporting Party shall, upon request of the importing Party:

- (a) provide all relevant information required by the importing Party; and
- (b) give reasonable access to the importing Party for inspection, testing, auditing and other relevant procedures.

9. The importing Party shall make available a list of commodities for which it is required to conduct a Pest Risk Analysis prior to the authorization of imports. Pest risk analyses shall be carried out as promptly as possible and normally within one year of a request being made.

10. Where a range of alternative sanitary or phytosanitary measures may be available to attain the appropriate level of protection of the importing Party, the Parties shall, upon request of the exporting Party, establish a technical dialogue with a view to selecting the most practicable and least trade-restrictive solution.

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Trade facilitation

11. Where it is necessary for the import of a product that an establishment or facility be included on a list by the importing Party, the importing Party shall approve such establishments or facilities which are situated on the territory of the exporting Party within {one month} and without prior inspection of individual establishments or facilities if:

- (a) the exporting Party has requested such an approval for a given establishment or facility, accompanied by the appropriate guarantees, and
- (b) the conditions and procedures set out in {Annex VI} are fulfilled.

The importing Party shall make its lists publicly available.

12. Without prejudice to existing arrangements at the time of entry into force of this Agreement and unless the Parties agree otherwise, consignments or regulated commodities shall be accepted on the basis of adequate guarantees by the exporting Party, without:

- (a) Preclearance programs. Control activities at the country of origin performed by the NPPO of the country of destination should not be applied as a permanent import measure and only intended to facilitate new trade. On a voluntary basis, the NPPO of the country of origin may request preclearance within the inspection activities carried out by the importing countries as a trade facilitation tool;
- (b) Import licenses or import permits;
- (c) Phytosanitary protocols or work plans prescribed by the importing Party.

13. Each Party shall ensure that products exported to the other Party meet the appropriate level of protection of the importing Party. The responsibility for the implementation of adequate control measures and inspections lies with the exporting Party. The importing Party may require that the relevant competent authority of the exporting Party objectively demonstrate, to the satisfaction of the importing Party, that the import requirements are fulfilled.]

[US: Article X.12: Regulatory Approvals for Products of Modern Agricultural Technology

1. Where a Party requires a product of modern agricultural technology to be approved or authorized prior to its importation, use or sale in its territory, the Party shall allow any person to submit an application for approval at any time.

2. Where a Party requires a product of modern agricultural technology to be approved or authorized prior to its importation or sale in its territory, each Party shall make publicly available:

- (a) a description of the processes it applies to accept, consider, and decide applications for approval or authorization;
- (b) the competent authorities responsible for receiving and deciding applications for

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approval or authorization;

(c) the timelines for completion of any steps or procedures in the approval or authorization processes;

(d) any documentation, information, or actions it requires from applicants as part of its approval or authorization processes; and

under normal circumstances⁷ each Party shall promptly make publicly available any risk assessment it conducts as part of an approval or authorization process for a product of modern agricultural technology.

3. Each Party shall endeavor to meet applicable timelines for all steps in its approval or authorization processes for products of modern agricultural technology. Where a Party does not meet the timeline for a step in an approval or authorization process, upon request of the other Party, the Party shall provide a timely notification to the other Party explaining why the timeline for that step was not met and identify and update the timeline for all remaining steps in the approval or authorization process.

4. Each Party shall avoid unnecessary duplication and burdens with respect to:

(a) any documentation, information, or actions required of applicants as part of its approval or authorization processes for products of modern agricultural technology; and

(b) any information the Party evaluates as part of the approval or authorization processes for products of modern agricultural technology.

5. Each Party shall promptly publish any changes to its required approval or authorization processes or related requirements for products of modern agricultural technology. Except in urgent circumstances, each Party shall endeavor to provide a transition period between publication of any material changes to its approval or authorization processes or related requirements for products or modern agricultural technology and their entry into force to allow interested persons to become familiar with and adapt to such changes, and endeavor to accommodate and avoid lengthening the approval or authorization process for applications that were submitted prior to publication of the changes. However, where the change reduces burdens on interested persons, entry into force should not be unnecessarily delayed.

6. Each Party shall maintain mechanisms or processes that provide an applicant seeking approval or authorization for a product of modern agricultural technology to timely obtain:

(a) information on the status of its application for approval or authorization;

(b) answers to questions regarding the approval or authorization processes and regulatory requirements for approval;

(c) notice that the Party requires clarification or additional information from the applicant;

⁷ [US: Note: Specific exceptional circumstances to be discussed]

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(d) opportunities to provide clarification with respect to its application or additional information in support of it during the review of the application; and

(e) opportunities to correct, or identify potential concerns regarding, information being considered or relied upon by the Party in considering and deciding on the application, including with respect to any risk or safety assessments conducted.

7. Each Party shall participate in the Global Low Level Presence Initiative to develop an approach or set of approaches to manage low-level presence in order to reduce unnecessary disruptions affecting trade.

8. The Parties hereby establish a Working Group on Trade in Products of Modern Agricultural Technologies (“Working Group”) to be co-chaired by representatives of each Party’s trade agency. Each Party shall designate officials from its competent authorities, including officials from authorities that conduct or evaluate risk assessments in connection with applications for approval of products of modern agricultural technology, to participate in the Working Group. The Working Group shall be a forum for the Parties to:

(a) discuss specific measures or issues related to modern agricultural technologies that may affect, directly or indirectly, trade between the Parties;

(b) discuss and resolve specific trade concerns arising from a measure of a Party affecting products of modern agricultural technology;

(c) facilitate the exchange of information, including on laws, regulations and policies of each Party, related to the trade of products of modern biotechnology; and

(d) consult on issues and positions related to international cooperative and standard-setting efforts related to modern agricultural technologies.

The Working Group shall provide an annual report to the Joint Committee concerning its activities as well as any progress it has made toward resolving trade concerns raised by a Party.]

Article X.13 Import Checks [EU: and Fees]

[EU: {Annex IX} sets out principles and guidelines for import checks and fees, including the frequency rate for import checks.

2. In the event that import checks reveal non-compliance with the relevant import requirements, the action taken by the importing Party shall be based on an assessment of the risk involved, and shall ensure that such measures are not more trade-restrictive than necessary to achieve the Party’s appropriate level of sanitary or phytosanitary protection.]

[3. The importer of a non-compliant consignment, or its representative, and on demand, the competent authorities of the exporting Party shall be notified of the reason for non-compliance, and be provided the opportunity to contribute relevant information to assist the importing Party in taking

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a final decision.

4. Where the consignment is accompanied by a certificate, the importing Party shall inform the competent authority of the exporting Party in case of a rejection and provide all appropriate information, including detailed laboratory results and methods. In case of pest interceptions, the notification should indicate the pest at the species level.]

[US: 3. When a Party prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check, the Party shall provide a notification, where practicable by electronic means, about the adverse result to at least one of the following: the importer or its agent, the exporter, the manufacturer, or the exporting Party. When providing the notification, the Party shall:

(a) include in the notification

(i) the reason for the prohibition or restriction;

(ii) the legal basis or authorization for the action;

(iii) as appropriate, information on the disposition of the affected goods; and

(iv) information on the status of the goods; and

(b) provide the notification as soon as possible and normally not later than 10 days after the date it prohibits or restricts the importation of the goods unless the goods are seized by a customs authority of the Party.

4. Where a Party that has prohibited or restricted the importation of a good of another Party on the basis of an adverse result of an import check, it shall provide an opportunity for a review of the decision and consider any relevant information submitted to it to assist in the review.]

[EU: 5. Upon request, in the case of an interception of regulated pests, the exporting Party shall provide information about monitoring and possible mitigation measures undertaken.

6. Any fees imposed for the procedures on imported products from the exporting Party shall not be higher than the actual cost of the service.

7. Inspections carried out in accordance with {Article 7(12) Preclearance} shall only be conducted in exceptional cases and with the understanding that they are temporary measures to build confidence. Fees and other costs of such inspections shall be borne by the importing party.]

[US: 1. Upon request, each Party shall provide the other Party with information on any import procedures and its basis for determining the nature and frequency of import checks, including the factors it considers in determining the risks associated with importations.

2. Upon request, each Party shall provide the other Party with information on the analytical methods, quality controls, sampling procedures, and facilities that the Party uses to test a good as part of an import check. Each Party shall ensure that any testing it conducts as part of an import

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check on goods of the other Party is done in accordance with appropriate, scientifically valid analytical methods, and in facilities operating under a quality assurance program that is consistent with international laboratory standards. Each Party shall maintain physical or electronic documentation regarding the identification, collection, sampling, transportation, and storage of test samples of goods of the other Party and the analytical methods used to test the samples.

5. Where a Party has determined a significant, sustained or recurring pattern of non-conformity with an SPS measure by another Party, it shall notify the other Party of the non-conformity.]

[EU: Article X.14: Application of SPS Measures

Except as provided for in Article X.6 {Adaptation to regional conditions} each Party shall apply its sanitary or phytosanitary import conditions to the entire territory of the other Party. Where harmonized import conditions exist in one Party, these conditions shall apply to the entire territory of the exporting Party.

Without prejudice to Article X.6 {Adaptation to regional conditions} each Party shall ensure that products which are in conformity with these import conditions can be placed on the market and used in its entire territory on the basis of a single authorization, approval or certificate.]

Article X.15: [EU: Joint Management] Committee [US: on Sanitary and Phytosanitary Matters]

[EU: 1. The Parties hereby establish a Joint Management Committee (JMC) for SPS Measures, hereafter called the Committee, comprising regulatory and trade representatives of each Party who have responsibility for SPS measures.]

[US: 1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Matters (the “Committee”) comprising representatives of each Party. No later than {15}) days after the date of entry into force of this Agreement, the Parties shall establish the Committee’s terms of reference and identify through an exchange of letters the primary representative of each Party that shall serve as its co-chair on the Committee. Each Party shall ensure that its representatives on the Committee are the appropriate officials from its relevant trade agencies or ministries and competent authorities with responsibility for the development, implementation, and enforcement of SPS measures. The Committee shall meet at least once a year, unless the Parties decide otherwise.]

[EU: 2. The functions of the Committee include:

- (a) To monitor the implementation of this Chapter and to consider any matter relating to this Chapter, and to examine all matters which may arise in relation to its implementation;
- (b) To provide direction for the identification, prioritization, management and resolution of issues;
- (c) To address any requests by the Parties for the modification of import checks;
- (d) To review the Annexes to this Agreement;

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(e) To provide a regular forum for exchanging information relating to each Party's regulatory system, including the scientific basis;

(f) To prepare and maintain a document detailing the state of discussions between the Parties on their work on recognition of the equivalence of specific SPS measures.

3. In addition, the Committee may, *inter alia*:

(a) identify opportunities for greater bilateral engagement, including enhanced relationships, which may include exchanges of officials;

(b) discuss at an early stage, changes to, or proposed changes to, measures being considered;

(c) facilitate improved understanding between Parties related to the implementation of the WTO SPS Agreement, promoting cooperation between Parties on SPS issues under discussion in multilateral fora, including the WTO SPS Committee and international standard-setting bodies, as appropriate;

(d) identify and discuss, at an early stage, initiatives that have an SPS component and would benefit from cooperation.

4. The Committee may establish working groups consisting of expert-level representatives of the Parties, to address specific SPS issues. When additional expertise is needed, participants from non-governmental organizations may be included, with the agreement of the parties.

5. A Party may refer any SPS issue to the Committee. The Committee should consider any matter referred to it as expeditiously as possible.

6. In the event that the Committee is unable to resolve an issue expeditiously, the Committee shall, upon request of a Party, report promptly to the {TTIP Oversight Body}. **{Pending outcome of institutional chapter}**

7. Unless the Parties otherwise agree, the Committee shall meet and establish its work program no later than six months following the entry into force of this Agreement, and its rules of procedure no later than one year after the entry into force of this Agreement.

8. Following its initial meeting, the Committee shall meet as required, normally on an annual basis. If agreed by the Parties, a meeting of the Committee may be held by videoconference or teleconference. The Committee may also address issues out of session by correspondence.

9. The Committee shall report annually on its activities and work program to the [TTIP Oversight Body]. **{Pending outcome of institutional chapter}**

10. Upon entry into force of this Agreement, each Party shall designate and inform the other Party of a Contact Point to coordinate the Committee's agenda and to facilitate communications on SPS matters.]

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[US: 2. The functions of the Committee shall include:

- (a) enhancing each Party's implementation of this Chapter and facilitating the exchange of information on each Party's progress in implementing this Chapter;
- (b) consulting on issues and positions related to the meetings and work of the WTO SPS Committee, the International Plant Protection Convention (hereinafter "IPPC"), World Animal Health Organization (hereinafter "OIE"), and the Codex Alimentarius Commission (hereinafter "Codex");
- (c) providing a forum for discussion of and reviewing progress on addressing specific trade concerns related to the application of SPS measures and other SPS matters with a view to reaching mutually acceptable solutions;
- (d) referring issues to technical working groups in support of work that the Committee considers to be a priority, establishing additional technical working groups, and eliminating technical working groups other than those established pursuant to Article X.13;
- (e) {approving any modifications to the Annexes of this Chapter}; and
- (f) reporting, at least annually, to the Joint Committee on its activities and progress on resolving specific trade concerns and other SPS matters, including those specific trade concerns for which a technical working group has developed an action plan.

3. A Party may request the Committee to refer a specific trade concern regarding an SPS measure or other SPS matter to a technical working group. If the Committee decides to refer the matter to a technical working group, it shall forward the request to the relevant technical working group and the requesting Party shall at that time provide the technical working group with technical information in support of its preferred approach for resolving the matter. Any decision to refer a matter to a technical working group shall take into account the resources of each Party and the need to balance the respective interest of each Party. The Committee may refer matters to a technical working group no more than once a year, except in cases of exceptional urgency.]

[US: Article X.16: Technical Working Groups

1. Recognizing that the resolution of SPS matters is best achieved through bilateral cooperation and consultation informed by the applicable science and understanding of the relevant risks, the Parties hereby establish technical working groups to be co-chaired by representatives of each Party concerning the following subjects:

- (a) animal health;
- (b) plant health; and
- (c) food safety.

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The Parties may decide to designate existing bodies to serve as the relevant technical working group for purposes of this Article. No later than [15] days after the date of entry into force of this Agreement, the Parties shall establish the terms of reference or rules of procedure for each technical working group. The co-chairs of a technical working group may decide to establish subgroups that may include, as appropriate, experts that are not representatives of the technical working group to consider particular technical issues.

2. Any technical working groups established shall, with respect to the subject matter of the working group:

- (a) consider specific SPS measures or sets of measures that are likely to affect, directly or indirectly, trade;
- (b) engage, at the earliest appropriate point, in scientific and technical exchange and cooperation regarding SPS matters that may, directly or indirectly, affect the trade;
- (c) provide a forum to facilitate consideration, discussion, and reviews of specific risk assessments and possible risk mitigation and management options;
- (d) seek to resolve specific trade concerns; and
- (e) provide a regular opportunity for each Party's representatives to update the technical working group on the progress the Party has made on addressing and resolving specific trade concerns.

3. Each technical working group established under this Chapter shall annually develop a work program taking into account the resource constraints of each Party and the need to balance each Party's respective interests.

4. The work program shall include action plans to address, with a view to resolving, specific trade concerns regarding SPS measures or other SPS matters. *[Additional provisions on action plans to be considered.]*

5. Each technical working group shall provide the Committee with a report, at least annually, regarding the progress of its current work programs, including timelines for future actions where appropriate.]

Article X.17: [EU: Technical Consultation]

[EU: Where a Party has significant concerns regarding food safety, plant health, or animal health, or regarding a measure proposed or implemented by the other Party, that Party can request technical consultations. The other Party should respond to such a request without undue delay and normally within 15 days. Each Party shall endeavor to provide all relevant information necessary to avoid unnecessary disruption to trade and to reach a mutually acceptable solution. Consultations may be held by audio or videoconference.]

[US: Cooperative Technical Consultations to Resolve SPS Trade Concerns]

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[US: 1. Each Party may request cooperative technical consultations to discuss any SPS measure of the other Party that it considers might adversely affect trade. The request shall be made in writing and identify:

- (a) the measure at issue;
- (b) the provisions of this Chapter or the SPS Agreement to which the concerns relate; and
- (c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure.

2. A Party shall deliver its request to the representative of the other Party identified in Article X.3(b) and, where the measure is under discussion by a technical working group or the working group on modern agricultural technologies, to the chairs of the relevant working group.

Additional provisions on the role of technical working groups to be considered.

3. In the event the measure identified in the request is not under discussion in a working group or no consensus exists in the working group that further work by it could address the concerns in the request, the Party to which the request is made shall, unless the Parties decide otherwise, reply to the request in writing within {15} days of the date it receives the request whether it is willing to discuss the concerns identified in the request. If the Party to whom the request is made is willing to discuss the concerns in the request, it shall meet with the other Party, in person or via video or teleconference, to discuss the matters identified in the request no later than {60} days after the date it receives the request. If the Party requesting cooperative technical consultations believes that the matter is urgent, it may request that any discussions take place within a shorter time frame. In such cases, the Party to whom the request is made shall give positive consideration to the request.

4. Prior to the meeting of the Parties provided for in paragraph 3 or within {15} days thereafter, either Party may request an expert to serve as a facilitator to resolve the concerns identified in the request for cooperative technical consultations. The other Party shall respond to the request within {7} days of the date it receives it. If the Parties agree to use a facilitator, the Parties shall try to agree on an individual to serve as facilitator.

5. If the Parties are unable to agree on an individual to serve as the facilitator within {7} days:

- (a) each Party shall nominate an individual who is not a national of any Party to serve as the facilitator; and
- (b) the Party requesting cooperative technical consultations shall select by lot an individual to serve as the facilitator, unless the Parties decide otherwise.

The Party to which the request has been made shall have the right to be present for the selection.

6. A facilitator shall be deemed to be appointed on the date the Parties receive written notification

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from the individual that he or she agrees to serve as the facilitator and confirms the he or she agrees to abide by the requirements set out in paragraph 7. The Parties shall meet with the facilitator, in person or by electronic means, within {30} days of the date the facilitator is appointed.

7. Any individual appointed to serve as a facilitator shall:

- (a) be independent of, and not be affiliated with or take instructions from, any Party;
- (b) not have a financial interest in the matter;
- (c) abide by terms and conditions that may be determined by the Parties;
- (d) not comment on the consistency of the measure at issue with respect to this Agreement or the SPS Agreement, during the course of his or her duties or afterwards;
- (e) agree to keep confidential, except between the Parties, any of the following received in the course of the facilitator's duties:
 - (i) any technical or scientific information submitted by a Party;
 - (ii) any statements by a Party regarding its position on the matter before the facilitator; and
 - (iii) the substance of any discussions between the Parties; and
- (f) not serve as an arbitrator or expert in any dispute concerning the matter.

The remuneration and expenses paid to the facilitator shall be borne equally by the Parties, unless the Parties decide otherwise.

8. Each Party shall ensure that representatives from the relevant trade and competent authorities participate in any meetings held pursuant to this Article. Where the Parties choose to meet in person, the meeting shall take place in the territory of the Party to which the request has been made, unless the Parties decide otherwise.

9. All communications related to cooperative technical discussions sought or carried out pursuant to this Article shall be kept confidential, unless the Parties decide otherwise, and shall be without prejudice to the rights and obligations under this Agreement or the WTO Agreement.

10. Each Party shall seek to resolve any concerns with respect to an SPS measure of the other Party through cooperative technical consultations pursuant to this Article prior to initiating dispute settlement proceedings under this Agreement.

11. Either Party may terminate cooperative technical consultations by notifying the other Party in writing. Such notification may be provided at any time, provided that more than {45} days have elapsed, or such other period of time as the Parties may decide, since the data on which the Party receiving a request for cooperative technical consultations replied that it is willing to enter into such consultations.]

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[EU: Article X.18: Emergency Measures

1. The importing Party may, on serious grounds, provisionally take emergency measures necessary for the protection of human, animal or plant health.
2. Emergency measures shall be notified to the other Party within 24 hours after the decision to implement them is taken and, on request, technical consultations regarding the situation shall be held in accordance with Article 17 {Technical consultation}. The Parties shall consider the information provided through such consultations.
3. The importing Party shall:
 - (a) consider information provided by the exporting Party when making decisions with respect to consignments that, at the time of adoption of emergency measures, are being transported between the Parties;
 - (b) consider the most suitable and proportionate solution for consignments in transport between the Parties, in order to avoid unnecessary disruptions to trade and
 - (c) revise or repeal, without undue delay, the emergency measures or replace them by permanent measures with a view to avoiding unnecessary trade disruption.]

[EU: Article X.19: Animal Welfare

1. The Parties recognize that animals are sentient beings. They undertake to respect trade conditions for live animals and animal products that are aimed to protect their welfare.
2. The Parties undertake to exchange information, expertise and experiences in the field of animal welfare with the aim to align regulatory standards related to breeding, holding, handling, transportation and slaughter of farm animals.
3. The Parties will strengthen their research collaboration in the area of animal welfare to develop adequate and science-based animal welfare standards related to animal breeding and the treatment of animals on farms, during transport and at slaughter.
4. In accordance with Article X.20 {Collaboration in international fora (multilateral and bilateral)}, the Parties undertake to collaborate in international fora with the aim to promote the further development of good animal welfare practices and their implementation.
5. The Committee described in Article X.15 [Joint Management Committee] may appoint a working group to implement this provision.]

[EU: Article X.20: Collaboration in International Flora

The Parties will collaborate in the international standard-setting bodies (OIE, *Codex Alimentarius*, IPPC, etc.), with a view to reaching mutually satisfactory outcomes.]

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[EU: Article X.21: Recognition and Termination of the Veterinary Agreements

The Parties recognize the achievements that have been accomplished under the Agreement between *the European Community and the Government of the United States of America on sanitary measures to protect public and animal health in respect of trade in live animals and animal products* (the Veterinary Agreement) and confirm their intention to continue this work under the framework of this Agreement. {This Veterinary Agreement of 21 April 1998, as amended, is terminated from the date of entry into force of this Agreement. *Exact wording and placement of this sentence to be decided by Legal Services*.}

Article X.22: Definitions

For purpose of this Chapter [EU: ,] [US: :]

[EU: “Protected Zone” for a specified regulated organism of phytosanitary concern means an officially defined geographical area in the EU in which that organism is not established as demonstrated by annual surveys, in spite of favorable conditions and its presence in other parts of the Union;

The “SPS Agreement” means the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures.

The definitions in Annex A of the SPS Agreement apply, as well as those of the Codex Alimentarius (Codex), the World Organization for Animal Health (OIE) and the International Plant Protection Convention (IPPC). In the event of an inconsistency between the definitions adopted by the Codex, or the OIE, the IPPC and the definitions set out in the WTO SPS Agreement, the definitions set out in the WTO SPS Agreement shall prevail.]

[US: **appropriate level of protection** shall have the same meaning ascribed to the term 'appropriate level of sanitary and phytosanitary protection' in the WTO SPS Agreement:

area shall have the meaning ascribed to that term by the OIE when used in relation to animal health, and shall have the meaning ascribed to that term by the IPPC when used in relation to plant health;

competent authority means the authorities in each Party responsible for measures and matters referred to in this Chapter.

demarcation means an area or zone, place of production, or subpopulation that maintains a distinct status with respect to a pest or disease prevalence and may be identified on a geographical basis using natural, artificial, or legal boundaries or on the basis of management and biosecurity practices employed at particular establishments or places of production;

final administrative decision, regulation, and regulatory authority shall have the same meaning ascribed to those terms in Chapter X (Regulatory Coherence, Transparency and Other Good

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Regulatory Practices);

import check means any inspections, examinations, sampling, review of documentation, texts or procedures, including laboratory, organoleptic, and identity, conducted at the border by an importing Party or its representative to determine if the consignment complies with the SPS requirements of the importing Party;

international standards, guidelines and recommendations shall have the same meaning ascribed to those terms in the WTO SPS Agreement;

low-level presence means the inadvertent low-level presence in a shipment of plants or plant products of rDNA plant material that is authorized for use in at least one country, but not in the importing country;

modern agricultural technology means [to be defined];

place of production shall have the meaning ascribed to that term by the IPPC;

relevant international organization means:

- (a) with respect to food safety, the Codex Alimentarius Commission;
- (b) with respect to animal health and zoonoses, the World Animal Health Organization; and
- (c) with respect to plant health, the Secretariat of the International Plant Protection Convention; and

risk assessment shall have the same meaning ascribed to the term in the WTO SPS Agreement;

SPS measure shall have the same meaning ascribed to the term sanitary and phytosanitary measure in the WTO SPS Agreement;

zone, establishment, and subpopulation shall have the meaning ascribed to those terms by the OIE.]

**CHAPTER []
COMPETITION**

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[EU: Article X.1: General Principles]

[EU: The Parties recognize the importance of free undistorted competition in their trade and investment relations. Effective competition enforcement contributes to making markets work better by ensuring that all companies compete their merits. This benefits consumers, businesses, and the economy as a whole.]

[EU: The Parties acknowledge that anti-competitive business practices and State interventions have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalization.]

Article X.2 [EU: Legislative Framework] [US: Anti-competitive Business Conduct]

[EU: 1. To promote free and undistorted competition in their respective territories,] each Party shall maintain antitrust and merger competition legislation which addresses all of the following practices in an effective manner:

- (a) horizontal and vertical agreements between enterprises, decisions by associations of enterprises and concerted practices which have as their object or effect the prevention, restriction or distortion of competition,
- (b) abuse by one or more enterprises of a dominant position,
- (c) concentrations between enterprises which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.]

[US: 1. Each party shall maintain competition law¹ that proscribes anti-competitive business conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.]

[EU: Article X.3: Implementation]

[EU: 1. The Parties shall each maintain an operationally independent authority responsible for and appropriately equipped for the effective enforcement of the competition legislation referred to above in X.2.]

[US: 1. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition law.]

[EU: 2. The Parties shall apply their respective competition legislation in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and the rights of defense of the enterprises concerned, irrespective of their nationality or ownership status.]

[US: 2. The enforcement policy of each Party's authorities responsible for the enforcement of such laws is to treat persons who are not persons of the Party no less favorably than persons of the Party

¹ [US: For the United States, competition law means the Sherman Antitrust Act of 1890 (15 U.S.C.A. §§ 1 et seq.), the Clayton Act of 1914 (15 U.S.C. §§ 12-27), and the Federal Trade Commission Act of 1914 (15 U.S.C. §§ 41-58), as amended, and regulations promulgated pursuant to these acts.]

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in like circumstances.]

[US: Article X.2: Procedural Fairness in Competition Law

1. Each Party shall ensure, that before it imposes a sanction or remedy against any person for violating its competition laws, it shall afford such person: information about the competition authority's competition concerns; a reasonable opportunity to be represented by counsel; and a reasonable opportunity to be heard and present evidence in its defense, except that a Party may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy. In particular, each Party shall afford such person a reasonable opportunity to offer evidence or testimony in its defense, including, where applicable, to offer the analysis of a properly qualified expert, to cross-examine any testifying witness; and to review and rebut the evidence introduced in the enforcement proceeding², subject to the confidentiality provisions of this [Chapter]. Each Party's competition authorities shall normally afford persons under investigation for possible violation of its competition laws reasonable opportunities to consult with such competition authorities with respect to significant legal, factual or procedural issues that arise during the course of investigation.

2. Each Party's authorities shall maintain procedures pursuant to which its competition law investigations are conducted. Where such investigations are not subject to definitive deadlines, each Party's competition authorities shall strive to conduct their investigations within a reasonable time frame.

3. Each Party shall publish or otherwise make publicly available written rules of procedure and evidence that apply to enforcement proceedings concerning alleged violations of competition laws and the determination of sanctions and remedies thereunder. These rules shall include procedures for introducing evidence, including expert evidence where applicable, and shall apply equally to all parties to the proceeding.

4. Each Party shall provide any person subject to imposition of a sanction or remedy for violation of its competition laws with the opportunity to seek review of the sanction or remedy, including review of alleged substantive or procedural errors, in a court or other independent tribunal established under that Party's laws.

5. Each party shall, in non-criminal matters, authorize its competition authorities to resolve alleged violations voluntarily by consent of the authority and the person subject to the enforcement action. A Party may provide for such voluntary resolution to be subject to judicial approval or a public comment period before becoming final.

6. Where a Party's competition authority formally alleges a violation of its competition laws, such authority shall be responsible for establishing the legal and factual basis for such alleged violation in an enforcement proceeding.³

2 [US: For the purposes of this article, enforcement proceedings means judicial or administrative proceedings following an investigation into alleged violation of the competition laws.]

3 [US: Nothing in paragraph 6 shall prevent a Party from requiring that a person against whom such an allegation is made be responsible for establishing certain elements in a defense to the allegation.]

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Article X.5: Cooperation

[EU: 1. In order to fulfill the objectives of this Agreement and to enhance effective competition enforcement, the Parties acknowledge that it is in their common interest to strengthen cooperation with regard to competition policy development and the investigation of antitrust and merger cases, to the extent compatible with the assisting Party's laws and important interests, and within reasonably available resources.]

[US: 1. The Parties cooperate regarding their enforcement policies and in the enforcement of their respective competition laws, including by seeking to coordinate investigations that raise common concerns in competition law enforcement, based on the Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws, 23 September 1991. The US-EU Merger Working Group Best Practices in Merger Investigations illustrate the agencies' commitment to bilateral cooperation.]

[EU: 2. In order to facilitate the cooperation referred to in paragraph (1) above, the Parties' competition authorities may exchange information, subject to the confidentiality provisions laid down in X.6.]

[US: 2. The Parties commit to maintaining a high level of international cooperation and coordination. The Parties acknowledge the importance of cooperation and coordination internationally and the work of multilateral organizations in this area, including the International Competition Network and the Competition Committee of the Organization for Economic Cooperation and Development.]

[EU: 3. The above cooperation will be developed in accordance with the existing EU-USA Cooperation Agreements⁴.]

Article X.6 Confidentiality

[EU: 1. When exchanging information under this Chapter the Parties shall take into account the limitations imposed by their respective legislations concerning professional and business secrecy and shall ensure protection of business secrets and other confidential information.]

[EU: 2. When a Party communicates information in confidence under this Agreement, the receiving Party shall, consistent with its laws and regulations, maintain the confidentiality of the communicated information.]

[US: 1. Each Party shall protect from disclosure confidential business information, as well as other information treated as confidential under its laws, that competition authorities obtain during the investigation. Where a Party's competition authority uses or intends to use such information in an enforcement proceeding, the Party shall, as permissible under its laws and as appropriate, provide procedures for allowing respondents or defendants timely access to such information as is necessary to prepare an adequate defense to the competition authority's allegations.]

⁴ [EU: Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws (OJ L 173, 18.06.1998); Agreement between the Government of the United States of America and the Commission of the European Communities regarding the application of their competition laws (OJ L 95, 27.4.1995).]

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[US: Article X.3: Transparency

1. The Parties recognize the value of transparent competition enforcement policies.
2. On the request of the other Party, a Party shall make available to the requesting Party public information concerning its:
 - (a) competition laws enforcement policies and practices;
 - (b) exemptions and immunities to its competition law, provided that the request specifies the particular goods or services and markets of concern, and includes information explaining how the exemption or immunity may hinder trade or investment between the Parties.
3. Each Party shall ensure that all final decisions finding a violation of its competition law are in writing and, in non-criminal matters, set out findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based. Each Party shall further ensure that any such decisions and any orders implementing them are published, or where publication is not practicable, otherwise made available to the public in such a manner as to enable interested persons to become acquainted with them. The version of the decisions or orders that the Party makes available to the public shall omit confidential business information, as well as information that is treated as confidential under its laws.]

Article X.7 [EU: Review Clause] [US: Consultations]

[EU: 1. The Parties shall keep under constant review the matters to which reference is made in this Chapter. Each Party may refer such matters to the (*appropriate body established by the Agreement*). The Parties agree to review progress in implementing this Chapter every five years after the entry into force of this Agreement, unless both Parties agree otherwise.]

[US: 1. To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of the other Party, enter into consultations within a reasonable period of time regarding any matter arising under this Chapter. In its request, the Party shall specify the matter on which it seeks to consult and indicate how the matter affects trade or investment among Parties.]

[US: 2. The Party to which a request for consultations has been addressed shall accord full and sympathetic consideration to the concerns raised.]

Article X.8: Dispute Settlement

[EU: 1. The provisions on the dispute settlement mechanism in Chapter/Section (xx) of this Agreement shall not apply to this section.]

[US: 1. No Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.]

Transatlantic Trade and Investment Partnership (TTIP)

Chapter []

Consolidated Proposed

Small and Medium [EU:-Sized] Enterprise (SME) Text

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For inclusion in the preamble of the Agreement:

Recognizing that small and medium [EU:-sized] enterprises (SMEs) [EU:, including micro-enterprises] contribute significantly to economic growth, employment, and innovation, and further recognizing the existing robust dialogue on ways to increase the participation of SMEs in trade and the cooperative work on SMEs, the Parties seek to continue to support the growth and development of SMEs [US: and promote the interests of their employees] by enhancing their ability to participate in and benefit from the opportunities created by this Agreement;

Article X.1: Cooperation to Increase Trade and Investment Opportunities for SMEs

1. The Parties shall continue and build upon the robust dialogue commenced under the auspices of the Transatlantic Economic Council (EU-US SME Dialogue) on ways to increase SME participation in trade and exchange best practices and the cooperative work on SMEs of the International Trade Administration of the US Department of Commerce and the Directorate General for Internal Market, Industry, Entrepreneurship, and SMEs (DG GROW) of the European Commission, which manages the Enterprise Europe Network, pursuant to the Cooperation Arrangement on Small and Medium-Sized Enterprises.

2. In order to enhance SME trade between the Parties and strengthen cooperation in specific areas, including areas identified in the 2012 Joint Statement on EU-US SME Workshops, the Parties shall:

(a) exchange information with the objective of increasing transatlantic linkages and business opportunities between regional innovation clusters through the Cooperation Arrangement on Clusters between the US Department of Commerce and DG GROW;

(b) continue work through the Transatlantic Intellectual Property Rights Working Group to develop and make available tools and resources related to intellectual property rights to inform SMEs and improve their competitiveness;

(c) facilitate the access of SMEs to information on EU and US regulations and other requirements;

(d) exchange information on good regulatory practices that could contribute to an overall improved business environment;

(e) explore opportunities for linkages and exchanges between EU and US programs for SMEs, including entrepreneurial programs, support measures for underserved communities, for example, young, senior, minority, and women entrepreneurs, and other relevant programs;

(f) exchange information on initiatives providing access to finance to support emerging growth companies or encouraging venture capital and investments in small companies in order to increase the competitiveness of SMEs in international markets and expand bilateral trade among EU and US-based small businesses;

(g) exchange information on best practices for increasing the ability of SMEs to do business in the other Party;

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(h) exchange information and best practices on promoting worker-owned cooperatives and other forms of worker-run SMEs; and

(i) address other topics, as decided by the Parties, taking into consideration, among other things, topics that SMEs recommend to the Parties.

3. The Parties may work together, as appropriate, on the matters described in paragraph 2 through the EU-US SME Dialogue, the SMEs Cooperation Arrangement, the Committee on SME Issues established in Article X.4 (Committee on SME Issues), or any other means as the Parties may decide.

Article X.2: Information Sharing

1. Each Party shall establish or maintain its own publicly accessible website or web page containing information regarding this Agreement, including:

(a) the text of this Agreement, including all annexes, tariff schedules, and product-specific rules of origin;

(b) a summary of this Agreement; and

(c) information designed for SMEs that contains:

(i) a description of the provisions in this Agreement that the Party in question considers to be relevant to SMEs; and

(ii) any additional information that the Party considers would be useful for SMEs interested in benefiting from the opportunities provided by this Agreement.

2. Each Party shall include links from the website or web page provided for in paragraph 1 to:

(a) the equivalent website or web page of the other Party; and

(b) the websites or web pages of its own government authorities and other appropriate entities that the Party considers would provide useful information to persons interested in trading, investing, or doing business in that Party.

[US: Where possible, each Party shall endeavor to make such information available in English.]

3. With respect to paragraph 2(b) such information [EU: shall] [US: may] include [EU: , covering both the central level and lower levels of the Federal (US) or Union (EU)]:

(a) customs regulations and procedures [EU: as well as a description of the import, export, and transit procedures informing of the practical steps needed to import and export, and for transit; and the forms and documents required for import to, export from, or transit through the customs territory of that Party];

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- (b) regulations and procedures concerning intellectual property rights;
- (c) [EU: a registry of technical regulations in force (including, where necessary, obligatory conformity assessment procedures); and of the titles and references of standards selected for reference in or use in connection with technical regulations, or proposed for such use; links to lists of conformity assessment bodies, in cases where third party conformity assessment is obligatory] [US: technical regulations and standards relating to import and export];
- (d) sanitary and phytosanitary measures relating to import and export;
- (e) rules on [EU: public] [US: central government] procurement, a database containing [EU: public] [US: central government] procurement notices as well as other relevant information concerning [EU: public] [US: central government] procurement opportunities;
- (f) business registration procedures;
- (g) access to finance;
- (h) information on programs supporting the internationalization of SMEs; and
- (i) other information with the Party considers may be of assistance to SMEs.

4. Each Party shall include [EU: a link] [US: links] from the website or web page provided for in paragraph 1 to a database that is electronically searchable by tariff nomenclature code and that includes the following information with respect to [EU: access to its market, covering both the central level and lower levels of the Federal (US) or Union (EU)] [US: tariff measures imposed by the Party]:

[EU: Tariff measures and tariff-related information]

(a) rates of duty and quotas (including most favored nation (MFN) [EU: 'erga omnes' rate for countries not MFN] and preferential rates and tariff quotas);

[EU:

(b) tariff nomenclature related excise duties;

(c) tariff nomenclature related taxes (value added tax/ sales tax);

(d) tariff nomenclature related customs or other fees;]

[EU: (e)] [US: (b)] other tariff measures, [US: and]

[EU: (f)] [US: c)] rules of origin [EU;] [US.]

[EU-

(g) duty drawback, deferral, or other types of relief that reduce, refund, or waive customs

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duties;

(h) criteria used to determine the customs value of the good, in accordance with the WTO Customs Valuation Agreement;

(i) country of origin marking requirements, including placement and method of marking;

Tariff nomenclature related non-tariff measures

(j) tariff nomenclature information needed for import procedure

(k) tariff nomenclature related non-tariff measures or regulations.]

5. Each Party shall regularly, or when requested by the other Party, review the information and links referred to in paragraphs 1 to 4 that it maintains on its website or web page to ensure they are up to date and accurate.

6. [EU: no fee shall apply for access to the information provided pursuant to paragraphs 1 to 4 for any person in either Party.]

Article X.4: Committee on SME Issues

1. The Parties hereby establish a Committee on SME Issues, comprising [EU: officials] [US: government representatives] of each Party.

2. The Committee on SME Issues shall:

(a) [EU: ensure that SME needs are taken into account in the implementation of the Agreement] [US: discuss the matters described in paragraph 2 of Article X.1.2 (Cooperation to Increase Trade and Investment Opportunities for SMEs),] and consider ways to increase trade and investment opportunities for SMEs by strengthening cooperation [EU: on SME issues between Parties] [US: in these and other areas of importance to SMEs];

(b) [EU: discuss the matters described in paragraph 2 of Article X.1 (Cooperation to Increase Trade and Investment Opportunities for SMEs),] and build on those for an effective implementation of the agreement while avoiding duplication of work with other EU-US cooperative activities on SMEs;

[US: identify ways to assist SMEs in the Parties' territories to take advantage of the commercial opportunities under the Agreement;]

[US: (c) meet with representatives of SMEs, as needed, to obtain feedback on the impact of the Agreement on SMEs, and discuss any matters arising under the Agreement of interest to SMEs;]

[EU: (c)] [US: (d)] [EU: monitor the implementation of the provisions on information sharing of Article X.2 (Information Sharing) to ensure that the information provided by the Parties is up to date and relevant for SMEs. The Committee may]

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recommend additional information that the Parties may include in the websites or web pages to be maintained in accordance with Article [EU: X.2] [US: X.3 (Information Sharing)];

[EU: (d)] [US: (e)] [EU: discuss any other matter arising from the implementation of the Agreement of interest to SMEs. This includes:
- discussing the monitoring and implementation of the Agreement as it relates to SMEs;
- be informed of the work of other committees and working groups established by the Agreement, including the Regulatory Cooperation Body, and present to these committees and working groups specific issue of particular interest to SMEs in their areas, while avoiding duplication of work programs; and
- identifying appropriate possible solutions to improve the ability of SMEs to engage in trade and investment among the Parties;
[note: appropriate provisions for contacts with the SME committee shall be placed in the other committees]

[US: review and coordinate with the work of other committees and working groups established by the Agreement to avoid duplication of work programs and to identify appropriate opportunities for cooperation to improve the ability of SMEs to engage in trade and investment among the Parties;]

[EU: (e)] [US: (f)] [EU: develop a close interaction with relevant SME stakeholders, at least once a year, by meeting in conjunction with an EU-US SME Dialogue to provide information and receive and discuss feedback on the implementation of the Agreement and its impact on SMEs, on the basis of input from stakeholders]

[US: exchange information to assist the Parties in monitoring implementation of the Agreement as it relates to SMEs];

[EU: (f)] [US: (g)] submit a regular report of its activities and make appropriate recommendations to the *{overarching institution of the TTIP}* [EU: for its consideration]; and
[EU: *[Note: to be aligned with the practice of other committees]*]

[EU: (g)] [US: (h)] consider any other matter pertaining to SMEs as the Committee on SME Issues may decide.

3. The Committee on SME Issues shall convene within one year after the Agreement enters into force and thereafter meet as necessary, and shall carry out its work through the communication channels decided by the Parties, which may include electronic mail, videoconferencing, or other means.

4. The Committee on SME Issues shall coordinate its work with the cooperative activities undertaken by each Party pursuant to the US-EU SME Dialogue and the [EU: administrative arrangements on SME cooperation] [US: SMEs MOU]. The Committee on SME Issues [EU: shall

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endeavor to meet] [US: may convene] in conjunction with meetings of the US-EU SME Dialogue and [EU: of the administrative arrangements on SME cooperation] [US: the SMEs MOU].

[US: 5. The Committee on SME Issues may seek to collaborate with experts and external organizations, as appropriate, in carrying out its programs and activities.]

[US: Article X.X: Dispute Settlement

No Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.]

Transatlantic Trade and Investment Partnership (TTIP)

Chapter []

Consolidated Proposed SOE Text

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[EU: Chapter on Initial Provisions and Definitions

Unless otherwise specified in this Agreement, each Party shall ensure that a person {definition of 'person' must include state enterprises, enterprises granted special or exclusive rights or privileges} that has been delegated regulatory, administrative or other governmental authority by a Party at any level of government, such as the power to grant import or export licenses or licenses for other economic activities, approve commercial transactions or impose quotas, fees or other charges, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.]

[EU: Article 1: Definitions

For the purposes of this Chapter, the following definitions shall apply:

"State enterprise" means any enterprise involved in a commercial activity over which a Party at central or sub-central level exercises or has the possibility of exercising decisive influence directly or indirectly by virtue of its ownership of it, its financial participation therein, through rules or practices concerning the functioning of the enterprise, or by any other means relevant to establishing such decisive influence. Decisive influence on the part of a Party shall be presumed when it, directly or indirectly: (i) holds the majority of the enterprise's capital; or (ii) holds the majority of the votes attached to the shares issued by the enterprise; or (iii) can appoint more than half of the members of the enterprise's administrative, managerial or supervisory body.

"Enterprise granted special or exclusive rights or privileges" means any enterprise, public or private, involved in a commercial activity that has been granted by a Party, at central or sub-central level, in law or in fact, exclusive or special rights or privileges. Such rights or privileges may include the right to act as a distributor, a network provider or another intermediary for the purchase or sale of a good or the provision or receipt of a service. Enterprises granted exclusive rights covers monopolies involved in a commercial activity.

A "monopoly" means an entity involved in a commercial activity, including a consortium or government agency that, in a relevant market in the territory of a Party, is designed at central or sub-central level as the sole supplier or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant.

"Special rights" means rights granted by a Party at central or sub-central level to a limited number of enterprises within a given geographical area or a product or service market, the effect of which is to substantially limit the ability of any other enterprise to carry out its activity in the same geographical area or the same product or service market under substantially equivalent conditions. The granting of a license to a limited number of enterprises in allocating a scarce resource through objective, proportional and non-discriminatory criteria is not in and of itself a special right.

"Non-discriminatory treatment" means national treatment or most-favored-nation treatment as set out in this Agreement, whichever is the better.

"In accordance with commercial considerations" means consistent with the customary business practices of a privately held enterprise operating according to market economy principles in international trade.

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"Designate" means to establish or authorize a monopoly, or to expand the scope of a monopoly, whether in law or in fact.]

[US: Article 1: Definitions

Arrangement means the Arrangement on Officially Supported Export Credits, developed within the framework of the Organization for Economic Cooperation and Development (OECD), or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original Members to the Arrangement that were members as of January 1, 1979;

commercial activities means activities the end result of which is the production of a good or supply of a service which will be sold to a consumer, including a state enterprise, state-owned enterprise, or designated monopoly, in the relevant market in quantities and at prices determined by the enterprise and that are undertaken with an expectation of gain or profit;¹

commercial considerations means factors such as price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that influence the commercial decisions of an enterprise in the relevant business or industry;

control person {...};

designate means, whether formally or in effect, to establish, name, or authorize a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

designated monopoly means a monopoly that a Party designates or has designated;

government monopoly means a monopoly that is owned or controlled by a Party or by another government monopoly;

injury means material injury to a domestic industry, threat of material injury to a domestic industry, or material retardation of the establishment of a domestic industry;

market means the geographical and commercial market for a good or service;

monopoly means an entity or a group of entities that, in any relevant market in the territory of a Party, is the exclusive provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

non-commercial assistance² means the provision of:

1 [US: For greater certainty, this excludes activities undertaken by an enterprise which operates on a:
(a) not-for-profit basis; or
(b) cost recovery basis.]

2 [US: For greater certainty, non-commercial assistance does not include intra-group transactions within a corporate group including state-owned enterprises, e.g. between the parent and subsidiaries of the group, or among the group's subsidiaries, when normal accounting standards or business practices would require that the corporate entity prepare consolidated net financial statements of these intra-group transactions.]

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(a) grant or debt forgiveness;

(b) a loan, equity infusion or capital, loan guarantee, or other type of financing or loan satisfaction on terms more favorable than those commercially available to that enterprise; or

(c) a good or service, other than general infrastructure, on terms more favorable than those commercially available to that enterprise;

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

state-owned enterprise means an enterprise that is principally engaged in commercial activities; and:

(a) is owned, or controlled through ownership interests, by a Party's central government; or

(b) in which a Party's central government appoints or has the power to appoint the majority of members of the board of directors or any equivalent management

(c) is controlled by a Party's central government through a control person or control persons.]

[EU: Article 2: Scope

1. The Parties confirm their rights and obligations under Article XVII, paragraphs 1 through 3, of GATT 1994, the Understanding on the Interpretation of Article XVII of GATT 1994, as well as under Article VIII of GATS, paragraphs 1, 2 and 5, which are hereby incorporated into and made part of this Agreement and shall apply.

2. This Chapter does not apply to 'covered procurement' by a Party or its procuring entities within the meaning of Article II of (Chapter XX – Public procurement).

3. {Placeholder: reference to the non-application of SOE disciplines to sectors not covered in the Parties schedules of specific commitments}]

[EU: Article 3: Additional Provisions on Scope

1. Without prejudice to the Parties' rights and obligations under this Chapter, nothing in this Chapter prevents the Parties from establishing or maintaining state enterprises or designating or maintaining monopolies or from granting enterprises special or exclusive rights or privileges.

2. Where an enterprise falls within the scope of application of this Chapter, the Parties shall not require or encourage such an enterprise to act in a manner inconsistent with this Agreement.]

[US: Article 2: Scope

1. This Chapter applies with respect to the activities of state-owned enterprises, state enterprises and

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designated monopolies that affect trade or investment between the Parties.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

- (a) a central bank or monetary authority of a Party;
- (b) a financial regulatory body or a resolution authority³ of a Party;
- (c) a financial institution or other entity owned or controlled by a Party that is established or operated temporarily solely for resolution purposes;⁴
- (d) government procurement; or
- (e) regulatory or supervisory activities of any non-governmental entity, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions, pursuant to direction or delegated authority of the Party.

3. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from:

- (a) establishing or maintaining a state enterprise or state-owned enterprise, or
- (b) designating a monopoly.]

[US: Article 3: Delegated Authority

Each Party shall ensure that when its state-owned enterprises, state enterprises, and designated monopolies exercise any regulatory, administrative, or other governmental authority⁵ which the Party has directed or delegated to such an entity to carry out, such entity shall act in a manner that is not inconsistent with that Party's obligations under this Agreement.]

[US: Article 4: Non-Discriminatory Treatment and Commercial Activities

1. Each Party shall ensure that its state-owned enterprises and designated monopolies, when engaging in commercial activities:

- (a) act in accordance with commercial considerations in their purchases or sales of goods or services, except, in the case of a designated monopoly, to fulfill any terms of its designation that are not inconsistent with paragraph 1 (b) and paragraph 3; and

3 [US: "Resolution authority" shall have the meaning given to it in Section 2.1 of the Financial Stability Board's ('FSB') Key Attributes of Effective Resolution Regimes for Financial Institutions, as published by the FSB in October 2011.]

4 [US: "Resolution purposes" shall be construed in accordance with the meaning given to the term "resolution" in Paragraph 21 of the Basel Committee on Banking Supervision's ("BCBS") Report and Recommendations of the Cross-border Bank Resolution Group, as published by the BCBS in March 2010.]

5 [US: Examples of regulatory, administrative, or other governmental authority include the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.]

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(b) accord to enterprises that are covered investments, goods of the other Party, and services suppliers of the other Party, treatment no less favorable than they accord to, respectively, like enterprises that are investments of the Party's investors, like goods of the Party, and like service suppliers of the Party, with respect to their purchases or sales of goods or services.

2. Paragraph 1 does not preclude a state-owned enterprise or designated monopoly from:

(a) purchasing or supplying goods or services on different terms or conditions, including those relating to price; or

(b) refusing to purchase or supply goods or services,

provided that such different terms or conditions or refusal are undertaken in accordance with commercial considerations and paragraph 1 (b).

3. Each Party shall ensure that any designated monopoly that it establishes or maintains does not use its monopoly position to engage in, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other entities that the Party or the designated monopoly owns or controls, anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments or trade between the Parties.]

[EU: Article 4: Non-Discrimination]

Each Party shall ensure in its territory that any enterprise satisfying the conditions set out in 1 (b) accords non-discriminatory treatment to a covered investment, to a good of the other Party and/or to a service or a service supplier of the other Party in its purchase or sale of a good or a service.]

[EU: Article 5: Commercial considerations]

Except to fulfill the purpose⁶ for which special or exclusive rights or privileges have been granted, or in the case of a state enterprise to fulfill its public mandate, and provided that the enterprise's conduct in fulfilling that purpose or mandate is consistent with the provisions in 4 and the Chapter on Competition, each Party shall ensure that any enterprise referred to in 1(a) and 1(b) acts in accordance with commercial considerations in the relevant territory in its purchases and sales of goods, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, as well as in its purchases or supply of services, including when these goods or services are supplied to or by an investment of an investor of the other Party.]

[EU: Article 6: Pricing]

For greater clarity, charging different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as supply and demand conditions, is not in itself inconsistent with 4 and 5.]

6 [EU: such as a public service obligation]

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[US: Article 5: Courts and Administrative Bodies

1. Each Party shall provide its courts with jurisdiction over civil claims against a foreign state-owned enterprise based on a commercial activity carried on its territory, except where a Party does not provide jurisdiction over similar claims against enterprises that are not state-owned enterprises.
2. Each Party shall ensure that any body that it establishes or maintains, and that regulates a state-owned enterprise or designated monopoly, acts impartially with respect to all enterprises that it regulates, including enterprises that are not state-owned enterprises.]

[EU: State enterprises and enterprises granted special or exclusive rights or privileges

1. In the case of state enterprises and enterprises granted special or exclusive rights or privileges, the Parties shall neither enact nor maintain in force any measure contrary to the competition legislation referred to {in Article 2 and Article 3(2) of the Competition Chapter}.
2. Enterprises entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the competition legislation referred to {in Article 2 and Article 3(2) of the Competition Chapter} in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to the enterprises in question. Trade and investment must not be affected to such an extent as would be contrary to the objectives of this Agreement.]

[US: Article 6: Adverse Effects

1. No Party shall cause adverse effects to the interests of the other Party through the use of non-commercial assistance that the Party provides, either directly or indirectly to any of its state-owned enterprises, where the Party explicitly limits access to the non-commercial assistance to its state-owned enterprises, provides non-commercial assistance which is predominantly used by its state-owned enterprises, provides a disproportionately large amount of the non-commercial assistance to its state-owned enterprises, or otherwise favors its state-owned enterprises in the provision of non-commercial assistance.
2. Each Party shall ensure that no state enterprise or state-owned enterprise that it establishes or maintains causes adverse effects to the interests of the other Party through the use of non-commercial assistance that the state enterprise or state-owned enterprise provides to any of its state-owned enterprises, where the Party explicitly limits access to the non-commercial assistance provided by the state enterprise or state-owned enterprise to its state-owned enterprises, or where the state enterprise or state-owned enterprise provides non-commercial assistance which is predominately used by the Party's state-owned enterprises, provides a disproportionately large amount of the non-commercial assistance to the Party's state-owned enterprises, or otherwise favors the Party's state-owned enterprises in the provision of non-commercial assistance.
3. Adverse effects cannot be established on the basis of any act, omission, or factual situation, to the extent that act, omission, or factual situation took place before the date of entry into force of this Agreement.
4. For the purpose of paragraphs 1-3, adverse effects are effects that arise from the provision of a

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good or service by a Party's state-owned enterprise which has benefited from non-commercial assistance and:

- (a) displace or impede from the Party's market imports of a like product⁷ that is an originating good of the other Party, or sales of a like product that is a good produced by an enterprise that is a covered investment;
- (b) consist of a significant price undercutting by a product of the Party's state-owned enterprise compared with the price in the same market of a like product that is an originating good of the other Party or a like product that is a good produced by an enterprise that is a covered investment, or significant price suppression, price depression, or lost sales in the same market;
- (c) displace or impede from the Party's market a like service supplied by a service supplier of the other Party, or a like service supplied by an enterprise that is a covered investment, or
- (d) consist of a significant price undercutting by a service supplied by the Party's state-owned enterprise as compared with the price in the same market of a like service supplied by a service supplier of the other Party, or by an enterprise that is a covered investment, or significant price suppression, price depression, or lost sales in the same market.

5. For the purposes of subparagraphs (a) and (c) of paragraph 4, the displacing or impeding of a product or service includes any case in which there has been a significant change in relative share of the market to the disadvantage of the like product of the other Party or of a covered investment, or to the disadvantage of a like service supplied by a service supplier of the other Party or by a covered investment.

6. A significant change in relative shares of the market shall include any of the following situations:

- (a) there is a significant increase in the market share of the product or service of the Party's state-owned enterprise;
- (b) the market share of the product or service of the Party's state-owned enterprise remains constant in circumstances in which, in the absence of the non-commercial assistance, it would have declined significantly; or
- (c) the market share of the product or service of the Party's state-owned enterprise declines, but by a significantly lower amount or at a significantly slower rate than would have been the case in the absence of the non-commercial assistance.

Where the change manifests itself over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the product or service, which shall be at least one year unless exceptional circumstances apply.

7. For purposes of subparagraphs (b) and (d) of paragraph 4, significant price undercutting shall

⁷ [US: For greater certainty, for the purpose of this Chapter, the term "product" does not include financial instruments, including money.]

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include demonstration through a comparison of prices at the same level of trade and at comparable times within the same market as follows:

- (a) the prices of a product of the Party's state-owned enterprise benefiting from non-commercial assistance with the prices of a like product of the other Party or an enterprise that is covered investment; or
- (b) the prices of a service of the Party's state-owned enterprise benefiting from non-commercial assistance with the prices of a like service supplied by a service supplier of the other Party or an enterprise that is a covered investment.

Due account shall be taken for factors affecting price comparability. If a direct comparison of transactions is not possible, the existence of the price undercutting may be demonstrated on some other reasonable basis, such as, in the case of goods, a comparison of unit values.

[US: Article 7: Injury

No Party shall cause injury to a domestic industry of the other Party through the use of non-commercial assistance that it provides, either directly or indirectly, to any of its state-owned enterprises in the territory of the other Party in circumstances where the Party explicitly limits access to the non-commercial assistance to its state-owned enterprises, provides non-commercial assistance which is predominantly used by its state-owned enterprises, provides a disproportionately large amount of the non-commercial assistance to its state-owned enterprises, or otherwise favors its state-owned enterprises in the provision of non-commercial assistance, and where:

- (a) the state-owned enterprise produces and sells a good in the territory of the other Party:
and
- (b) a like good is produced and sold by a domestic industry of the other Party.]

[EU: Article 7: Transparency & Corporate Governance

1. The Parties shall ensure that enterprises referred to in 1(a) and 1(b) shall observe high standards of transparency and corporate governance in accordance with the OECD Guidelines on corporate governance of state owned enterprises {exact reference}.

2. A Party which has reason to believe that its interests under this Agreement are being adversely affected by the operations of an enterprise or enterprises referred to in 1(a) and 1(b) of the other Party may request that Party to supply information about the operations of its enterprise related to the carrying out of the provisions of this Agreement.

3. Each Party shall, at the request of the other Party, make available information concerning specific enterprises referred to in 1(a) and 1(b) and which do not qualify as small and medium-sized enterprises as defined in the European Union law and {limitation for the other Party}. Requests for such information shall indicate the enterprise, the products/services and markets concerned, and include indicators that the enterprise is engaging in practices that hinder trade or investment between the Parties.

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The information may include:

- (a) the organizational structure of the enterprise, the composition of its board of directors or of an equivalent structure of any other executive organ exercising direct or indirect influence through an affiliated or related entity in such an enterprise; and cross holdings and other links with different enterprises or groups of enterprises referred to in 1(a) and 1(b);
 - (b) the ownership and the voting structure of the enterprise, indicating the percentage of shares and percentage of voting rights that a Party and/or an enterprise referred to in 1(a) and 1(b) cumulatively own;
 - (c) a description of any special shares or special voting or other rights that a Party and/or an enterprise referred to in 1(a) and 1(b) hold, where such rights differ from the rights attached to the general common shares of such entity;
 - (d) the name and title(s) of any government official of a Party serving as an officer or member of the board of directors or of an equivalent structure or of any other executive organ exercising direct or indirect influence through an affiliated or related entity in the enterprise;
 - (e) details of the government departments or public bodies which monitor the enterprise and any reporting requirements;
 - (f) the role of the government or any public bodies in the appointment, dismissal or remuneration of managers; and
 - (g) annual revenue or total assets, or both; and
 - (h) exemptions, non-conforming measures, immunities and any other measures derogating from the application of a Party's laws or regulations or granting favorable treatment by a Party.
4. The provisions of paragraphs 2 and 3 shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.
5. Each Party shall ensure that any regulatory body responsible for regulating any of the enterprises referred to in 1(a) and 1(b) is independent from, and not accountable to, any of the enterprises referred to in 1(a) and 1(b).
6. Each Party shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner at all levels of government, be it central or local, and their application to enterprises referred to in Article 1(a) and 1(b). Exemptions must be limited and transparent.
7. The provisions of Article 7 apply to enterprises operating in all sectors.]

[US: Article 8: Transparency

1. Each Party shall provide to the other Party a list of its state-owned enterprises within 180 days of the date of entry into force of this Agreement, and thereafter shall provide an updated list annually.

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2. Where a Party designates a monopoly, or expands the scope of an existing designated monopoly, it shall promptly notify the other Party of the designation or expansion of scope and the conditions under which the monopoly shall operate.

3. On the written request of the other Party, a Party shall promptly provide the following information concerning a state-owned enterprise or a government monopoly:

(a) the percentage of shares that the Party, its state-owned enterprises, state enterprises, or designated monopolies cumulatively own, and the percentage of votes that they cumulatively hold in the entity;

(b) a description of any special shares, or special voting or other rights, that the Party, its state-owned enterprises, or designated monopolies hold, to the extent different from the rights attached to the general common shares of such entity;

(c) the government titles, or former government titles, and decision-making ability of any official serving as a board member, officer, director, manager, or other control person of such entity;

(d) the entity's annual revenue and total assets over the most recent three year period for which information is available;

(e) any exemptions and immunities from which the entity benefits under the Party's law; and

(f) any additional information regarding the entity which is publicly available, including annual financial reports and third-party audits, and which is sought in the written request.

4. On the written request of another Party, a Party shall promptly provide the following information concerning assistance received by any of its state-owned enterprises;

(a) any financing or re-financing that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, including the amount of such financing and the terms on which it was provided;

(b) any loan guarantee that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, including fees associated with the guarantee and any other conditions associated with the guarantee;

(c) any forgiveness of debt or other financial liability that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise;

(d) any goods or services that the Party, or another one of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, and the conditions associated with such provision; and

(e) any export credit that the Party, or one of the Party's state-owned enterprises, has

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provided in support of the export of a good or service from one of the Party's state-owned enterprises, including the amount of such export credits, and the terms and conditions on which it was provided.

5. Each Party shall include in any written request under paragraphs 3 and 4 an explanation of how the activities of the state-owned enterprise may be affecting trade or investment between the Parties.]

[US: Article 9: Committee on State-Owned Enterprises and Designated Monopolies

1. The Parties hereby establish a Committee on State-Owned Enterprises and Designated Monopolies, comprised of officials from each Party.

2. The Committee shall meet within one year of the date of entry into force of the Agreement, and at least annually thereafter, unless the Parties decide otherwise.

3. The Committee shall:

(a) review and consider the operation and implementation of this Chapter;

(b) discuss, at a Party's request, the activities of any state-owned enterprise or designated monopoly of a Party specified in the request with a view to identifying any distortion of trade or investment between the Parties that may result from those activities;

(c) consider, at a Party's request, notifications under Article 8 (Transparency);

(d) develop cooperative efforts, as appropriate, to promote the principles underlying the obligations contained in this Chapter and to contribute to the development of similar obligations in regional and multilateral institutions in which the Parties participate; and

(e) undertake such other activities as the Committee may decide.

4. Prior to each Committee meeting, each party shall invite, as appropriate, input from the public on matters related to state-owned enterprises or designated monopolies that may affect developing its meeting agenda.]

[US: Article 10: Exceptions

1. Nothing in the Articles 4 (Non-Discriminatory Treatment and Commercial Activities), 5 (Courts and Administrative Bodies), 6 (Adverse Effects), or 7 (Injury) shall be construed to:

(a) prevent the adoption or enforcement by any Party of measures to respond temporarily to a national or global economic emergency; or

(b) apply to a state-owned enterprise for which a Party has taken measures on a temporary basis in response to a national or global economic emergency

2. Articles 4(1)(a) (Non-Discriminatory Treatment and Commercial Activities), 5 (Courts and

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Administrative Bodies), 6 (Adverse Effects), 7 (Injury), 8 (Transparency), 9 (Committee), and 11 (Dispute Settlement) shall not apply where the state-owned enterprise is:

- (a) established or maintained by a Party solely to provide essential services to the general public in its territory; or
- (b) subject to government mandates defining its public service function, such as universal service obligations, or requirements to provide services at below market rates or on a cost recovery basis which are not imposed on similarly situated private companies.

3. Articles 4 (Non-Discriminatory Treatment and Commercial Activities), 5 (Courts and Administrative Bodies), 6 (Adverse Effects), and 7 (Injury) shall not apply to a state-owned enterprise or designated monopoly that finances housing, including insurance or guarantees of residential loans or mortgage securities, except where such a state-owned enterprise or designated monopoly shall accord treatment to covered investments no less favorable than the treatment it accords to like enterprises which are investments of the Party's investors.

4. With respect to a state-owned enterprise of a Party that provides export credits, Articles 3 (Delegated Authority), 4 (Non-Discriminatory Treatment and Commercial Activities), 5 (Courts and Administrative Bodies), 6 (Adverse Effects), and 7 (Injury) shall not apply to:

- (i) the provision of export credits that fall within the scope of the Arrangement and are offered on terms consistent with the Arrangement, regardless of whether the Party is a Participant to the Arrangement; and
- (ii) the provision of short-term insurance, guarantee, or other financing with a repayment term of less than two years, provided that the state-owned enterprise charges premium rates or interest rates that are adequate to cover the long-term operating costs and losses of the program, determined on a net present value basis, under which the insurance, guarantee, or other financing is provided.]

[US: Article 11: Dispute Settlement

Any recourse to dispute settlement pursuant to Chapter {X} (Dispute Settlement) for any matter arising under this Chapter shall be subject to Annex X-A of this Chapter.]

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[US: ANNEX X-A

PROCESS FOR DEVELOPING INFORMATION CONCERNING STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

1. Where a panel has been established pursuant to Chapter {X} (Dispute Settlement) to examine a matter arising under this Chapter, the panel shall administer the process set out in paragraphs 2 through 4 aimed at developing information relevant to the claim, including data regarding the volume and value of relevant purchases or sales by the state-owned enterprise or designated monopoly in question, and information about that entity's relevant purchasing, sales, and contracting procedures.⁸ The process shall include procedures aimed at protecting information that is by nature confidential or which a disputing Party provides on a confidential basis.
2. The complaining Party may present written questions to the other Party within 60 days of the date on which the panel is established. The responding Party shall provide its responses to the questions to the complaining Party and the panel within 60 days from the date it receives the questions.
3. The complaining Party shall have 60 days from the date it receives the responses to its questions to review them and provide any additional questions related to the responses to the responding Party. The responding Party shall have 45 days from the date it receives the additional questions to provide its responses to the additional questions to the complaining Party and the panel.
4. If the complaining Party considers that the responding Party has failed to cooperate in the process, the complaining Party shall inform the panel and the responding Party in writing no later than 30 days from the date responses to the complaining Party are due, and provide the basis for this view. The panel shall afford the responding Party an opportunity to reply to this view in writing.
5. The panel may seek additional information from a disputing Party that was not provided to the panel through the information development process carried out under this Annex, where the panel considers the information necessary to resolve the dispute. However, the panel shall not request additional information to complete the record where the information would support a Party's position and the absence of that information in the record is the result of that Party's non-cooperation in the information gathering process.]

8 [US: The presentation of written questions and responses pursuant to paragraph 2 and 3 may commence prior to the date a panel is composed. Upon its composition, the complaining Party shall provide any questions it presented to the responding Party, and the responding Party shall provide any responses it provided to the complaining Party, to the panel.]

Chapter []

Dispute Settlement

June 2015

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[EU: Section 1

Objective and Scope]

Article 1: [EU: Objective] [US: Mechanism to Resolve Disputes]

[EU: The objective of] [US: The Parties endeavor in] this Chapter [EU: is] to establish an effective and efficient mechanism for resolving any dispute between the Parties concerning the interpretation and application of this Agreement with a view to arriving, where possible, at a mutually agreed solution.

Article 2: Scope

Except as otherwise provided in this Agreement, this Chapter shall apply to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement [US: wherever a Party considers that:

- (a) another Party has otherwise failed to carry out its obligations under this Agreement;
- (b) a measure of another Party is inconsistent with the obligations under this Agreement;
- (c) except as otherwise provided in this Agreement, a benefit the Party could reasonably have expected to accrue to under this Agreement is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement, except that a Party may not invoke this paragraph with respect to a benefit under this Agreement if the measure is subject to an exception under Article [...] (General exceptions).]

Article 3: Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement [US: or any other agreement to which the Parties are party], the complaining Party may select the forum in which to settle the dispute.
2. Once the complaining Party has requested the establishment of a panel with respect to a matter, it shall not request the establishment of a panel [US: or take an equivalent step] in another forum with respect to the same matter [EU:, unless the forum selected first fails for procedural or jurisdictional reasons to make findings on the matter].
3. For the purpose of this Article, a matter is considered to be the same where it concerns the same measure [EU: and a substantially equivalent obligation] under this Agreement and the WTO Agreement [US: or any other agreement to which the Parties are party].

Article x: [EU: Relations with WTO Obligations]

1. Nothing in this Agreement shall preclude a Party from implementing the suspension of concessions or other obligations authorized by the Dispute Settlement Body pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement.
2. [EU: The WTO Agreement shall not be invoked to preclude a Party from suspending obligations under this Chapter.

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Article x: Administration of Dispute Settlement Proceedings

Each Party shall:

- (a) designate an office that shall be responsible for [US: providing administrative assistance to panels established under Article 7] [EU: the administration of disputes under this Chapter];
- (b) be responsible for the operation and costs of its designated office; and
- (c) provide written notice to the other Party of the office's location and contact information.

[EU: Section 2 Consultations and Mediation]

Article x: Consultations

1. A Party may request consultations with respect to any matter referred to in Article XX.2 by delivering a written request to the Contact Point of the other Party [EU:, copied to the {institutional body to be defined}]. The request shall set out the reasons for requesting consultations including identification of the measure at issue [US: or how the Party has otherwise failed to carry out its obligations under this Agreement] and an indication of the legal basis for the complaint.
2. The Party complained against shall reply to the request delivered under paragraph 1 in writing within (7/19) days from the date it receives the request.
3. The Parties shall endeavor to resolve the dispute for which consultations have been requested by entering into consultations with the aim of reaching a mutually agreed solution.
4. Consultations shall be held within 30 days of the date of receipt of the request for consultations. Consultations on matters of urgency, including those regarding perishable goods or seasonal goods or services, shall be held within 15 days of the date of receipt of such request.
5. Consultations shall be held in the territory of the Party complained against, unless the Parties decide otherwise. Consultations shall be held in person unless the Parties decide to consult by other means.
6. During the consultations, each Party shall endeavor to provide sufficient factual information to allow a full examination of how the matter subject to consultations might affect the application of this Agreement.
7. Each Party shall endeavor to make available during the consultations personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations and can contribute to resolving the matter.
8. Consultations shall be confidential and without prejudice to the rights of either Party in any further proceedings. A Party shall not disclose any position taken or any information provided by the other Party in the course of consultations that has not been made available to the public.
9. Consultations shall be deemed concluded:
 - (a) 40 days after the date of receipt of the request;
 - (b) on matters of urgency, 20 days after the day of receipt of the request; or
 - (c) on any other date decided by the Parties.
10. The Party that requested consultations may have recourse to Article X [EU: panel establishment] [US: Joint Committee] if:

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- (a) the Party complained against does not respond to the request for consultations within the time frame laid down in paragraph 2;
- (b) consultations are deemed concluded under paragraph 9;
- (c) the Parties decide not to have consultations; or
- (d) the Parties decide to conclude consultations without a mutually agreed solution.

[EU: Article X: Mediation

Any Party may request the other Party to enter into a mediation procedure with respect to any measure adversely affecting trade or investment between the Parties pursuant to Annex III (Mediation Mechanism) to this Agreement.]

[US: Article x: Intervention of Joint Committee

1. If the Parties fail to resolve a matter pursuant to Article x within:
 - (a) 40 days of the date of receipt of a request for consultations;
 - (b) 20 days of the date of receipt of a request for consultations in matters of urgency; or
 - (c) such other time period as they may decide,
2. The Party referring the matter to the Joint Committee shall set out in its written notification the reasons for doing so.

either Party may refer the matter to the Joint Committee established under Article [...] (Institutional Provision) by delivering written notification to the Contact Point of the other Party.

3. The Joint Committee shall convene within ten days of receipt of the notification provided under paragraph 1 and shall endeavor to resolve the dispute promptly. To assist the Parties in reaching a mutually satisfactory resolution of the dispute, the Joint Committee may:
 - (a) call on such technical advisers or expert groups as it deems necessary; or
 - (b) make recommendations.
4. The Joint Committee may meet in person or by other means.]

[EU: Section 3 Dispute Settlement Procedures]

[EU: Subsection 1: Arbitration Procedure]

Article x: Panel Establishment

1. The complaining Party may refer the matter to a dispute settlement panel (“panel”) by notifying the Party complained against.
2. The notification shall be made in writing to the Party complained against through its Contact Point [EU: and the institutional body {to be defined}]. The complaining Party shall identify the measure at issue [US: or how the Party complained against has otherwise failed to carry out its obligations under this Agreement] and shall provide a brief summary of the legal basis for the complaint sufficient to present the problem clearly.
3. A panel shall be established on delivery of the written notification pursuant to paragraph 2.
4. Unless the Parties decide otherwise within {14/5} days from the date of [US: establishment of the panel] [EU: composition of the panel], the terms of reference shall be:

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“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the notification pursuant to {Article x.x/panel request} [US:, to make findings, determinations, and recommendations as provided in Article x.x and to deliver the written reports referred to in Articles x and x] [EU: to rule on the compatibility of the measure in question with the provisions referred to in Article 2 in Chapter XX and to make a ruling in accordance with Articles x and x of Chapter XX].“

Article x: Panel Composition

1. A panel shall be composed of three arbitrators.
2. Within {14} days of the date of receipt by the Party complained against of the request for the establishment of a panel, the Parties shall consult with a view to agreeing on individuals to serve as arbitrators. A Party may propose, and the Parties may agree on, individuals to serve as arbitrators, whether or not they are on a roster established pursuant to Article { }.
3. If the Parties are unable to agree on an individual to serve as chair within the time period specified in paragraph 2, [US: the office designated by the complaining Party under Article x] [EU: the chair of the institutional body or the chair's delegate] shall within seven days select by lot an individual to serve as chair from among the individuals on the roster who are not nationals of either Party. The Parties shall have the right to [US: have representatives] [EU: be] present for the selection. The [US: office designated by the complaining Party] [EU: the chair of the institutional body or the chair's delegate] shall inform the Parties in writing of the date and location for the selection.
4. If the Parties are unable to agree on individuals to serve as arbitrators other than the chair within the time period specified in paragraph 2, each Party shall select an individual to serve as an arbitrator from its list as established under Article x within five days of the expiry of the time period specified in paragraph 2.
5. If, with respect to an arbitrator other than the chair, the Parties agree under paragraph 2 on an individual proposed by one Party to serve as an arbitrator but do not agree on an individual proposed by the other Party to serve as an arbitrator, the other Party shall select an individual to serve as an arbitrator from its list established under Article x within five days from the expiry of the time period specified in paragraph 2.
6. If the Parties have agreed on an individual to serve as an arbitrator other than the chair, who is not a national of either Party, the chair and the other arbitrator shall be selected from the list of non-nationals.
7. If a Party fails to select an individual to serve as an arbitrator within the time period specified in paragraph 4 or 5 (“non-selecting Party”), the [EU: chair of the institutional body or the chair's delegate][US: other Party] shall select by lot, within 14 days of the non-selecting Party's failure to act within the relevant time period specified in paragraph 4 or 5, for the non-selecting Party an individual to serve as an arbitrator from among the members of the list who are nationals of the non-selecting Party. The non-selecting Party shall have the right to [US: have representatives][EU: be] present for the selection of an individual to serve as the arbitrator. The [EU: chair of the institutional body or the chair's delegate][US: other Party] shall inform the non-selecting Party in writing of the date and location for the selection.
8. The date of panel composition shall be the date on which [US: the responsible office notifies the Parties that] all three arbitrators have [US: been appointed following their acceptance of the invitation to serve on the panel and completion of the Initial Disclosure Statement that appears as an Appendix to the Code of Conduct for Dispute Settlement Proceedings under

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this Chapter] [EU: notified the Parties in writing that they have agreed to serve on the panel].

9. If a list provided for in Article x is not established or does not contain sufficient names for purposes of selecting an arbitrator under paragraph 4, 5, or 7, the arbitrator who would otherwise be selected from the missing or incomplete list shall be selected from among all individuals who have been proposed [US: for the dispute] by one or both of the Parties.

Article x: [EU: Lists of Arbitrators] [US: Arbitrators]

1. No later than { } days after the date of entry into force of this Agreement, the [EU: institutional body][US: Parties] shall establish a roster of individuals who are willing and able to serve as arbitrators. The roster shall be composed of three lists: one list for each Party and one list of individuals who are not nationals of any Party. Unless the [US: Parties] [EU: institutional body] decide[s] otherwise, the list for each Party shall contain at least {5/10} names and the list of individuals who are not nationals of any Party shall contain at least {5/8} names. [US: The Parties may review and revise the roster at any time.]
2. [EU: The {...}] will ensure that the list is always maintained at the level set forth in paragraph 1].
[US: Once established, a roster shall remain in effect until the Parties constitute a new roster. The Parties shall review the roster every three years and may remove and replace individuals on the list as appropriate. The Parties may also at any time remove an individual from the roster. An individual whom the Parties have appointed to the roster shall remain as a member of the roster until the individual resigns, is replaced or is unable to serve, or the Parties have removed the individual. The Parties may appoint a replacement where a member of the roster is no longer available to serve or the Parties have removed a member of the roster.]
3. Arbitrators [EU: shall] [US: should] have expertise or experience in law [EU: and] [US:,] international trade [US:, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements]. They shall be independent and serve in their individual capacities. They shall not take instructions from any organization or government with regard to matters related to the dispute or be affiliated with the government of any Party. They shall comply with the Code of Conduct [EU: set out in Annex II to this Agreement] [US: established by the Parties].
4. The {institutional body} may establish additional rosters of individuals with specialized knowledge and experience in particular matters covered by this Agreement. [EU: If the Institutional Body so decides, such additional rosters shall be used when selecting individuals to serve as arbitrators in accordance with paragraphs 4, 5 and 7 of Article XX.6).

Article x: Rules of Procedure

1. [US: The Parties shall establish as of the date of entry into force of this Agreement, Rules of Procedure and a Code of Conduct for individuals who have agreed to serve as arbitrators on a panel and, where applicable, for experts, and for assistants and staff of an office designated pursuant to Article x(a). Should the Parties decide otherwise, the panel shall follow the Rules of Procedure and may, after consulting with the Parties, adopt additional rules of procedure not incompatible with the Rules of Procedure.]
[EU: Dispute settlement procedures under this Chapter shall be governed by the Rules of Procedure set out in Annex I to this Agreement and by the Code of Conduct set out in Annex

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II to this Agreement.]

2. The Rules of Procedure shall ensure in particular:
 - (a) that each Party shall make available to the public its initial and rebuttal written submissions, written responses to a question from the panel, and written comments on responses to a question from the panel;
 - (b) at least one hearing before the panel;
 - (c) that any hearing before the panel shall be open to observation by the public; and
 - (d) the protection of confidential information.

Article x: Amicus Curiae Submissions

[EU: Natural or legal persons established in the territory of a Party may submit *amicus curiae* briefs to the arbitration panel in accordance with the Rules of Procedure.] [US: The panel shall consider requests from non-governmental entities located in the territory of a Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties.]

Article x: Information and Technical Advice

1. At the request of a Party, or upon its own initiative, the panel may seek any information or technical advice from any [EU: source] [US: person or body] which it deems appropriate, [EU: including the Parties involved in the dispute] [US: provided that the Parties so decide and subject to such terms and conditions as the Parties may decide].
2. [EU: The panel may also seek the opinion of experts, as it deems appropriate. The panel shall consult the Parties before choosing such experts. Any such person or body chosen by the panel shall abide by the Code of Conduct.]
3. The panel shall provide each Party with an opportunity to comment on any request for information or advice from any [EU: source] [US: person or body] and any information or advice obtained from any [EU:source] [US: person or body] under this article.

Article x : Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall jointly notify [EU: the {institutional body to be defined} and] the panel, where composed, [EU: of any] [US: that they have reached] such solution.

Article x: Suspension and Termination of [US: Proceedings] [EU: Arbitration and Compliance Procedures]

[US:

1. The panel may suspend its work at any time at the request of the complaining Party. The complaining Party shall set out in its request its reasons for requesting suspension.]
2. The panel shall suspend its work at any time where the Parties jointly request it to do so [EU: for a period agreed by the Parties not exceeding 12 consecutive months]. The panel shall resume its work [EU: before the end of that period] at the written request of both Parties or [EU: at the end of that period] at the written request of either Party. [EU: The requesting Party shall inform the Chairperson of the {institutional body} and the other Party accordingly.]
3. [EU: If a Party does not request the resumption of the panel's work at the expiry of the agreed

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suspension period, the procedure shall be terminated.] [US: If the work of the panel has been suspended for more than 12 consecutive months, the establishment of the panel under Article x shall lapse, unless the Parties decide otherwise.] The panel shall terminate its work at any time when the Parties jointly request to do so.

4. In the event of suspension, all deadlines established by the relevant time frames set out in this Chapter, in the Rules of Procedure and in additional rules of procedure that the panel may have adopted shall be extended by the amount of time that the work was suspended.

[EU: Article x: Preliminary Ruling on Urgency

If a Party so requests, the panel shall give, within 10 days of its establishment, a preliminary ruling on whether it deems the case to be urgent.]

Article x: Decisions [EU: and Rulings] of the Panel

[US:

1. Unless the Parties decide otherwise, the panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties, and on any information or advice obtained in accordance with Article x.]
2. The panel shall [EU: interpret the provisions referred to in Article 2] [US: consider this Agreement] in accordance with the customary rules of interpretation of public international law. [EU: including those codified] [US: which are reflected] in [US: Articles 31 through 33 of] the Vienna Convention of 1969 on the Law of Treaties. [EU: The panel shall also take into account relevant interpretations in reports of panels and the Appellate Body adopted by the WTO Dispute Settlement Body. The rulings of the panel cannot add to or diminish the rights and obligations of the Parties under this Agreement]
1. The panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. [EU: However, in no case shall dissenting opinions of arbitrators be disclosed,] [US: Panelists may furnish separate opinions on matters not unanimously agreed. No panel may, either in its interim or final report, disclose which panelists are associated with majority or minority opinions.]

Article x: Interim Panel Report

1. The panel [EU: shall] [US: should] within {90/180} days after the date of its composition issue to the Parties an interim report. Where it considers that this deadline cannot be met, the chair of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel will issue its interim report. Under no circumstances [US: shall] [EU: should] the interim report be issued later than [120/210] days after the date of establishment of the panel [US: unless the Parties decide otherwise].
2. The interim report shall contain:
 - (a) finding of fact;
 - (b) [EU: a determination whether the measure at issue is inconsistent with the obligations of this agreement] [US: a Party has otherwise failed to carry out its obligations under this Agreement; or the measure at issue is causing nullification or impairment in the sense of Article 2(c)]

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- (c) [US: any other findings and determinations specified in the panel's terms of reference;]
 - (d) [US:, if the Parties have jointly requested, recommendations for resolution of the dispute;] and
 - (e) the basic rationale behind any findings and determinations [US: and, where applicable, recommendations].
3. A Party may submit to the panel written comments on precise aspects of its interim report within {14} days of the issuance of the report to the Parties.

4. [EU: In cases of urgency, including those involving perishable goods or seasonal goods or services, the panel shall make every effort to issue its interim report within 60 days of the date of its composition. Any Party may submit a written request to the panel to review precise aspects of the interim report within seven days of the notification of the interim report.]

[US: In matters of urgency, the panel shall make every effort to accelerate the proceedings to the greatest extent possible.]

Article x: Final Panel Report

1. After considering any written comments by the Parties on the interim report, the panel may modify its report and make any further examination it considers appropriate. The final report shall include a discussion of the written comments, if any, submitted by the Parties pursuant to Article x.
2. The panel [US: should] [EU: shall] issue a final report to the Parties [EU: and to the {institutional body}] [US:, including any separate opinions on matters not unanimously agreed,] within {45} days of issuance of the interim report. Where it considers that this deadline cannot be met, the chair of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel will issue its final report. Under no circumstances [EU: should] [US: shall] the final report be issued later than {60} days after the issuance of the interim report.

[EU:

3. In cases of urgency, including those involving perishable goods or seasonal goods or services, the panel shall make every effort to notify its ruling within 60 days from the date of its composition. Under no circumstances should the ruling be notified later than 75 days from the date of its establishment.]
4. [EU: The Parties] [US: Each Party] shall promptly publish the final report, subject to the protection of confidential information.

[EU:

5. The ruling/report of the panel shall be unconditionally accepted by the Parties. It shall not create any rights or obligations for natural or legal persons.]

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[EU: Subsection 2: Compliance]

[EU: Article 10: Compliance with the Panel Ruling]

The Party complained against shall take any measure necessary to comply promptly and in good faith with the panel ruling.]

[EU: Article 11: Reasonable Period of Time for Compliance]

1. If immediate compliance is not possible, the Parties shall endeavor to agree on the period of time to comply with the ruling. In such a case, the Party complained against shall, no later than 30 days after receipt of the notification of the panel ruling to the Parties, notify the complaining Party and the {institutional body} of the time it will require for compliance (“reasonable period of time”).
2. If there is disagreement between the Parties on the reasonable period of time to comply with the panel ruling, the complaining Party shall, within 20 days of the receipt of the notification made under paragraph 1 by the Party complained against, request in writing the original panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the {institutional body}. The panel shall notify its ruling to the Parties and to the {institutional body} within 20 days from the date of the submission of the request.
3. The Party complained against shall inform the complaining party in writing of its progress to comply with the panel ruling at least one month before the expiry of the reasonable period of time.
4. The reasonable period of time may be extended by mutual agreement of the Parties.]

[US: Article 15: Implementation of Final Report]

1. If in its final report the panel determines that the responding Party has not conformed to its obligations under this Agreement or that a measure of the responding Party is causing nullification or impairment in the sense of Article 2 (c), the Parties shall seek to agree on a resolution of the dispute, taking into account the determinations and recommendations, if any, of the panel. The resolution shall normally seek, respectively, to eliminate the non-conformity or the nullification or impairment.
2. If in its final report the panel determines that the responding Party has not complied with its obligations under this agreement or that a measure of the responding Party is causing nullification or impairment under the article 2 (c), within 30 days after the panel presents its final report to the Parties under article 14.2, the responding Party shall inform the complaining Party of its intent with respect to the elimination of the non-conformity of the nullification or impairment.]

[EU: Article 12: Review of Any Measure Taken to Comply With the Panel ruling]

1. The Party complained against shall notify the complaining Party and the {institutional body} before the end of the reasonable period of time of any measure that it has taken to comply with the panel ruling.
2. In the event of a disagreement between the Parties concerning the existence or the consistency of any measure taken to comply with the provisions referred to in Article 2, the

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complaining Party may request in writing the original panel to rule on the matter. Such request shall identify the specific measure at issue and explain how such measure is inconsistent with the provisions referred to in Article 2, in a manner sufficient to present the legal basis for the complaint clearly. The panel shall notify its ruling to the Parties and to the {institutional body} within 45 days of the date of the submission of the request.]

[EU: Article 13: Temporary Remedies in Case of Non-Compliance

1. If the Party complained against fails to notify any measure taken to comply with the panel ruling before the expiry of the reasonable period of time, or if the panel rules that no measure taken to comply exists or the measure notified under Article 12 paragraph 1 is inconsistent with that Party's obligations under the provisions referred to in Article 2, the Party complained against shall, if so requested by the complaining Party and after consultations with that Party, present an offer for temporary compensation.
2. If the complaining Party decides not to request an offer for temporary compensation under paragraph 1 of this Article, or, in case such request is made, if no agreement on compensation is reached within 30 days after the end of the reasonable period of time or of the issuance of the panel ruling under Article 12 that no measure taken to comply exists or that a measure taken to comply is inconsistent with the provisions referred to in Article 2, the complaining Party shall be entitled, upon notification to the other Party and to the {institutional body}, to suspend obligations arising from any provisions referred to in Article 2 at a level equivalent to the nullification or impairment caused by violation. The notification shall specify the level of suspension of obligations. The complaining Party may implement the suspension at any moment after the expiry of 10 days from the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3 of this Article.
3. If the Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the original panel to rule on the matter. Such request shall be notified to the complaining Party and to the {institutional body} before the expiry of the 10-day period referred to in paragraph 2. The original panel shall notify its ruling on the level of the suspension of obligations to the Parties and to the {institutional body} within 30 days of the date of the submission of the request. Obligations shall not be suspended until the original panel has notified its ruling, and any suspension shall be consistent with the panel ruling.
4. The suspension of obligations and the compensation foreseen in this Article shall be temporary and shall not be applied after:
 - (a) the Parties have reached a mutually agreed solution pursuant to Article 17; or
 - (b) the Parties have agreed that the measure notified under Article 12 paragraph 1 brings the Party complained against into conformity with the provisions referred to in Article 2; or
 - (c) any measure found to be inconsistent with the provisions referred to in the Article 2 has been withdrawn or amended so as to bring it into conformity with those provisions, as ruled under Article 12 paragraph 2.]

[US: Article 16: Non-Implementation – Suspension of Benefits

1. If the responding Party fails to notify the complaining Party under Article 15.2 that it intends to eliminate the non-conformity or, where the Panel has determined a measure is causing

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nullification or impairment in the sense of Article 2(c), the responding Party shall enter into negotiations with the complaining Party to develop mutually acceptable compensation within 14 days of receipt of a request by the complaining Party to do so.

2. If the Parties:
 - (a) are unable to agree to a resolution under Article 15.1 within 60 days of receipt of the final panel report;
 - (b) are unable to agree on compensation within 30 days after the responding Party receives the complaining Party's request under Article 16.1; or
 - (c) have agreed on compensation pursuant to Article 16.1 or on a resolution pursuant to Article 15.1 and the complaining Party considers that the responding Party has failed to observe the terms of the agreement,the complaining Party may at any time thereafter provide written notice to the responding Party that it intends to suspend the application to the responding Party of benefits under this Agreement of equivalent effect to the nullification and impairment (i) resulting from the non-conformity or (ii) in the sense of Article 2(c). The notice shall specify the level of benefits that the Party proposes to suspend and the basis for that level.
3. Subject to paragraph 4, 5 and 6, the complaining Party may begin suspending benefits 30 days after it provides written notice to the responding Party under paragraph 2.
4. If the responding Party considers that it has eliminated the non-conformity or the nullification or impairment in the sense of Article 2 (c) that the panel has found, it shall provide the complaining Party, within seven days of receipt of the complaining Party's notice under paragraph 3, with the text of any measure taken to comply and a brief description of how it has eliminated the non-conformity or the nullification or impairment. If the complaining Party considers that the responding Party has not eliminated the non-conformity or the nullification or impairment, it may request the panel to reconvene under paragraph 7 to consider the matter. The complaining Party may not suspend the application of benefits until the panel has reconvened and issued its final report on the matter.
5. If the responding Party considers that the level of benefits proposed to be suspended is manifestly excessive, the responding Party shall so notify the complaining Party within seven days of receiving notice under paragraph 3 and include a brief description of the reasons why it considers the level of benefits proposed to be suspended manifestly excessive. Thereafter, the responding Party may request the panel to be reconvened under paragraph 7 to consider the matter. If the responding Party makes its request before the end of the 30-day period referred to in paragraph 3, the complaining Party may not suspend the application of benefits until the panel has issued its final report on the matter.
6. Notwithstanding paragraph 5, if the responding Party states in its reasons provided under paragraph 5 that it has reduced the non-conformity or the nullification or impairment, it shall provide the complaining Party with the text of any measure taken to comply and a brief description of how it has reduced the non-conformity or the nullification or impairment. If the complaining Party disagrees with the responding Party's statement, it shall notify the responding Party within 45 days of receipt of the responding Party's notification. Thereafter, the responding Party may request the panel to be reconvened under paragraph 7 to consider the matter. If the responding Party makes its request within seven days of receipt of the complaining Party's notification under this paragraph, the complaining Party may not suspend the application of benefits until the panel has issued its final report on the matter.
7. The panel shall reconvene within 14 days of the date of a request to do so under paragraph 4, 5 or 6.
 - (a) The panel shall present to the Parties an interim report on the matter within {90} days

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- after it reconvenes pursuant to a request received under paragraph 5, or within {120} days after it reconvenes pursuant to a request received under paragraph 4 or 6.
- (b) The interim and final panel report shall contain findings of fact, the determination for which it was reconvened and the basic rationale behind any findings and determinations.
 - (c) The panel shall make every effort to take any decision by consensus. Nevertheless, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. Panelists may furnish separate opinions on matters not unanimously agreed. No panel may, either in its interim or final report issued pursuant to paragraph 4, 5 or 6, disclose which panelists are associated with majority or minority opinions.
 - (d) After the panel presents to the Parties an interim report on the matter, each Party may submit written comments to the panel on the panel's interim report within {14} days of the presentation of the report or within such other time period as the Parties may decide.
 - (e) After considering any written comments by the Parties on the interim report, the panel may modify its report and make any further examination it considers appropriate.
 - (f) The panel shall present a final report to the Parties, including any separate opinions on matters not unanimously agreed, within {35} days of presentation of the interim panel report.
 - (g) Unless the Parties decide otherwise, the office designated under Article 4 1(a) for the dispute shall publish the final report, subject to the protection of confidential information, seven days after the panel presents it to the Parties.
8. If the panel has determined pursuant to paragraph 4 that the responding Party has not eliminated the non-conformity or the nullification or impairment in the sense of Article 2 (c), the panel shall determine the level of benefits it considers to be of equivalent effect to the non-conformity or the nullification or impairment in the sense of Article 2 (c) and include this determination in its interim and final report.
9. If the panel pursuant to paragraph 5 or 6 determines that the level of benefits proposed to be suspended is manifestly excessive compared to the nullification or impairment of the benefits under this Agreement resulting from the non-conformity or from the nullification or impairment in the sense of Article 2(c), it shall determine the level of benefits it considers to be of equivalent effect and include this determination in its interim and final report.
10. The complaining Party might begin suspending benefits immediately after it receives the panel's final report pursuant to paragraph 7(f), and any suspension shall be consistent with the panel's final report.
11. Should any arbitrator of the original panel no longer be available to participate in proceedings pursuant to this Article, a replacement shall be selected following the procedures used to pick the unavailable arbitrator.]

[EU: Article 14: Review of Any Measure Taken to Comply After the Adaption of Temporary Remedies for Non-Compliance

1. The Party complained against shall notify the complaining Party and the {institutional body} of the measure it has taken to comply with the ruling of the panel following the suspension of concessions or following the application of temporary compensation, as the case may be. With the exception of cases under paragraph 2, the complaining Party shall terminate the suspension of concessions within 30 days from receipt of the notification. In cases where compensation has been applied, and with the exception of cases under paragraph 2, the defending Party may terminate the application of such compensation within 30 days of its notification that it has complied with the ruling of the panel.

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2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the provisions referred to in Article 2 within 30 days of date of receipt of the notification, the complaining Party shall request in writing the original panel to rule on the matter. Such a request shall be notified simultaneously to the other Party and to the (institutional body). The panel ruling shall be notified to the Parties and to the {institutional body} within 45 days of the date of the submission of the request. If the panel rules that the measure taken to comply is in conformity with the provisions referred to in Article 2, the suspension of obligations or compensation, as the case may be, shall be terminated. Where relevant, the level of suspension of obligations or of compensation shall be adapted in light of the panel ruling.]

[US: Article 17: Compliance Review

1. Without prejudice to Article 16, if the responding Party considers that it has eliminated the non-conformity or the nullification or impairment in the sense of Article 2(c) that the panel has determined, the responding Party shall so notify the complaining Party and provide the complaining Party with the text of any measure taken to comply and a brief description of how the responding Party has eliminated the non-conformity or the nullification or impairment in the sense of Article 2(c). If the complaining Party disagrees with the responding Party's statement, it shall notify the responding Party within {60} days of receipt of the responding Party's notification. Thereafter, either the responding or the complaining Party may request the panel to be reconvened to consider the matter.
2. The panel shall reconvene within 14 days of the request to do so under paragraph 1 and proceed in the same manner as directed under Article 16.7, subparagraphs (b) through (g). The panel shall present to the Parties an interim report on the matter within {120} days after it reconvenes.
3. If the panel determines that the responding Party has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly resume the application of any benefits it has suspended under Article 16.
4. Should any arbitrator of the original panel no longer be available to participate in proceedings pursuant to this Article, a replacement shall be selected following the procedures used to pick the unavailable arbitrator.]

[EU: Section 4

General Provisions]

Article x: Time Limits

1. All time limits for proceedings under this Chapter shall be counted in calendar days, the first day being the day following the act or fact to which they refer, unless otherwise specified.
2. The Parties may agree to modify any time limit in this chapter. [EU: The panel may at any time propose to the Parties to modify any time limit in this chapter, stating the reasons for the proposal.]

[EU: Article x: Review and Modification of the Chapter]

The {institutional body} may decide to modify this Chapter and its Annexes.]

**Note – Tactical State of Play of the TTIP Negotiations
– March 2016**

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SUMMARY

Discussions during the the 12th round of negotiations on the Transatlantic Trade and Investment Partnership (TTIP) took place in Brussels between 22nd and 26th February 2016 and covered all three pillars of the agreement, i.e., market access, the regulatory cluster and rules. As part of the overall intensification of talks, this round stretched into a second week as the US and EU exchanged government procurement offers and continued to discussions on rules of origin as well as intellectual property rights.

During this round two of the three pillars of TTIP were subject to a particular thrust, i.e. regulatory cooperation and rules.

The regulatory pillar saw an exchange of new textual proposals on regulatory cooperation by the EU and US aimed at refining ideas about how to create a system within TTIP which facilitates current and future regulatory cooperation in both manufacturing and services. Parties also discussed the EU's revised draft chapter on good regulatory practices as well as all other regulatory issues, i.e., technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS) and the nine industry sectors under consideration.

In the rules silo, both sides now have on the table their respective proposals for investment protection as well as for the sustainable development chapter. Following substantial changes in the EU's proposal for investment protection, the EU in November 2015 presented a new and reformed approach to investment protection and investment dispute resolution for TTIP, which it presented to the US in detail during this round for the first time. Discussions took place in an open and constructive atmosphere. With regard to sustainable development, the US tabled its proposals on labor and environment, and negotiators turned the spotlight on a detailed examination of each side's proposal. Parties also had good discussions on other parts of the rules silo, such as competition, customs and trade facilitation, state-to-state dispute settlement and SMEs, among other things.

Last but not least, the EU and US discussed market access areas, most notably services, tariffs and public procurement. On procurement, there was an exchange of offers, followed by two and a half days of discussions between the negotiating teams on both the offers and the text of the chapter.

Finally, the Parties agreed on accelerating their work between negotiating rounds with a view to picking up the pace of negotiations at large. Two additional, fully fledged negotiation rounds are planned between now and the summer break. The pivotal and overarching objective is to negotiate an ambitious, high standard TTIP agreement that responds to both EU and US interests, which means that substance will prevail over speed. The EU reiterated its intention to ensure that substantial progress be made in all three pillars of the agreement by the summer break.

1.1 Trade in Goods: Tariffs and Market Access

Non-agricultural goods

The discussion during this round centered upon the offensive interest on each side in terms of faster staging of custom duty elimination on a subset of products currently in the 3, 7 or T basket. The US questioned some of the EU sensitivities on certain chemical products, which also led to discussions on US export restrictions on LNG. The EU gave no room for flexibility on these products and highlighted that the TLs concerned are very few (around 35-40) compared to the overall number of chemical tariff lines (+1,100). The U.S. nonetheless expressed it would have to consult with its

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chemical industry on how to position itself vis-à-vis its current offer of EIF on all chemical tariff lines.

The EU proposed a possible package on mechanical devices in Chapter 84 and electrical appliances in Chapter 85 for which both parties share offensive interests. While the US showed an interest, it hastened to point out that it would need to consult with its industry regarding some of the products and that progress on motor vehicle-related parts would only be possible if the EU showed progress in the discussion on agricultural tariffs.

The US showed openness to improve staging on EU goods such as jewelery, handbags and hand tools for which it has no particular sensitivity vis-à-vis the EU. On ceramics (tiles and roofing) and glass (household wears), the situation is mixed as the US has traditional sensitivities which coincide in some cases with EU export interests. However, the US undertook to review whether certain segments could be put forward for improved staging.

In a more general context, the parties also discussed the fate of the tariff lines in the T basket for which the EU proposed that all NAMA tariff lines be limited to the 7-year basket. The US again explained that it was not against the 7-year basket limit, but could not bind itself to this until it was clear that this would be the ceiling for all tariffs.

Agricultural Goods

Tariffs

The EU sought clarification from the US on its capacity to improve the staging on a number of tariff lines under the “3” and “7” categories and corresponding to the ones offered by the EU at entry into force subject to reciprocity.

The US presented requests on EU lines included under “3”, “7” and “T”, pertaining mostly to the dairy (e.g., butter), cereals, and fruit and vegetables sectors. With respect to the latter, the US side requested elimination of the entry price system.

Products under “Other Treatment” were not discussed.

The US side indicated dairy, sugar, tobacco as products with particular sensitivity.

Chapter on agriculture

Following the consolidation of the four textual elements (EU and US proposals for Chapter: EU proposal on wine and spirits; US proposal on spirits), a first review led to the identification of elements where further convergence seems possible (cooperation, committee on agriculture), and others where positions are far apart (export competition, wine).

As regards export competition, the US is opposed to the inclusion of any discipline in TTIP that would go beyond the Nairobi outcome. It pointed to a non-binding language in TPP where it resisted calls from other members to undertake specific commitments. The US suggested adding the language on export restrictions agreed in TPP and committed to propose an alternative language on cooperation in agriculture.

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On wine, the EU recalled that TTIP must include comprehensive disciplines on wine and spirits based on the incorporation of the existing bilateral agreements, and eliminate the possibility for US producers to use the 17 EU wine names (so-called “semi-generics”) listed in Annex II of the 2006 Wine Agreement. The US reiterated its opposition to the incorporation of wine rules in TTIP and to the EU request on semi-generics. The EU expressed strong concerns and will follow up at political level.

The EU presented its counterproposal for the annex on labeling provisions on spirits, based on the joint position of the EU and US industries. The two sides will now work on a consolidated text based on the EU and US proposals.

The two sides reviewed specific non-tariff issues. On some of them, specific steps were identified to work toward appropriate solutions and ensure follow up. On others, such as dairy import assessment or support of small beer and wine producers, the US is still questioning the significance of the issues for the EU industry.

Fisheries

As part of the 12th negotiating round, the EU and the US held a discussion on market access in the area of fisheries. The purpose of the meeting was to explore each side's export interest with a view on how to balance those with respective sensitive domestic interests. Both Parties explained their offensive and defensive interests. The US will now need to complete and improve its offer to reduce the current gap. The objective is to have complete liberalization in this sector, with a symmetrical dismantlement of tariffs for the sensitive products.

1.2 Public procurement

Discussions focused firstly on the recent exchange of initial procurement offers. Both sides clarified the scope and the main value elements of their respective offers and provided further interpretation to the commitments and notes within the offer documents. The EU asked questions on US entities that covered the threshold values and their practical enforcement as well as on the service contracts covered. The EU also asked questions on how the contracts covered were procured in practice. Also, questions were asked comparing commitments made in TPP.

Furthermore, the EU continued to ask questions on market access in a number of key priority areas. These questions covered the following topics which are within Federal competence: new Federal domestic content restrictions (such as the FAST Act of February 2016, which raises American content requirement for rolling stock procurement funded by Federal Transit Administration from 60% to 70%), allowing local hiring preferences in some federally funded infrastructure projects, possible reorganization plans of the US Federal Aviation Administration, restrictions and exclusions on procurement of dredging and ship building, restrictions in procurement by the Department of Defense of specialty metals, textiles and hand tools as well as sub-contracting obligations with regards to US SMEs. The EU received factual answers on a majority of the questions. However, the US was not able to provide any further answers or comments with regard to sub-Federal procurement and again underlined its difficulties and sensitivities in this area. With regard to the process, the US clarified that anything remaining for market access in procurement is linked to sensitivities.

As for the textual provisions for the chapter, some of the key textual provisions relate to market access (such as on National Treatment and flow-down), more fundamental advancement is subject to agreement to be reached on market access. As for other areas of the text proposal, discussions allowed to clarify positions in view of more fundamental advancement in the next round. EU stressed in particular the need to find solutions to build more transparency and facilitate access to procurement by SMEs.

1.3 Trade in Services and Investment

The EU and the US covered the following areas in the services discussion: cross-border trade in services, liberalization of investment and rules related to financial services, postal and express delivery services, direct selling, recognition of professional qualifications, domestic regulation, telecoms and e-commerce. There was also a short exchange on follow-up issues related to market access.

As regards **liberalization of investment**, we had one day of discussions focusing on definitions, market access, national treatment, performance requirements and senior management and board of directors. The EU and the US have engaged in an in-depth comparison of their respective approaches, with a view to identifying areas that would require further substantive discussion in future rounds. Work towards a consolidated text has progressed, notably on definitions, performance requirements and senior management and board of directors.

As regards **financial services**, the EU and the US agreed on the architecture of the financial services chapter according to the EU proposal: the EU accepted a stand-alone chapter on financial services (content to be negotiated) and the US agreed to a process of negotiation, whereby horizontal disciplines (such as national treatment) would be centralized for the sake of efficiency and to avoid undesired inconsistencies. Once these discussions reach sufficient maturity, we will discuss if and how to modify these provisions to the FS chapter.

Furthermore, we started work on the consolidated text. The focus of the discussions was on definitions, the scope of the financial chapter as well as rules and exceptions (specific exception, prudential exception). In particular the US chapter on financial services covers only financial service suppliers, which are regulated and supervised as financial institutions (all other financial services suppliers are covered in the investment chapter), whereas the EU chapter covers all categories of financial service suppliers. Moreover, the EU prudential exception includes a necessity test as opposed to the US proposal which includes an anti-circumvention test as in the GATS.

The EU and the US have not changed their positions on **regulatory cooperation in financial services**: The US continues to oppose discussing this issue in TTIP, whereas the EU confirmed that its mutual access offer for Financial Services hinges upon the US satisfactory engagement in regulatory cooperation.

The EU and the US discussed the approach to **domestic regulation** on the basis of the EU non-paper and taking into account the current outcome of TISA negotiations. The US took a cautious position on the application of domestic regulation to non-services such as manufacturing.

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Also, we discussed **delivery services** on the basis of the EU and US proposals tabled for this round. The US text is based on the jointly agreed TISA text and, as such, has many things in common with the EU's proposal for TTIP.

The US presented its proposal on **direct selling** and stressed its benefits for SMEs. The EU expressed an interest in including provisions on direct selling in TTIP provided that the proposal does not affect the EU's rules on consumer protection. The US agreed with the approach.

The EU and the US made further progress in the negotiations related to the framework of **mutual recognition agreements**. The focus was on ensuring that the mechanism envisaged by the agreement would be compatible with EU and US regulatory systems. The US confirmed its ambition of going beyond its existing practices including TPP and TISA. The Parties also discussed how to apply different types of dispute/mediation/appeal mechanisms to the framework. Intersessional discussions on auditors and architects are planned for March.

The discussions on market access focused on telecoms and maritime transport (EU interests) and Annex 2 (US interests).

Apart from that, we had three days of discussions on **telecommunications services**, covering all EU and US proposals. There was an in-depth discussion on the scope of the chapter (the EU insisting on covering new telecommunications services, such as broadband, and the US proposing a self-defined scope) and on access obligations for major suppliers. However, there is no major progress to report at this stage. The US signaled that progress on these key EU interests might be accelerated if discussions on data flows and computing facilities also advanced faster (allegedly because US telecom operators are very interested in data flows). There was some progress on the text of the telecoms chapter, most notably on the provisions on interconnection and competitive safeguards.

Discussions on **e-commerce** covered all proposals except for the provisions on data flows and computing facilities. There was good progress on understanding each other's proposals and on exploring potential possibilities for compromise. With regard to non-discrimination of digital products, the US emphasized that they are very interested in this concept irrespective of the coverage of audio-visual services. They signaled some openness to refer to a more neutral term (digital content instead of digital products) and to exclude audio-visual services from this provision. Positive discussions also took place on the EU proposals on e-trust services and e-authentication and on the prohibition of prior authorization requirements for online services.

1.4. Rules of Origin

Product-specific rules

Negotiators discussed the following issues:

(i) **US proposal on 'Origin Procedures' (Section B)**

- The US text follows the TPP model, however
 - (i), it excludes a number of elements incorporated there, e.g., the requirement for importing customs authorities to request information from the exporter/producer before denying a claim of preference, as well as some references to customs cooperation and
 - (ii) it re-introduces the knowledge of the importers.

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- The US highlighted the need for a speedy verification procedure and for the importing party to decide on the originating status of the goods, the US expressed concerns on the possibility for the EU system to be subject to abuses by the exporting authority, which may be inclined to protect its exporters' interests by confirming the originating status of the goods.
- While agreeing on the need to establish an appropriate procedure of verification, the EU insisted on the need to protect the confidential information of exporters/producers. In this sense, the cooperation of both Parties' authorities in case of verification would ensure the needed comfort for the operators. EU noted that the US system could also be subject to abuses by the importing authorities, which could refuse the preferences without having contacted the exporter/producer or the authorities of the exporting Party.
- The US requested the EU to react to its proposal.

(ii) 'General Provisions' part (Section A)

- The texts of the 'non-conflictive provisions' of the Parties are close in substance and drafting. The US seemed to be open to considering the EU's compromise texts proposal.
- Specific discussions took place on the concrete functioning of the US proposal on 'requirement for originating status' and 'cumulation'. The US confirmed that its proposal is that the products are originating 'in TTIP' (common origin) and that materials and also all types of processes may be cumulated by the Parties (full cumulation).
- The EU formulated a list of concrete questions on the functioning of several US provisions (meaning of 'produced entirely in the territory of the Parties', definition of 'territory of US' in relation with the territorial seas/EEZ, etc.) and requested the US to come back with detailed explanations.
- The US agreed on EU/US consolidated text containing the initial positions of the Parties for the reading room, subject to final legal confirmation.

(iii) Product Specific Rules (PSR)

- The US indicated its readiness to exchange proposals on agricultural products in the round of April.
- The Parties compared in detail the respective proposals for Chapters 85 and 86. The US approach for many products in HS Chapter 85 is to impede the import of the relevant parts, and to permit for the assembly of the imported parts to confer origin only if a certain value added is reached in the Party, as the EU does. The Parties noted that the positions are close for HS Chapter 86.
- The US flagged the possibility of certain changes in the chemical sectors, i.e., to use a horizontal rule for each chapter, as the EU proposes.
- The EU recalls the basics of the anti-fraud clause (in all agreements; protection of public revenues, applicable in case of systemic fraud/lack of enforcements of the rules by one Party), and clarified US concerns.
- Both Parties agreed that the anti-fraud clause will build on the “origin procedures” (certification/verification of origin) once established.
- Both Parties agreed that there is no divergence in the objective of fighting against fraud, and that accordingly, we must introduce relevant provisions. The question remaining is “how”.

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Textiles

Discussions took place on the following issues:

- (i) The standard approaches of both Parties to product-specific rules (PSR), as well as some other elements such as tolerances, origin quota derogations and cumulation.
- Detailed exchange following the comparison of the EU approach (where the product-specific rule requirements apply to all materials) and the US method (where the product-specific rule requirements apply exclusively to some materials; those which define the classification of the product). In conclusion, the US approach is more relaxed than the EU one.
 - The US raised questions on the EU-Vietnam FTA, and more precisely, on cumulation with Korea as a solution to relax the rules. Detailed questions on the functioning of EU extended cumulation followed.
 - Further details on the different functioning of 'origin quota derogations' and the 'short supply list mechanism' were highlighted. The US considers 'origin quota derogations' products as 'non-originating' and they are therefore only partially covered by the FTA. Products in the short supply list are deemed originating (the list is considered part of the PSR). The US repeated that they will no longer pursue 'origin quota derogations' in its FTAs.
 - Specific certificates of origin issued by governmental authorities are used only for cases of 'origin quota derogations' in some regimes (AGOA) because of the procedures needed for the implementation of the quotas.
- ii. The elements of the US proposed Chapter on Textile and Clothing referring to anti-circumvention and information sharing. The EU noted that:
- some of the provisions did not seem to be relevant in an agreement between the EU and the US. The US agreed.
 - other provisions seemed to have an undefined scope, i.e., they were not clear on what the obligations of a Party would be in case of a request for cooperation by the other Party.
 - potential overlapping with the CCMAA (Customs Cooperation and Mutual Assistance Agreement)
 - Confidentiality issues where not clearly addressed.

The US confirmed that:

- The scope of these provisions goes beyond strictly preferential origin issues of textiles and clothing and would also cover infringements and fraud on non-preferential origin (anti-dumping, origin marking), but not on other elements such as labeling. The reason behind these proposed provisions is the high incidence of fraud (determined in around 50% of cases investigated).
- US customs may provide customs cooperation following a request by a partner importing country for the verification of the preferential originating status of textile and clothing products exported from the US. The legal authority vis-à-vis exporters to conduct such verifications would be derived from the Free Trade Agreement, possibly supported by further legislation implemented in the US. Although US customs could potentially request the cooperation of the exporting partner country for preferential imports, it prefers in most cases to do its own verification including direct visits to the exporting country.

2.1 Regulatory Coherence

Discussions took place in a constructive manner and good progress was made in both sessions. As the respective proposals reflect exchanges over the past months (with each side taking into account some of the comments received in previous negotiations), they are a very useful starting point for further work. Both sides asked a number of questions for clarification and agreed that work will need to continue between sessions, including on legal issues. Although further analysis is needed, it is safe to say that provisions tabled by both the EU and US are complementary in many respects and could form the basis for identifying common ground. Looking ahead, each side will provide additional information on its proposals prior to the next negotiating round. Furthermore, the Parties agreed to work on a possible consolidation of both parts in parallel. However, a number of important issues remain to be addressed: scope (both in terms of measures and authorities covered), the question of how to identify the cooperation activities that should be covered, and the architecture (relationship of the regulatory cooperation chapter with sectors), including the institutional mechanism, which will be crucial to the future operability of regulatory cooperation.

2.2 Technical Barriers to Trade

Discussions on standards during this round sought to strike a balance between the existing respective proposals and can therefore be seen as an attempt to find a compromise on:

- i) transparency concerning the referencing of standards in support of regulatory objectives and the active participation of governments in the development of standards;
- ii) cooperation between EU and US standardization bodies, also with a view to enhancing stakeholder participation;
- iii) consideration and use of standards developed by the other side;
- iv) possibility for stakeholders to submit proposals to both Parties for common EU-US standards.

The US and the EU also discussed existing textual provisions on cooperation, resolution of trade concerns, and the role and functions of the TBT Committee. The US also provided a “bracketed” version of the original EU proposal on standards with edits or alternative wording which would make the EU text potentially acceptable to them.

Difficult issues, not discussed in detail during the round but referred to by the US remain: 1) the US insistence on the reference to its approach to international standards; 2) the link made by the US between “openness” (meaning an unqualified right of participation of US stakeholders in CEN-CENELEC) and the possibility for US agencies to consider European standards for referencing; 3) the US request for a process establishing the equivalence of US and harmonized European standards.

Transparency in standards setting

The EU proposed that US regulatory Agencies would have the obligation to a) inform the public of their participation in standards development activities, and b) make public their intention to reference a standard in regulation at an early stage and allow any interested person to provide feedback not only once a standard has been preselected – as it is currently done under the notice and

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comment procedure, but even before that preselection is made by means of an Advance Notice for Proposed Rulemaking or a Request for Information. On its side the EU would publish the draft of the Annual Union Work Program on standardization and the different standardization requests, and allow any interested person to provide feedback. The US welcomed this idea, but questioned the details of its implementation regarding mostly deadlines and procedures for providing feedback, as well as accountability of the commission regarding the taking into account of the feedback.

Stakeholders' participation in standards setting

The US insisted on its request for the commission to “require”, in its standardization request, CEN and CENELEC to involve US experts in its standards development process (with no guarantee of reciprocity) as a condition for referencing harmonized standards.

Consideration of the standards of the other Party in the development of new standards and for incorporation by reference in technical regulations

The US insisted on reflecting its understanding of international standards in the relevant provisions, this is to say that any standard complying with the criteria of the WTO TBT Committee Decision on Principles for the Development of International Standards, is an international standard, even if the body developing them is not an organization where participation takes place through national delegations.

Stakeholders' proposals on cooperation on standards

The EU presented the idea of creating a process by which stakeholders could put forward ideas which, if deemed appropriate by the relevant regulators, would trigger work aiming at developing common standards.

Provision on cooperation

There are some commonalities between the EU and the US proposals on bilateral cooperation which should facilitate consolidation. The EU underlined the need to ensure consistency and avoid duplication with the horizontal Regulatory Cooperation Chapter and flagged the difficulty of accepting that the proposed cooperation should have a specific objective to, inter alia, “establish procedures to recognize as equivalent standards used as a basis for or in support of compliance with regulations.” The EU insisted on the need to approach cooperation on standards in a more holistic way and not just focusing on equivalence of standards. The US indicated that they have similar procedures in place with Canada and Mexico but could not offer any practical example of equivalence granted.

US provision on resolution of trade concerns

The US proposal aims for a technical discussion on trade irritants concerning existing or planned TBT measures with a view to finding bilateral solutions as soon as possible, without having recourse to more formal procedures under TTIP. While not objecting in principle to having such a mechanism, the EU stressed the need to ensure that this is used efficiently and not hindered by trivial issues and does not duplicate unnecessarily parallel ongoing discussions on the same matters in the WTO TBT Committee framework.

US provisions on role and functions of the TTIP TBT Committee

Most of the proposed functions are not problematic and in line with both sides' practice in other FTAs. However, the US proposal reflects the US preference for a strong TBT Committee which also encompasses some overseeing functions on regulatory cooperation.

2.3 Sanitary and phytosanitary issues

Both sides appointed new lead negotiators – Koen van Dyck, SANTE and Sharon Borner, USTR. Discussions on SPS were cumbersome, partly due to the fact that the US proposals were based on the TPP agreement most of the time. The Parties discussed proposed articles on regionalization, audits, certification and anti-microbial resistance. The discussion also covered new annexes on regionalization and audits (the EU proposed to use the agreed text from the Veterinary Agreement of 1998 as a basis), and on certification (proposed by the US). Because new text had been tabled, the discussion largely focused on explaining the text and underlying objectives and concepts of each side. Given that internationally agreed guidance documents are available in the area of audits and also on regionalization, both sides questioned the need for annexes that describe procedures at the level of detail as in the Veterinary Agreement.

On regionalization, it became apparent that US ambitions are not as far-reaching as the EU proposal, in particular in the area of plant health. To provide a more suitable structure for further discussion, it was agreed to reorganize the text in a way that more clearly separates general principles, provisions related to animal diseases and provisions related to plant pests. The EU undertook to make a proposal which reorganizes the elements but does not change the substance of either side's text.

On audits, the US asked many detailed question about the annex proposed by the EU – although the text comes from in the Veterinary Agreement. On very short notice, on 20 February, the US had sent a revised text proposal for the Article which is based on TPP Agreement. The EU was not in a position to enter into text consolidation on this revised back. The US took the view that the Article on 'audits' should not address the verification activities of the FDA or APHIS, because these agencies do 'inspections' rather than 'audits'. The EU took the view that the Article should preferably address all verification activities, i.e., audits and inspections.

On certification, the US proposed a annex and some revisions to the proposed text of the Article, which were discussed in detail. It appears that the US is seeking to simplify certification procedures as much as possible. The EU understands 'certification' as one aspect of the overall trade conditions and signaled a certain flexibility on this issue, if other aspects of bilateral trade conditions (audit, swift approval procedures) are also addressed.

Many detailed questions were asked about the proposed Article on anti-microbial resistance. No text brackets were removed. The US volunteered to update the consolidated text proposals on the audits and certification articles. The EU will work on the consolidated regionalization text. It was agreed to schedule a discussion between sessions, possibly in early April.

2.4 Sectors

Pharmaceuticals

Regulators on both sides noted that there is the intention to establish a Mutual Recognition Agreement on GMP inspections including all 28 MS, provided that the FDA receives reports of the audits conducted under the Joint Audit Program (JAP) (i.e., MS peer review system) and a set of additional information on each country. Afterwards, the FDA will carry out its own assessment country by country. This is a significant step forward compared to previous negotiation rounds. The

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implementation of this understanding should be further fine-tuned, as the FDA aims at MS being included progressively on a rolling basis and the Commission wants to make sure that all MS will be evaluated and included before TTIP enters into force.

From the eight audits (Sweden, Greece, Croatia, Germany, UK, the Czech Republic, Hungary and Italy) in 2015 in the context of the JAP, only three reports have been made available to the US FDA (SE, EL, HR). The five other reports are due to be finalized in the coming weeks. Those reports are produced by EU MS auditors and include feedback from the auditee. The FDA undertook to take a decision on each MS, three months after having received the JAP audit report and other additional information (MS conflict of interest rules and pre-audit documentation). In comparison with the process followed for the other MRAs on GMP, it is remarkable that the FDA would essentially rely on the JAP since it is an EU MS internal system of audits. It is therefore of utmost importance that MS deliver the JAP audit reports within a shorter time frame (e.g., not more than four months) and provide the additional information required for FDA assessment.

Consideration should be given to accelerating the program in order to complete the audits of all MS before TTIP is signed. In addition to its current financial support, the Commission will discuss with Member States possibilities to increase human resources to support a higher number of audits in order to achieve this objective.

The FDA did not show interest on working on generics (EU proposal submitted in December 2015), arguing a lack of resources to examine the proposal but undertook to provide feedback by the next round. Considerations that scientific work should be excluded from TTIP were also put forward. However, the EU insisted on the need to work under TTIP to promote regulatory and scientific collaboration in areas such as biosimilars, generics and pediatrics.

On the exchange of confidential trade secret information, there is agreement that this is an important matter but there is not yet agreement on what instrument to use. The FDA favors a document to be signed by each MS, the Commission and the European Medicines Agency. In accordance with this approach, the FDA has proposed a template that is under legal analysis. The Commission favors using TTIP as a legal basis for the exchange of confidential and trade secret information.

Cosmetics

All in all, discussions on cosmetics remain very difficult and the scope of common objectives fairly limited.

The US confirmed that in the US, UV filters (which are used in many cosmetic products) will continue to be subject to safety assessment based on animal carcinogenic studies that EU enterprises cannot provide due to the EU ban on animal testing. The EU and US approaches remain irreconcilable and EU market access problems will therefore remain.

Although it would be important to enhance scientific cooperation on the safety assessment of cosmetic ingredients, there was no agreement on the modalities to be established.

The FDA is not interested in working on labeling (as dual labeling is allowed) nor on collaboration within INCI (International Nomenclature of Cosmetic Ingredients). The only interest is to carry out a pilot project on a set of colorants (however, the outcome/impact of such a study is unclear).

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The FDA indicated that it has no intention to revisit its Sun Protection Factor (SPF) efficacy testing standard that deviates from the existing ISO standard (the EU idea would be to avoid double testing). Despite not being identical to the ISO standard, the FDA believes its guidelines are in line with the ISO standard.

On alternatives to animal testing (ATMs), the FDA is willing to accept TPP language (recommendation to use ATMs when available) but that would not apply in any case of any cosmetic product containing a sunscreen ingredient.

Textiles

The textile regulatory meeting was constructive and areas of common interest were identified (textile labeling, safety aspects and standards). However, concrete modalities to put into practice such cooperation have not yet been established. The next step should be for the EU to draft and table a legal text.

Cars

The EU and the US held a constructive and detailed technical discussion based on the EU proposal to explore equivalence, equivalence plus and/or expedited harmonization deliverables based on test cases and follow-up discussions (safety aspects of automotive regulation). The two sides exchanged detailed information on each of the issues, agreeing that more work on technical details would be needed between sessions. In general, there was a shared understanding of the issues that would need to be addressed, with safety standards related to crashworthiness continuing to be the most complex area of work. There was also an exchange of views regarding the UN 1998 Agreement process. The EU side expressed openness to improve aspects related to transparency.

The two sides gave updates on potential areas for **expedited bilateral harmonization**:

- Adaptive front lighting – common work to be developed based on NHTSA research
- Automatic emergency braking system – the process in the EU has been launched aiming at a Commission proposal. There is ground for exchange of information and common work (voluntary agreement in the US)
- Seat-belt interlocks – exchange of information to be pursued.

Regarding **work in the UNECE**, the two sides exchanged information on the state of play of the trilateral paper and the Geneva process, which will hopefully be approved in the WP29 session in March 2016. For the implementation process, the sides will prepare an evaluation of the implementation of existing Global Technical Regulations and pending work on Global Technical Regulations and debate priorities for future work (with Japan).

Medical devices

The two Parties need to further reflect on how to translate the current three agenda points into specific objectives/deliverables to be achieved within TTIP negotiations.

The US keeps insisting on the need for the EU to implement the Medical Device Single Audit

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Program (MDSAP) Pilot as soon as possible and to implement IMDRF guidance documents. The EU is currently only an observer in the MDSAP and the intention of the Commission is to decide with MS on possible full participation in the future. In addition, should the EU decide to become a full member of the MDSAP, i.e., for the EU to be able to accept the manufacturing site audits carried out by third country auditors, a legal basis would need to be established. There is a need to improve the uptake of MDSAP among manufacturers and auditing organizations (need of critical mass of auditors and audits to be able to assess MDASP functioning). The Commission may also inquire if other MS are available to actively participate in the MDSAP.

The EU undertook to discuss possible further implementation of IMDRF MDSAP guidance documents with the EU Notified Body Operations Group (NBOG) as this matter is MS responsibility.

On Unique Device Identification – UDI, the Commission (DG GROW) IT team is reviewing the US UDI Database (GUDID) technical file and is engaged in preparatory technical work to integrate EU UDI system. The idea

is to build in an EU system aligned and interoperable (data exchanges) with the US system. The US system has been operational since September 2014. The EU system will take some years to become operational. A DVC will take place between EU and US technical experts on 9 March.

Regarding Regulated Product Submission – RPS, industry seems to be very keen on this strand of work. In the IMDRF Pilot, 11 applications have been accepted so far. Five notified bodies of the EU are involved. Ireland is coordinating the effort on the side of EU regulators.

ICT

Market surveillance

The Parties continued to discuss how to establish a market surveillance framework for cooperation in TTIP relating to ICT products, in particular those that in the EU are covered by the Radio and the EMC Directive. The Parties continue to agree on their interest in having language in TTIP on this issue. The US will put forward a text during the following round which is largely based on the Draft Memorandum of Understanding drafted by the Federal Communications Commission and the Administrative Cooperation (ADCO) groups of the EU in 2010.

E-labeling

The US debriefed the EU on the progress of its Notice for Proposed Rulemaking in this area, which they intend to have finished before the end of 2016. The US insisted that there is a window of opportunity for the EU and the US to converge on the requirements in this area. The EU, while welcoming future exchanges on this area, noted that this is not a legislative priority, and that whenever considered this will be part of a larger exercise in which other e-compliance activities will be considered.

Software-Defined Radio

The EU and the US provided mutual updates on the state of play of legislative preparatory work

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relating to the compliance of software-defined radio. Both parties confirmed their interest in exchanging views and information on this issue.

Specific Absorption Rates

The EU provided updates on current developments concerning standards relating to the specific absorption rate and measurement methods. Both parties agreed to continue exchanging information.

E-health

The EU noted that the new work stream on innovation ecosystems appears to be generating a lot of interest among newcomers/stakeholders in both the EU and the US.

The EU side emphasized the importance of maintaining (as agreed several times with the US side over the last couple of years) the good progress of the roadmap work under the auspices of the TEC.

E-accessibility

The Parties discussed recent developments in their cooperation on e-accessibility issues and noted their satisfaction with the ongoing process. During the discussion the US confirmed its intention to publish its e-accessibility standards in October this year. Both sides agreed to re-examine the situation once the US standard has been published and try to see if the European standard (EN) could be aligned then. Both parties agreed that once the alignment is completed a discussion could take place to address the internationalization of the common accessibility standards.

Encryption

The EU and the US continued to discuss conformity assessment principles for ICT products that use cryptography. The discussion was based on the TPP text, which the US linked to the World Semiconductor Council (WSC) principles.

The EU noted the sensitivities of Member States, which are competent in this area and which would not like to see its right to regulate curtailed in a security-related area. The EU went on to present a set of questions, derived from previous contacts with Member States. As the US was not ready to provide a reply on the spot, the EU will be sending the set of follow up questions in written form. Given the complexity of the subject, both sides agreed on the need to further deepen the issue on both policy and technical aspects before the next TTIP round.

Engineering

The discussion on the engineering sector was characterized by continuous reluctance on the part of the US side to engage in this sector.

The EU pointed to the numerous industry contributions received in that sector (including joint submission from EU and US industry associations) and reported on ideas brought forward by industry to translate these general requests into specific items (e.g., harmonization of safety pictograms). The EU also requested a presentation from OSHA on safety legislation in the area of machinery in order to facilitate the identification of possible areas of cooperation.

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The US pointed out that joint industry submissions address very general issues of principle that are subject to other negotiations chapters (TBT and Regulatory Cooperation) and are not sufficiently precise to justify a sector-specific annex. According to the US, this level of generality reflects the de facto lack of agreement between EU and US industries on specific issues relating to that sector. The US reiterated that in order to justify a specific engineering annex and the involvement of the relevant US regulators, ideas must be concrete enough to provide a clear benefit in terms of avoiding costs/administrative burden for industry.

Chemicals

Both sides agreed to speed up the process as much as possible over the next months. General common objectives were identified. This constitutes significant progress, seeing that the US has been reluctant to engage or commit to any particular objectives until now. Text-based discussion could then follow.

Furthermore, the EU and the US reviewed the status of the follow-up actions agreed at the 11th round. As part of its follow-up actions, the EU consulted with the MS involved in pilot projects to find out whether they found them useful. Two competent authorities confirmed that they had found the information exchange with the US authorities on priority substances useful and one reported that they would continue this cooperation in the future.

Another competent authority reported that the initial information exchange had established that the US and the Member States were working on different issues relating to one priority substance – further cooperation would, therefore, be only of limited value. One competent authority noted that the information exchange had been useful, but probably more for the US than for that Member State due to different timelines for the work envisaged. All competent authorities confirmed that the cooperation with the US had not led to additional work nor to any delays in the planning and execution of its own activities.

The US had requested to again discuss the sharing of data for regulatory purposes, in particular the sharing of confidential information, as this had come up in several of the pilot projects. The EU stressed that this is a cross-cutting issue also relevant for other sectors, notably pharmaceuticals, and possibly also for horizontal regulatory cooperation. The US recalled that TSCA (Toxic Substances Control Act) had very strict rules concerning the protection of CBI (Confidential Business Information) and agreements with other countries (such as Australia or Canada) had included provisions stating that this kind of sharing is only possible with the consent of data owners. The EU mentioned that a similar proposal had been made by European industry; however, the EU considered that in such a configuration, the involvement of authorities is not actually needed as data owners can directly agree to make their data available to whichever authority requests them. The REACH regulation contained clear rules for authorities: exchange of confidential information with a third country is possible without the consent of data owners, provided there is a formal agreement in place that ensures protection of CBI. The EU also recalled that a Congress TTIP ratification bill could override current US legal limitations. The US considered that this would be unlikely and saw benefits in consent-based provisions, i.e., the opinion of authorities on the data that an owner also agrees to make available to the other authority. The US noted that one of the pilot projects had revealed an interest in being able to share confidential information in the possession of a Member State but outside of REACH (e.g., from a national product register). The EU commented that REACH contained no provisions that would apply to such data and that this would have to be

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further examined – it might be relevant for other sectors as well. The EU recalled that the topic of facilitating data sharing also included data formats and the follow-up to the data sharing symposium organized by ACC (American Chemistry Council) in July 2015, which had aimed at convincing the US EPA (Environmental Protection Agency) that it is possible to work with robust study summaries (as the EU does) rather than with full study reports. The EPA had agreed to conduct a retrospective analysis comparing some full study reports and robust summaries to assess whether the latter were sufficiently reliable. But this depends on willingness of industry to make available suitable data. The EU was willing to participate in and contribute to such a review.

There had not been any progress in the pilot project on classification and labeling as the US OSHA (Occupational Safety and Health Administration) had not completed its analysis of differences in the classification rules for mixtures in Safety Data Sheets. The OSHA had reached out to the ACC to investigate whether EU-US differences on SDS existed only on paper or whether they posed a real problem for operators. Feedback was still outstanding. The EU welcomed outreach and recalled that this should also take place on the EU side, once the paper from the US was available. The OSHA committed to deliver the more comprehensive analysis by the end of March, and then a follow-up telephone communication could be held in the week of 4 April.

Pesticides

The EU and the US discussed shared objectives in this area. An initial discussion tentatively identified common approaches in the application of regulatory provisions – in particular on minor crops – and in the cooperation in international fora such as the CODEX or the OECD. Discussions were held to consider the sharing of scientific information and data sources, as well as crop groupings that are part of the respective regulatory toolboxes during application procedures. Parties will further explore these in advance of the next round.

3. Rules

3.1. Sustainable Development

The discussions took place in a constructive atmosphere. The US clearly felt more comfortable engaging in the discussions on the basis of its own text proposal, including in terms of its general willingness to have discussions concerning some areas that go beyond previous US FTA practice.

This allowed the EU to reiterate messages on the importance of an ambitious text, and to seek detailed feedback from the US on the innovative elements in the EU proposal – notably on the “thematic articles” on core labor standards and on environmental issues.

However, it should be noted that the proposal tabled by the US is still partial, and notably does not cover all areas of interest to the EU (and included in the EU text). The US adhered to a cautious position in several of such areas, reiterating during the round that internal consultations are still ongoing – including on some topics already addressed in TPP, such as biodiversity.

Therefore, while the constructive spirit of this round is a positive signal, further exchanges will be needed in order to have a full assessment of the scope and level of detail pursued by the US in this area. The architecture of the text also remains an issue to be discussed further.

3.2 Trade in Energy and Raw Materials

The US did not come forward with its priorities on energy and raw materials. The US argued that they were not in a position to exchange anything with the EU, given that the inter-agency process had not been concluded. Nevertheless, the US seemed willing to present priorities ahead of the next round in April.

Discussion on certain elements of the Trade in Goods/Market Access chapter helped to clarify whether horizontal provisions could cover specific issues pertaining to Energy and Raw Materials, such as dual pricing and export restrictions. As regards the latter, the US kept insisting that the export of natural gas to the EU could be linked with the EU's commitments and reservations in the Services and Investment chapter.

3.3. Small and Medium Enterprises

This was a particularly encouraging and positive meeting. On the Committee, the EU and US agreed on substance but still need to work out some drafting issues. On the website, a potential landing zone was explored. The US would not give information on NTBs organized by HS code, but could provide a robust website with all the relevant information consolidated into a single place. The US also signaled resistance to binding commitments on information about sub-federal.

The Parties are working to finalize the consolidation of the EU and US proposals on the Committee, where there is no substantive difficulty.

Furthermore, the Parties agreed that the SME chapter should also reflect SME-specific issues addressed elsewhere in TTIP.

3.4 Customs and Trade Facilitation

A productive exchange allowed for further progress in the text of the chapter. Convergence was explored in relation to several articles, subject to confirmation after internal consultation by both Parties. Tier I areas where such progress was made include inquiry points, release of goods, international standards, use of information technology and electronic payment data, and documentation, post-clearance audit, customs brokers, pre-shipment inspection, transit and shipment.

Clarification was supplied on important outstanding issues including:

- advance rulings, where differences remain on scope, timelines for adoption and validity, and publications;
- expedited shipments, where the EU is focusing on discussions on the substance of simplifications afforded to operators;
- *de minimis*, with an emphasis by the EU on efforts toward the facilitation of VAT payments, as announced in the EU communication on the Digital Single Market.

The scope of the Article on fees and charges remains open.

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The EU introduced new proposals relating to:

- Objectives and principles;
- Tier I texts on authorized operators and on single window;
- A proposal on Tier II activities and on the specialized committee.

The initial exchange allowed for several clarifications. The articulation of Tier I commitments and Tier II activities was discussed, notably in relation to data alignment. Exchanges will continue at the next round.

The US introduced new proposals relating to:

- advice and guidance; the text proposed reflects a US administrative procedure allowing operators to request advice and guidance on a customs transaction from a designated authority;
- standards of conduct; the text introduced by the US is intended to complement language envisaged in a separate chapter on anti-corruption;
- the customs treatment of shipping containers; the EU mentioned that this matter could be addressed in the context of language on temporary admission.

Further discussions of customs-related topics (temporary admission, return of goods after repair, duty-free entry of commercial samples) took place in a joint meeting of the Customs and Trade Facilitation and the trade in goods groups. The EU mentioned its intention to present a proposal on temporary admission ahead of the next round.

Finally, in response to a request from the EU, agreement was also reached on a updated version of the consolidated text of the chapter, reflecting progress made in the discussions over the past year and including the latest respective textual proposals. This document is soon to be made available to EU stakeholders.

3.5 Intellectual Property Rights, Including Geographical Indications

A positive feature of the twelfth round of IP discussions was the US submission, for the first time, of some texts on relatively consensual areas (international treaties and general provisions). However, the US remains unwilling to table, at this stage, concrete proposals on more sensitive offensive interests that have been expressed by some of its right holders or that are explicitly referred to in its TPA (for instance on patents, on technical protection measures and digital rights management or on enforcement).

When confronted with the EU warning that bringing sensitive proposals that would require changes in EU law to the table – and doing it at a late stage of the negotiation – may have a negative impact on stakeholders and has very limited chances of being accepted, the US reiterated its understanding that the IPR chapter should not be a standard (TPP type) text, but also insisted that such a departure from its “model” creates some difficulties in terms of addressing the demands included in the IPR related sections of its TPA.

Additional details on the content of the future section on cooperation which the US intends to table very soon:

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It should broadly capture the level of cooperation that already exists, in particular through the work of the Transatlantic IPR Working Group, i.e., it should cover cooperation in relation to third countries; international organizations; customs matters; voluntary stakeholder initiatives, technical assistance and capacity building, support to SMEs (including websites), etc. Institutionally, it would be important to put in place an IPR Committee ensuring transparency in its activities and inclusion of a wider range of stakeholders.

One negative element of note is that certain US legislative projects in areas that are very important for EU right holders appear not to be making progress in Congress. This is the case in particular for the draft laws on patent reform (addressing the problem of patent trolls) and on the copyright sectors identified as offensive interests by the EU (broadcasting rights, public performance and resale rights).

As regards geographical indicators, discussions focused on the preparation of an intersessional discussion prior to the next round.

3.6 Competition

The EU and the US continued discussions exploring possible common language for the competition chapter (including on procedural fairness) on a non-prejudice basis.

The discussions allowed the Parties to further identify possible agreement and start working on texts, subject to respective internal clearance and consultation processes.

Article X. 1 (General Principles): The US confirmed that it agrees with the EU-sponsored notion of having general principles.

X.2 (Legislative framework): The US agreed to capture merger control. It was agreed to refer to respective laws in a footnote.

X.3 (Implementation): New article combines “Legal Framework and Implementation”.

- The US agreed to keep the EU text on “non-discrimination” to avoid using the term “person” (US competition law concept);

- (*Procedural fairness*) The Parties continued to explore possible ways forward indicating sensitive language and possible red lines. The EU repeated its concern that some of the US proposals may be interpreted as requiring the EU to change its existing legal system which the EU cannot agree to. Language discussions included possible acceptable language (in agreement with procedural fairness provisions in the EU) on: (i) Information of allegations drawn against parties; (ii) “Reasonable opportunity to be represented by counsel”; (iii) “to engage with the Party's competition authorities on significant legal, factual or procedural issues”; (iv) “reasonable opportunity to set out all factual and legal arguments which are relevant to the defense of an enterprise”; and (v) “opportunity to review the evidence as permissible under the Parties' respective laws”.

The EU reiterated that the US-proposed reference to “reasonable deadlines” would be open to disputes about interpretation. The US proposed to mitigate this risk with more general language.

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The US (DOJ) reiterated that court decisions are not published in written form (relates to cartel infringements) but they acknowledged there was some form of transparency through court records and public access to court proceedings, sometimes press releases, etc. The US therefore proposes not to include criminal matters in the obligation to provide written decisions that are “made public”. The EU reiterated that contrary to the US consent decrees, commitment decisions are voluntary remedies offered by the Parties and therefore any language would have to be fully respectful of the Article 9 Commitment Decisions set up. Both sides explored language that would capture the possibility for the voluntary resolution of competition concerns which would be respectful of existing laws.

EU Article X.4 (application of competition law to all enterprises, including SOEs): The EU considers it important to include this provision in the TTIP. The EU pointed again at similar language accepted by the US in the US-Australia FTA and the TPP Agreement and urged the US to consider similar language. The EU clarified that the EU is not attempting to change US law but only to confirm in the text what the exemptions from the Sherman Act are (state action doctrine) which would correspond to the wording of the EU Article 106 TFEU. The EU confirmed openness to placement of that Article (Competition Chapter or SOE Chapter), as long as it is included somewhere.

X.4 (Cooperation): The US made proposals to streamline the language, however with no intention to change the content of the Article. The EU appreciated that the US is ready to accept language regarding business secrets (the EU reminded the US again on the sensitivity of EU Member States as regards confidential information and business secrets).

X.5 (Review clause): Both sides agreed on common language. The Parties confirmed their agreement to bracket the exact review period and wait for outcomes of the General Chapter.

X.7 (Dispute settlement): Both Parties agree to the language.

The Parties agreed to consult internally on the draft of the consolidated text and continue working towards lifting the remaining brackets.

State-Owned Enterprises (SOEs and subsidies)

The Parties engaged in substantive discussions on the basis of their respective text proposals. The US proposal covers both the 'traditional' (non-subsidy) part of SOE provisions, but also a subsidy part, covering only SOEs. Since there is no agreement yet on the EU requests to cover all levels of government and to extend subsidy rules to all enterprises, the discussions were carried out on a hypothetical “what if” basis.

SOEs (non-subsidy part)

The EU reconfirmed its position that a political decision would be needed to ensure that future rules apply at sub-federal levels of government (and not only at central level). The EU reminded the US that the EU objective is to negotiate an ambitious agreement that would set the gold standard for SOE rules. The US reiterated its position that the TTIP cannot be seen as achieving less than what was achieved in the TPP.

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The discussions were constructive and both Parties showed willingness to find solutions on a number of issues. The US clarified its position by tabling some modifications to its original text proposal, taking inspiration from the TPP (financial services exemptions, articulation of NT rule, and transparency). The fact that the EU published the text of the concluded Vietnam negotiations helped the discussions. The discussions showed that EU and US positions are similar on a number of key definitions (monopolies, designation, commercial activities, and commercial considerations), rules (commercial considerations and non-discrimination, delegated authority), and transparency. More work however is required in the following areas:

- SOE definition: The US repeated its willingness to explore the inclusion of the “control” aspect into the definition, as proposed by the EU. The discussions brought up useful ideas and the EU will follow up on these.
- Special rights or privileges: Due to time constraints, there was no discussion this time but the EU will follow up during the next round. The concept is difficult for the US.
- Anticompetitive practices in a non-monopolized market: The EU requested that this article be dropped or, in the alternative, that it be excluded from DS rules. The US again showed willingness to consider the EU's request.
- Transparency: Due to time constraints, there was no time to discuss these provisions in detail but discussions will continue next time.

The Parties agreed to exchange information between the sessions.

Subsidies

The US reiterated its position that SOEs should be treated differently because they are different in the sense that they may not operate exactly as private companies and therefore warrant a tougher set of rules. The EU repeated its concern with the unbalanced approach of the US text proposal on SOE subsidies covering EU MS while not covering SOE subsidies at the US sub-federal (state) level.

The EU further reiterated its position that before being willing to engage in negotiations on provisions specifically addressing the issue of subsidies to SOEs, it would be necessary to first agree on a common ground covering provisions relating to subsidies to both SOEs and private companies, in particular as regards transparency and consultations. The US took note of the EU position. The US is willing to consider engaging on the condition that the EU is willing to consider specific rules for SOEs and fisheries. As for subsidies to services, the US expressed hesitation to engage outside SOEs. The US was also willing to consider EU proposals regarding prohibited subsidies, albeit limited to SOEs.

In their discussions, the Parties concentrated in particular on the definition of subsidy (“non-commercial assistance”) the treatment of internal transfers, and the concept of “imputability”, especially in the context of the US proposal regarding SOE giving subsidies to other SOEs. In these discussions, the Parties explored the US “five-factor test” (developed in some DVC cases) and the relevant case law, and the interplay with the “delegated authority” rule and the WTO concept of “public body”. The Parties also discussed the EU concept of “regional specificity”. The US expressed willingness to clarify the concepts of “benefit” and “specificity” in its proposal for a subsidy definition.

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The Parties agreed to exchange information between the sessions.

3.7 Investment Protection

Regarding investment protection, discussions focused on definitions, expropriation and transfer articles. The EU provided further explanation on its text proposal sent on 12 November 2015. The EU and the US engaged in an in-depth comparison of their respective approaches, with a view to identifying areas that will require further substantive discussion in future rounds (notably fair and equitable treatment) and with the objective of consolidating the respective texts.

Regarding resolution of investment disputes, the exchange of views on the respective text proposals focused primarily on understanding the respective approaches and on identifying areas of convergence. The US asked mainly factual and exploratory questions concerning the EU's intentions and the objectives behind the new provisions in the EU proposal.

Discussions relating to “definitions and scope” were generic. Some convergence was found on the shared intention behind the “on behalf approach” under the definition of “claimant”, as well as the principled agreement on the definition of “respondent”. Parties also agreed in principle to include definitions on the various rules referred to in this section including “UNCITRAL Transparency rules”, “ICSID Convention”, “ICSID additional facility rules”, “New York Convention” and “UNCITRAL Arbitration Rules”.

As regards amicable resolution, the US agreed on the principle that any Alternative Dispute Resolution is positive and expressed interest in the EU's rationale for requiring that a mutually agreed solution be notified to the Committee. On consultation, the US also inquired about the objective pursued by the EU in making consultations a requirement under the agreement, and how that could potentially impact timelines.

Parties also discussed the Article on Consent to arbitration where some commonality and some structural differences were identified. As regards the submission of a claim, some shared the view that the requirement to have loss or damage resulting from a breach and the procedural rules that should apply in a dispute under the TTIP agreement also on the procedural rules to apply in a dispute under TTIP and that these should be considered to be of a dynamic nature (meaning changing with time). As regards third party funding, the US explained that this type of financing is uncommon in the US. The article on other claims was also discussed where the Parties found some agreement regarding the Parties' respective intentions to prevent parallel and multiple proceedings as well as provisions allowing for the early dismissal of unfounded claims.

The Parties also identified a number of areas where there is broad agreement, including on the approach taken with respect to preliminary objections in a dispute, the approach on transparency and public access to the proceedings and the status of the non-disputing party in a proceeding. Other areas discussed included an article on the possibility of control by the Contracting Parties over the interpretation of the Agreement, the prevention of parallel and multiple proceedings, as well as the possibility to allow for early dismissals of unfounded claims. Other provisions such as the Tribunal of First Instance and the Appeal Tribunal were not broached in this round.

3.8. State-to-State Dispute Settlement

This round was dedicated to intense discussions on the existing EU and the new US compromise proposal on compliance, tabled shortly ahead of round 12. We could identify the key areas of convergences which include the right to request a reasonable period of time for compliance ('RPT') and sequencing between compliance review and suspension of obligations, but with considerable streamlining of the compliance and sanctions arbitration proceedings in case of continued non-compliance of the responding party after the RPT has expired. Some conceptual differences remain, notably concerning the standard for review of the level of the sanctions and which Party can request a compliance panel during the sanctions. There was agreement to further tidy up the joint consolidated text between the sessions. The US also committed to respond to the EU proposal on mediation in the next round since it was not ready for that in this round.