FREE TRADE AGREEMENT
BETWEEN
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
AND
THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA

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PREAMBLE

The Governments of the People's Republic of China ("China") and the Republic of Nicaragua ("Nicaragua"), hereinafter referred to collectively as "the Parties":

Inspired by their growing friendship and bilateral economic and trade relationship;

Recalling the *Early Harvest Arrangement for the Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Nicaragua* signed in July 12, 2022;

Desiring to strengthen their economic partnership and further liberalise bilateral trade and promote investment to bring economic and social benefits;

Building on their rights, obligations and undertakings under the *Marrakesh Agreement Establishing the World Trade Organization*;

Recognising that the strengthening of their economic partnership through a Free Trade Agreement will produce mutual benefits for the Parties;

Resolved to establish transparent and predictable rules governing the trade and investment between the Parties;

Considering the different levels of social and economic development of the Parties;

Reaffirming their commitment to pursue the objective of sustainable development;

Protect and preserve the environment and enhance the means for doing so, including through the conservation of natural resources in their respective territories;

Desiring to create favourable conditions for the promotion of commercial and economic cooperation in areas of common interest;

Create new employment opportunities, strengthen labor cooperation, and improve the overall quality of life for their respective citizens;

Upholding the rights of their governments to regulate in order to meet national policy objectives, and to preserve their flexibility to safeguard the public welfare;

Have agreed as follows:

CHAPTER 1

INITIAL PROVISIONS AND DEFINITIONS

Article 1.1: Establishment of a Free Trade Area

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

Article 1.2: Objectives

1. The objectives of this Agreement are to:

(a) encourage expansion and diversification of trade between the Parties;

(b) facilitate trade in goods and services by promoting conditions of fair competition in the free trade area;

(c) promote conditions of fair competition in the free trade zone.

(d) establish comprehensible rules in order to ensure a regulated and transparent environment for the trade of goods and services between the Parties;

(e) increase investment opportunities in the territories of the Parties;

(f) ensure an adequate and effective protection of intellectual property rights in the territories of the Parties, taking into consideration the economic situation and the social or cultural need of each Party; as well as to promote technological innovation and the transfer and dissemination of technology between the Parties;

(g) confirm their commitment to the promotion of trade and reaffirm their aspiration to achieve an appropriate balance between the economic, social and environmental components of sustainable development;

(h) create effective procedures for the implementation and application of this Agreement, for its joint administration, and for the resolution of disputes; and

(i) establish a framework for further bilateral cooperation to expand and enhance the benefits of this Agreement.

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with customary rules of interpretation of Public International Law.

Article 1.3: Relation to Other Agreements

1. The Parties confirm their rights and obligations under the WTO Agreement and the other agreements negotiated thereunder to which both Parties are party, and any other international agreement to which both Parties are party.

2. In the event of any inconsistency between this Agreement and any other agreement to which the Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution in accordance with customary rules of interpretation of public international law.

Article 1.4: Geographical Applicability[1]

1. With regard to China, this Agreement shall apply to the entire customs territory of China, including land territory, territorial airspace, internal waters and territorial sea as well as their bed and subsoil, and any area beyond its territorial sea within which it may exercise sovereign rights and/or jurisdiction in accordance with international law and its domestic law.

2. With regard to Nicaragua, the territory of the Republic of Nicaragua, in accordance with its national legislation and international law.

3. Each Party is fully responsible for the observance of all provisions of this Agreement and shall take such reasonable measures as may be available to it to ensure their observance by local governments and authorities in its territory.

Article 1.5: General Definitions

For the purposes of this Agreement, unless otherwise specified:

Agreement on Safeguards means Agreement on Safeguards; contained in Annex 1A to the WTO Agreement;

[1] This Article is for the implementation of this Agreement only.

customs administration means:

(a) for China, the General Administration of Customs of the People's Republic of China (GACC) or its successor; and

(b) for Nicaragua, the General Directorate of Customs Services *(la Dirección General de Servicios Aduaneros* (DGA)) or its successor;

customs duty includes any duty or charge of any kind imposed in connection with the importation of a good, but does not include:

(a) any charge equivalent to an internal tax imposed consistently with Article III.2 of GATT 1994;

(b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement or the *Agreement on Subsidies and Countervailing Measures*, contained in Annex 1A to the WTO Agreement any duty applied consistently with Article XIX of GATT 1994 and *Agreement on Safeguards*; and

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

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

days means calendar days;

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 organisation;

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

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

FTA Joint Commission means the China-Nicaragua Free Trade Agreement Joint Commission established under Article 20.1 (FTA Joint Commission);

GATS means the *General Agreement on Trade in Services*, contained in Annex 1B to the WTO Agreement;

GATT 1994 means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

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

Harmonized System or HS means the Harmonized Commodity Description and Coding System, as adopted and administered by the World Customs Organization, set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on 14 June 1983, as may be amended, adopted and implemented by the Parties in their respective law;

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

national means:

(a) for China, a natural person who has the nationality of China according to the Laws of China; and

(b) for Nicaragua, a Nicaraguan (nicaragüense) as defined in Article 15 of the Political Constitution of the Republic of Nicaragua (*Constitución Política de la República de Nicaragua*);

originating means qualifying under the provisions of origin set out in Chapter 3 (Rules of Origin and Implementation Procedures);

Party means any State for which this Agreement is in force;

person means a natural person or an enterprise;

TRIPS Agreement means the Agreement on Trade-related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement;

WTO means the World Trade Organization; and

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

CHAPTER 2

TRADE IN GOODS

Article 2.1: Scope

Except as otherwise provided in this Agreement, this Chapter applies to trade in goods between the Parties.

Article 2.2: National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 2.3: Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, each Party shall, upon entry into force of this Agreement, progressively eliminate its customs duties on originating goods of the other Party in accordance with its Schedule in Annex 2-A.

2. Except as otherwise provided in this Agreement, neither Party may increase any existing import customs duty, or adopt any new customs duty, on an originating good of the other Party.

3. If a Party reduces its applied most-favoured-nation customs duty rate after the entry into force of this Agreement, that duty rate shall apply as regards trade covered by this Agreement if and for as long as it is lower than the customs duty rate calculated in accordance with its Schedule to Annex 2-A.

Article 2.4: Acceleration of Tariff Commitments

1. At the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties on originating goods as set out in their Schedules in Annex 2-A.

2. Notwithstanding the provisions of Article 20.1 (FTA Joint Commission), an agreement by the Parties to accelerate the reduction and elimination of customs duties

on originating goods shall supersede any duty rate determined pursuant to their Schedules for such good and shall enter into force following approval by each Party in accordance with their respective applicable legal procedures.

3. A Party may at any time accelerate unilaterally the reduction and elimination of customs duties on originating goods of the other Party set out in its Schedule in Annex 2-A. A Party considering doing so shall inform the other Party as early as practicable before the new rate of customs duty takes effect.

4 For greater certainty, a Party may:

(a) raise a customs duty to the level set out in its Schedule in Annex 2-A following a unilateral reduction for the respective year. A Party considering doing so shall inform the other Party as early as practicable before the new rate of customs duty takes effect; or

(b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

Article 2.5: Temporary Admission of Goods

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

(a) professional equipment, such as equipment used for scientific research, pedagogical or medical activities, the press or television and cinematographic purposes, necessary of a person who qualifies for temporary entry, pursuant to the domestic laws of the importing Party;

(b) goods intended for display or demonstration at exhibitions, fairs, meetings, or similar events;

(c) commercial samples; and

(d) goods admitted for sports purposes.

2. Each Party shall, at the request of the person concerned and for reasons its customs authority considers valid, extend the time limit for temporary admission beyond the period initially fixed in accordance with its domestic law.

3. Neither Party may 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 the other 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 6 months, 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 domestic law.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the 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 domestic law.

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

6. Each Party shall provide that its customs administration or other competent authority shall relieve the importer or another person responsible for a good admitted under this Article from any liability for failure to re-export the good on presentation of proof to the satisfaction of the customs administration of the importing Party that the good has been destroyed by reason of force majeure.

Article 2.6: Import and Export Restrictions

1. Unless otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition or restriction or measure having equivalent effect, including quantitative restrictions, on the importation of a good originating in the territory of the other Party, or on the exportation or sale for export of a good destined for the territory

of the other Party except in accordance with its rights and obligations under the GATT 1994. To this end, Article XI of GATT 1994, including its interpretive notes, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

(a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping duty orders and undertakings;

(b) import licensing conditioned on the fulfillment of a performance requirement; or

(c) voluntary export restraints inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Anti-dumping Agreement.

3. Neither Party may, as a condition for engaging in importation or for the importation of a good, require a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory.

4. For greater certainty, paragraph 3 does not prevent a Party from requiring a person referred to in that paragraph to designate an agent for the purposes of facilitating communications between its regulatory authorities and that person.

5. For the purposes of paragraph 3, **distributor** means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of the other Party.

6. Paragraph 1 shall not apply to the measures set out in Annex 2-B of this Article.

Article 2.7: Tariff-Rate Quota

1. For products in respect of which China establishes a Tariff-Rate Quota (hereinafter referred to as "TRQ") in its Schedule to Annex 2-A, China shall apply in-quota tariff rates at 15% to imports of such products of Nicaraguan origin up to the quantity for each year as specified in Annex 2-C after the entry into force of this Agreement.

2. Imports of such products of Nicaraguan origin in excess of the specified quantity in Annex 2-C in any given calendar year shall be subject to tariff rates at 50%.

Article 2.8: Tariff-Rate Quota Administration

1. A Party shall implement and administer TRQ set out in its Schedule to Annex 2-A in accordance with Article XIII of GATT 1994, including its interpretive notes, and the Agreement on Import Licensing Procedures (hereinafter referred to as the "Import Licensing Agreement"), contained in Annex 1 A to the WTO Agreement.

2. A Party shall ensure that:

(a) its procedures for administering its TRQ are transparent, timely, non-discriminatory, responsive to market conditions, minimally burdensome to trade, and reflect end-user preferences; and

(b) any person of a Party that fulfills the importing Party's legal and administrative requirements shall be eligible to apply and to be considered for a TRQ allocation by the Party.

3. Each Party shall make every effort to administer its TRQ in a manner that allows importers to fully utilise the TRQ quantities.

4. On the written request of a Party, the other Party shall consult with the requesting Party regarding the administration of its TRQ.

Article 2.9: Import Licensing Procedures

A Party shall ensure that import licensing regimes applied to goods originating in the other Party are applied in accordance with the WTO Agreement, and in particular, with the provisions of the Import Licensing Agreement.

Article 2.10: Administrative Fees and Formalities

1. The Parties shall ensure, in accordance with Article VIII.1 of GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III.2 of GATT 1994, and anti-dumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation on imports or exports for fiscal purposes.

2. Neither Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

3. The Parties shall make available through the Internet or a comparable computer-based telecommunications network a current list of the fees and charges they impose in connection with importation or exportation.

Article 2.11: Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods, and shall work together toward an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.

2. Neither Party shall maintain, introduce or reintroduce any export subsidy on any agricultural good destined to the territory of the other Party.

Article 2.12: Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods (hereinafter referred to as the "Committee"), comprising representatives of each Party.

2. The Committee shall meet at least once a year to consider matters arising under this Chapter, and may meet more frequently as the Parties may agree.

3. The Committee's functions shall include, *inter alia*:

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

(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures and, if appropriate, referring such matters to the FTA Joint Commission for its consideration;

(c) reviewing future amendments to the Harmonized System to ensure that each Party's obligations under this Agreement are not altered, and consulting in order to resolve any conflicts between:

(i) subsequent amendments to Harmonized System 2022 and Annex 2-A (Schedule of Tariff Commitments); or

(ii) Annex 2-A and national nomenclatures;

(d) consulting on and endeavouring to resolve any dispute that may arise among the Parties on matters related to the classification of goods under the Harmonized System;

(e) establishing working groups, if necessary, and monitoring the work of the working groups established under the auspices of the Committee; and

(f) exchanging information on matters related to subparagraphs (a) through (c) which may, directly or indirectly, affect trade between the Parties with a view to minimizing their negative effects on trade and seeking mutually acceptable alternatives.

Article 2.13: Definition

For the purposes of this Chapter, except as otherwise specified:

base rate of customs duty means the most-favoured-nation (MFN) import customs duty rate applied on 1 January 2021 provided by each Party, on which the successive reductions set out in Annex 2-A shall be applied;

consular transactions means requirements that goods of a Party, intended for export to the territory of the other Party, must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations or any other customs documentation required on or in connection with importation;

duty-free means free of customs duty;

goods and products shall be understood to have the same meaning, unless the context otherwise requires;

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 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, in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or

(e) relates in any way the volume or value of imports to the volume or value of exports or to 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.

ANNEX 2-A

SCHEDULE OF TARIFF COMMITMENTS

Section A：Tariff Schedule of China

GENERAL NOTES

1. The provisions of this Schedule are generally expressed in terms of the Customs Tariff of Import and Export of the People's Republic of China. The interpretation of the provisions of this Schedule, including the description and coverage of headings and subheadings of this Schedule, shall be governed by the Customs Tariff of Import and Export of the People's Republic of China. To the extent that provisions of this Schedule are identical to the corresponding provisions of the Customs Tariff of Import and Export of the People's Republic of China, the provisions of this Schedule shall have the same meaning as the corresponding provisions of the Customs Tariff of Import and Export of the People's Republic of China.

2. For the purposes of this Schedule, the base rates of customs duty set out in this Schedule reflect the Most-Favoured-Nation (MFN) tariff rates of the Chinese customs duty in effect on January 1, 2021.

3. The following Categories shall apply to the elimination of the customs duties by China:

(a) customs duties on originating goods provided for in Category "A0" in the Schedule shall be eliminated entirely and such goods shall be free of customs duty on the date this Agreement enters into force;

(b) customs duties on originating goods provided for in Category "A5" in the Schedule shall be removed in five equal annual stages beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective January 1 of year five;

(c) customs duties on originating goods provided for in Category "A10" in the Schedule shall be removed in ten equal annual stages beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective January 1 of year ten;

(d) customs duties on originating goods provided for in Category "A15" in the Schedule shall be removed in fifteen equal annual stages beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective January 1 of year fifteen;

(e) the Tariff-Rate Quota in Article 2.7 (Tariff-Rate Quota) of Chapter 2 (Trade in Goods) shall apply for originating goods provided for in Category "TRQ" in the Schedule, with the in-quota tariff rates at 15% and the out-quota tariff rates at 50%; and

(f) customs duties on originating goods provided for in Category "E" in the Schedule shall remain the same as the base rates.

4. The base rates of customs duty and Categories for determining the interim rate of customs duty at each stage of reduction are indicated for the goods in the Schedule.

5. Reduced rates shall be rounded 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 Chinese Yuan.

6. For the purposes of this Section and the Schedule, year **one** means the year this Agreement enters into force, as provided in Article 22.2 (Entry into force).

7. For the purposes of this Section and the Schedule, beginning in year two, each annual stage of tariff reduction shall take effect on January 1 of the relevant year.

Section B：Tariff Schedule of Nicaragua

GENERAL NOTES

1. The provisions of this Schedule are generally expressed in terms of the Central American Import Tariff (*Arancel Centroamericano de Importación*), which includes the Central American Tariff System (*Sistema Arancelario Centroamericano* - "SAC"), and the interpretation of the provisions of this Schedule, including the product coverage of tariff items of this Schedule, shall be governed by the General Notes, Section Notes, and Chapter Notes of the Central American Import Tariff (*Arancel Centroamericano de Importación*). To the extent that provisions of this Schedule are identical to the corresponding provisions of the Central American Import Tariff (*Arancel Centroamericano de Importación*), the provisions of this Schedule shall

have the same meaning as the corresponding provisions of the Central American Import Tariff (*Arancel Centroamericano de Importación*).

2. For the purposes of this Schedule, the base rates of customs duty set out in this Schedule reflect Most-Favoured-Nation (MFN) tariff rates of the Central American Import Tariff (Arancel Centroamericano de Importación) in effect on January 1, 2021.

3. The following Categories shall apply to the elimination of the customs duties by Nicaragua:

(a) customs duties on originating goods provided for in Category "A0" in the Schedule shall be eliminated entirely and such goods shall be free of customs duty on the date this Agreement enters into force;

(b) customs duties on originating goods provided for in Category "A5" in the Schedule shall be removed in five equal annual stages beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective January 1 of year five;

(c) customs duties on originating goods provided for in Category "A10" in the Schedule shall be removed in ten equal annual stages beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective January 1 of year ten;

(d) customs duties on originating goods provided for in Category "A15" in the Schedule shall be removed in fifteen equal annual stages beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective January 1 of year fifteen;

(e) customs duties on originating goods provided for in Category "E" in the Schedule shall remain the same as the base rates.

4. The base rates of customs duty and Categories for determining the interim rate of customs duty at each stage of reduction are indicated for the goods in the Schedule.

5. Reduced rates shall be rounded 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 Cordoba.

6. For the purposes of this Section and the Schedule, year **one** means the year this Agreement enters into force, as provided in Article 22.2 (Entry into Force).

7. For the purposes of this Section and the Schedule, beginning in year two, each annual stage of tariff reduction shall take effect on January 1 of the relevant year.

ANNEX 2-B

Import and Export Restrictions

The provisions of Article 2.6 shall not apply to measures adopted by:

In the case of China

1. Measures related to the protection of the environment and natural resources pursuant to applicable domestic law and the provisions established in Article 19.2 (General Exceptions) of this Agreement; and

2. Actions authorized by the Dispute Settlement Body of the WTO.

In the case of Nicaragua

1. Controls on imports of motor vehicles older than seven years, in accordance with Law No. 891, Law on Amendments and Additions to Law No. 822, Tax Concertation Law (*Ley de Concertación Tributaria*), published in the Official Journal "*La Gaceta, Diario Oficial*", No. 240 of December 18, 2014 and its Errata published in the Official Journal "*La Gaceta, Diario Oficial*", No. 10 of January 16, 2015; and

2. Actions authorized by the Dispute Settlement Body of the WTO.

ANNEX 2-C

TARIFF-RATE QUOTA

1. Table 1 specifies the products in respect of which China establishes a TRQ in its Schedule to Annex 2-A.

2. For the products specified in Table 1, the quantity of the TRQ for year 1 to which China shall apply in-quota tariff rates at 15% is specified in Table 2. If this Agreement enters into force in a date after January 1, the quantity of the TRQ for year 1 will be prorated in a proportional manner for the rest of the calendar year. The quantities of the TRQ beyond the year 1 shall remain at the same level as the full quantities for year 1 specified in Table 2.

Table 1: Products

HS Code 2021	Description
1701.1300	See description in Tariff Schedule of China
1701.1400	
1701.9910	
1701.9920	
1701.9990	

Table 2: Quantity of the Tariff-Rate Quota

Year	Quantity of the Tariff-Rate Quota (metric tons)
1	50,000

CHAPTER 3

RULES OF ORIGIN AND IMPLEMENTATION PROCEDURES

Section A: Rules of Origin

Article 3.1: Originating Goods

Except as otherwise provided in this Chapter, the following goods shall be considered as originating in a Party:

(a) goods wholly obtained or produced in a Party as defined in Article 3.2 (Goods Wholly Obtained);

(b) goods produced in a Party exclusively from originating materials; or

(c) goods produced from non-originating materials in a Party, provided that the goods conform to a regional value content of no less than 40%, except for the goods listed in the Annex 3-A (Product Specific Rules of Origin) which must comply with the requirements specified therein;

and meet other applicable provisions of this Chapter.

Article 3.2: Goods Wholly Obtained

For the purposes of Article 3.1(a), the following goods shall be considered as wholly obtained or produced in a Party:

(a) live animals born and raised in a Party;

(b) goods obtained from live animals referred to in subparagraph (a);

(c) plant and plant products grown, and harvested, picked or gathered in a Party;

(d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in a Party;

(e) minerals and other naturally occurring substances not included in subparagraphs (a) through (d), extracted or taken from its soil, waters, seabed or subsoil beneath the seabed;

(f) goods extracted from the waters, seabed or subsoil beneath the seabed outside the territorial waters of a Party, provided that the Party has the right to exploit such waters, seabed or subsoil beneath the seabed in accordance with international law and its domestic law;

(g) goods of sea fishing and other marine products taken from the sea outside the

territorial waters of a Party by a vessel registered in a Party and flying the flag of that Party;

(h) goods processed or made on board factory ships registered in a Party and flying the flag of that Party, exclusively from goods referred to in subparagraph (g);

(i) scrap and waste derived from processing operations in a Party, which fit only for the recovery of raw materials;

(j) used goods consumed and collected there which fit only for the recovery of raw materials; or

(k) goods produced entirely in a Party exclusively from the goods referred to in subparagraphs (a) to (j).

Article 3.3: Regional Value Content

1. The Regional Value Content (RVC) of a good shall be calculated on the basis of following method：

$$RVC=\frac{V - VNM}{V}\times 100\%$$

where:

RVC is the regional value content, expressed as a percentage;

V is the value of the product, as defined in the *Customs Valuation Agreement*, adjusted on an FOB basis; and

VNM is the value of the non-originating materials, including materials of undetermined origin, as provided in paragraph 2.

2. The value of the non-originating materials shall be:

(a) the value of the materials, as defined in the *Customs Valuation Agreement*, adjusted on a CIF basis; or

(b) the earliest ascertained price paid or payable for the non-originating materials in a Party where the working or processing takes place. When the producer of a product acquires non-originating materials within that Party, the value of such materials shall not include freight, insurance, packing costs, and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location.

3. The value of the non-originating materials used by the producer in the production of a product shall not include, for the purposes of calculating the regional value content of the product, pursuant to paragraph 1, the value of non-originating materials used to produce originating materials that are subsequently used in the production of the product.

Article 3.4: *De Minimis*

A product that does not meet tariff classification change requirements, pursuant to Annex 3-A (Product Specific Rules of Origin), shall nonetheless be considered to be an originating product, provided that:

(a) the value of all non-originating materials, determined pursuant to Article 3.3 (Regional Value Content), including materials of undetermined origin, that do not meet the tariff classification change requirement does not exceed 10% of the FOB value of the given product; and

(b) the product meets all the other applicable criteria of this Chapter.

Article 3.5: Accumulation

Originating materials of a Party, used in the production of a good in the other Party, shall be considered to be originating in the latter Party.

Article 3.6: Minimal Operations or Processes

1. Notwithstanding Article 3.1(c), a good shall not be considered as originating, if it has only undergone one or more of the following operations or processes:

(a) preservation operations to ensure the goods remain in good condition during transport and storage;

(b) simple assembly of parts of articles to constitute a complete article, or disassembly of products into parts;

(c) packing, unpacking or repacking operations for the purposes of sale or presentation;

(d) slaughtering of animals;

(e) washing, cleaning, removal of dust, oxide, oil, paint or other coverings;

(f) ironing or pressing of textiles;

(g) simple painting and polishing operations;

(h) husking, partial or total bleaching, polishing, and glazing of cereals and rice;

(i) operations to color sugar or form sugar lumps;

(j) peeling, stoning, and shelling of fruits, nuts and vegetables;

(k) sharpening, simple grinding or simple cutting;

(l) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles), cutting, slitting, bending, coiling, or uncoiling;

(m) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and other similar packaging operations;

(n) affixing or printing marks, labels, logos or other like distinguishing signs on products or their packaging;

(o) simple mixing of goods, whether or not of different kinds;

(p) mere dilution with water or another substance that does not materially alter the characteristics of the goods; or

(q) operations whose sole purpose is to ease port handling.

2. All operations in the production of a given good carried out in a Party shall be taken into account when determining whether the working or process undergone by that good is considered as minimal operations or processes referred to in paragraph 1.

Article 3.7: Fungible Materials

Where originating and non-originating fungible materials are used in the production of a good, the following methods shall be adopted in determining whether the materials used are originating:

(a) physical separation of the materials; or

(b) an inventory management method recognized in the generally accepted accounting principles of the exporting Party, provided that the inventory management method selected is used for at least 12 continuous months.

Article 3.8: Neutral Elements

1. In determining whether a good is an originating good, any neutral elements as defined in paragraph 2 shall be disregarded.

2. **Neutral elements** means a good used in the production, testing or inspection of another good but not physically incorporated into that good by itself, including:

(a) fuel, energy, catalysts and solvents;

(b) plant, equipment and machine, including devices and supplies used for testing or inspecting the goods;

(c) gloves, glasses, footwear, clothing, safety equipment and supplies;

(d) tools, dies and moulds;

(e) spare parts and materials used in the maintenance of equipment and buildings;

(f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and

(g) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

Article 3.9: Packing, Packages and Containers

1. Containers and packing materials used for the transport of goods shall not be taken into account in determining the origin of the goods.

2. The origin of the packaging materials and containers in which goods are packaged for retail sale shall be disregarded in determining the origin of the goods, provided that the packaging materials and containers are classified with the goods.

3. Notwithstanding paragraph 2, where goods are subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the goods.

Article 3.10: Accessories, Spare Parts and Tools

1. Accessories, spare parts or tools presented and classified with the good shall be considered as part of the good, provided that:

(a) they are invoiced together with the good; and

(b) their quantities and values are commercially customary for the good.

2. Where a good is subject to change in tariff classification criterion set out in Annex 3-A (Product Specific Rules of Origin), accessories, spare parts, or tools described in paragraph 1 shall be disregarded when determining the origin of the good.

3. Where a good is subject to a regional value content requirement, the value of the accessories, spare parts or tools described in paragraph 1 shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 3.11: Sets

Sets, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the non-originating products does not exceed 15% of total value of the set, determined pursuant to Article 3.3 (Regional Value Content).

Article 3.12: Direct Consignment

1. Preferential tariff treatment under this Agreement shall only be granted to originating products which are transported directly between the Parties.

2. Notwithstanding paragraph 1, goods whose transport involves transit through one or more non-Parties, with or without trans-shipment or temporary storage of up to 180 days in such non-Parties, shall still be considered as directly transported between the Parties, provided that:

(a) the transit entry of the goods is justified for geographical reason or by consideration related exclusively to transport requirements;

(b) the goods do not undergo any other operation there other than unloading and reloading, or any operation required to keep them in good condition;

(c) the goods do not enter into trade or consumption there; and

(d) the goods remain under customs control during transit in those non-Parties.

3. Compliance with paragraph 2 shall be evidenced by presenting the customs authority of the importing Party, during the importation, either with customs documents of the non-Parties, or with any other documents to the satisfaction of the customs authority of the importing Party.

Section B: Implementation Procedures

Article 3.13: Certificate of Origin

1. In order for originating goods to benefit from preferential tariff treatment, the

Certificate of Origin, as set out in Annex 3-B (Certificate of Origin), will be issued by the authorized body or bodies of the exporting Party, upon written application of the exporter, producer, or under the exporter's responsibility, by his authorized representative together with the supporting documents.

The Certificate of Origin shall:

(a) contain a unique certificate number;

(b) cover one or more goods under one consignment;

(c) state the basis on which the goods are deemed to qualify as originating for the purposes of this Chapter;

(d) contain security features, such as specimen signatures or stamps as advised to the importing Party by the exporting Party; and

(e) be completed in English.

2. The Certificate of Origin shall be issued before or at the time of shipment. It shall be valid for one year from the date of issuance in the exporting Party.

3. Each Party shall inform the customs authority of the other Party of the name of each authorized body, as well as relevant contact details, and shall provide details of security features for relevant forms, including the official seals to be used by each authorized body and documents used by each authorized body, prior to the issuance of any certificate by that body. Any change in the information provided above shall be promptly notified to the customs authority of the other Party.

4. A Certificate of Origin may be issued retrospectively within one year from the date of shipment, bearing the words "ISSUED RETROSPECTIVELY" and remains valid for one year from the date of shipment, if it is not issued before or at the time of shipment due to force majeure, involuntary errors, omissions or other valid causes.

5. In cases of theft, loss, or accidental destruction of a Certificate of Origin, the exporter or producer may make a written request to the authorized bodies of the exporting Party for issuing a certified copy. The certified copy shall bear the words "CERTIFIED TRUE COPY of the original Certificate of Origin number ___ dated ___". The certified copy shall be valid during the term of validity of the original Certificate of Origin.

6. In circumstances where a certificate of origin contains incorrect information submitted by the importer, according to the domestic law, the customs authority of the importing Party gives the importer the opportunity to present a new certificate within a certain period. The new Certificate of Origin shall be valid for the remainder of the period established in the original Certificate of Origin.

7. Orthographic and typing errors in a Certificate of Origin shall not cause this

document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

Article 3.14: Retention of Origin Documents

1. Each Party shall require its producers, exporters and importers to retain documents that prove the originating status of the goods as well as the fulfillment of the other requirements of this Chapter for at least three years or any longer time in accordance with that Party's domestic law.

2. Each Party shall require that its authorized bodies retain copies of Certificates of Origin and other related supporting documents for at least three years or any longer time in accordance with that Party's domestic law.

Article 3.15: Obligations Regarding Importations

Except as otherwise provided in this Chapter, the importer claiming for preferential tariff treatment shall:

(a) indicate in the customs declaration that the good qualifies as an originating good;

(b) possess a valid Certificate of Origin at the time the import customs declaration referred to in subparagraph (a) is made; and

(c) submit the valid Certificate of Origin and other documentary evidence established in Article 3.12 related to the importation of the goods, upon request of the customs administration of the importing Party.

Article 3.16: Refund of Import Customs Duties or Deposit

1. Each Party shall provide that, where an originating good was imported, importer may, no later than one year after the date of importation, apply for refund of any excess duties, deposit, or guarantee paid as a result of the good not having been accorded preferential tariff treatment, on presentation to the customs authority of the importing Party of:

(a) a valid Certificate of Origin demonstrating that the good was originating at the time of importation; and

(b) such other documentation relating to the importation of the good as the importing Party may require.

2. Without prejudice to paragraph 1, each Party may require, in accordance with its respective laws and regulations, that the importer shall formally declare to the customs authority at the time of importation that the good in question qualifies as originating as a precondition for claiming preferential tariff treatment, failing which no preferential tariff treatment is to be granted.

Article 3.17: Verification of Origin

1. For the purposes of determining the authenticity or accuracy of the Certificate of Origin, the originating status of the products concerned, or the fulfillment of the other requirements of this Chapter, the customs authority of the importing Party may conduct origin verification based on risk analysis and at random or whenever the customs authority of the importing Party has reasonable doubts, by means of：

(a) requests for additional information from the importer;

(b) requests to the customs authority or authorized body of the exporting Party to verify the origin of a product;

(c) such other procedures as the competent authorities of the Parties may jointly decide; or

(d) conducting verification visit to the exporting Party, when necessary, in a manner to be jointly determined by the customs authorities of the Parties.

2. The customs authority of the importing Party requesting verification to the exporting Party shall specify the reasons and provide any documents and information justifying the verification.

3. The competent authority receiving a request for verification, under paragraph 1. a) or 1. b), shall respond to the request promptly and reply within 90 days, from the date of raising of the verification request. Upon request of the importer, exporter or producer, the above-mentioned period can be extended to another 90 days.

4. If the customs authority of the importing Party decides to suspend the granting of preferential treatment to the goods concerned while awaiting the results of the verification, the goods shall be released upon submission of guarantee, except as otherwise provided in the domestic law of the importing Party.

5. If no reply is received within 180 days, or if the reply does not contain sufficient information to determine the authenticity of the documents or the originating status of the products in question, the requesting customs authority may deny preferential tariff treatment.

6. The competent authority for the Certificate of Origin related to the concerned goods, shall not deny any request for a verification visit agreed by the Parties. Any failure to consent to a verification visit shall be liable for a denial of preferential benefits claimed in accordance with this Agreement.

Article 3.18: Denial of Preferential Tariff Treatment

Except as otherwise provided in this Chapter, the importing Party may deny claim for preferential tariff treatment, if:

(a) the goods do not meet the requirements of this Chapter

(b) the importer, exporter or producer fails to comply with the relevant requirements of this Chapter;

(c) the Certificate of Origin does not meet the requirement of this Chapter; or

(d) in the cases stipulated in Article 3.17 (Verification of Origin).

Article 3.19: Third Country Invoicing

The importing Party shall not reject a Certificate of Origin solely for the reason that the invoice was issued in a non Party, provided that the requirements under this Chapter are complied with.

Article 3.20: Electronic Origin Data Exchange System

For the purposes of the effective and efficient implementation of this Chapter, both Parties may establish Electronic Origin Data Exchange System to ensure real-time exchange of origin related information between customs administrations upon mutually agreed time framework.

Article 3.21: Committee on Rules of Origin

1. The Parties hereby establish a Committee on Rules of Origin under the FTA Joint Commission, composed of government representatives of each Party.

2. The Committee shall meet as necessary to consider any matter arising under this Chapter and consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently in order to achieve the objectives of this Agreement.

Article 3.22: Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Chapter.

2. Each Party shall notify the other Party in writing of its designated contact point no later than 60 days after the date of entry into force of this Agreement.

3. A Party shall promptly notify the other Party of any change of its contact point or the details of the relevant officials.

Article 3.23: Definitions

For the purposes of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, mollusks, crustaceans, other aquatic invertebrates and aquatic plants, from seed stock such as eggs, fry, fingerlings, and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding, or protection from predators;

authorized body means any government authority or other entity authorized under the laws or regulations of a Party or recognized by a Party as competent to issue a Certificate of Origin;

competent authority means:

for China:

the General Administration of Customs of the People's Republic of China (GACC)

for Nicaragua:

i. for administration purposes, the Directorate of Application and Negotiation of Trade Agreements of the Ministry of Development, Industry and Trade (*Dirección de Aplicación y Negociación de Acuerdos Comerciales del Ministerio de Fomento, Industria y Comercio* (MIFIC));

ii. for the application and verification of the origin of imported goods, the Directorate General of Customs Services (*Dirección General de Servicios Aduaneros* (DGA)); and

iii. for the purpose of issuance of Certificates of Origin and the verification of proofs of origin for exports the Nicaraguan´s Single Window for Foreign Trade (*Ventanilla Única de Comercio Exterior de Nicaragua* (VUCEN));

or their successors;

Customs Valuation Agreement means *the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

CIF means the value of the imported good inclusive of the cost of insurance and freight up to the port or place of entry in the country of importation;

FOB means the value of the exported good free on board inclusive of the cost of transport to the port or site of final shipment abroad;

fungible goods or materials means materials which are interchangeable for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination;

generally accepted accounting principles means the recognized accounting standards of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Those standards may encompass broad guidelines of general applications as well as detailed standards, practices and procedures;

good means any merchandise, product, article, or material;

materials means ingredients, parts, components, subassemblies and/or goods that were physically incorporated into another product or were subject to a process in the production of another product;

non-originating good or non-originating material means a good or material that

does not qualify as originating under this Chapter;

originating materials or originating goods means materials or goods which qualify as originating in accordance with this Chapter;

product means a product being produced, even if it is intended for later use in another production operation; and

production means any method of obtaining goods including, but not limited to, growing, raising, mining, harvesting, fishing, aquaculture, farming, trapping, hunting, capturing, gathering, collecting, breeding, extracting, manufacturing, processing or assembling a good.

ANNEX 3-A

PRODUCT SPECIFIC RULES OF ORIGIN

Note:

1. For goods classifiable under provisions for scrap and wastes, and those scrap and wastes which are not described by name, the origin criteria shall be wholly obtained;

2. Reference to a change in tariff classification in this annex shall apply only to non-originating materials;

3."CC"means a change in tariff classification at the 2-digit level;
4."CTH"means a change in tariff classification at the 4-digit level;

5."CTSH"means a change in tariff classification at the 6-digit level;

6. Change in tariff classification means when non-originating matter undergoes a change of tariff classification as a result of transformation processes carried out in the territory of a Party.

HS code	Article Description	Criteria
01	Live animals.	WO
02	Meat and edible meat offal.	WO
03	Fish and crustaceans, molluscs and other aquatic invertebrates.	CC
04.01	Milk and cream, not concentrated nor containing added sugar or other sweetening matter.	WO
04.02	Milk and cream, concentrated or containing added sugar or other sweetening matter.	WO

HS code	Article Description	Criteria
04.03	Buttermilk, curdled milk and cream, yogurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa.	WO
04.04	Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included.	WO
04.05	Butter and other fats and oils derived from milk; dairy spreads.	WO
04.06	Cheese and curd.	WO
04.08	Birds' eggs, not in shell, and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter.	WO
07	Edible vegetables and certain roots and tubers.	WO
08	Edible fruit and nuts; peel of citrus fruit or melons.	WO
09.01	Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion:	
	Coffee, not roasted:	
0901.11	Not decaffeinated.	WO

HS code	Article Description	Criteria
0901.12	Decaffeinated.	WO
	Coffee, roasted.	
0901.21	Not decaffeinated.	WO
0901.22	Decaffeinated.	WO
0901.90	Other.	WO
09.02	Tea, whether or not flavoured.	CC
10.01	Wheat and maslin.	WO
10.02	Rye.	WO
10.03	Barley.	WO
10.04	Oats.	WO
10.05	Maize (corn).	WO
10.06	Rice.	WO
10.07	Grain sorghum.	WO
10.08	Buckwheat, millet and canary seed; other cereals.	WO
11.01	Wheat or maslin flour.	CC except from Chapter 10
11.02	Cereal flours other than of wheat or maslin.	CC except from Chapter 10
11.03	Cereal groats, meal and pellets.	CC except from Chapter 10
11.04	Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced or kibbled), except rice of heading 10.06; germ of cereals, whole, rolled, flaked	CC except from Chapter 10

HS code	Article Description	Criteria
	or ground.	
11.05	Flour, meal, powder, flakes, granules and pellets of potatoes.	WO
11.08	Starches; inulin.	WO
12.01	Soya beans, whether or not broken.	WO
12.02	Ground-nuts, not roasted or otherwise cooked, whether or not shelled or broken.	WO
12.04	Linseed, whether or not broken.	WO
12.05	Rape or colza seeds, whether or not broken.	WO
12.06	Sunflower seeds, whether or not broken.	WO
12.07	Other oil seeds and oleaginous fruits, whether or not broken.	WO
12.08	Flours and meals of oil seeds or oleaginous fruits, other than those of mustard.	WO
15.07	Soya-bean oil and its fractions, whether or not refined, but not chemically modified.	CC except from Chapter 12
15.08	Ground-nut oil and its fractions, whether or not refined, but not chemically modified.	WO
15.09	Olive oil and its fractions, whether or not refined, but not chemically modified.	CC
15.11	Palm oil and its fractions, whether or not refined, but not chemically modified.	WO

HS code	Article Description	Criteria
15.12	Sunflower-seed, safflower or cottonseed oil and fractions thereof, whether or not refined, but not chemically modified.	CC except from Chapter 12
15.13	Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified.	WO
15.14	Rape, colza or mustard oil and frac- tions thereof, whether or not refined, but not chemically modified.	CC except from Chapter 12
15.15	Other fixed vegetable fats and oils (including jojoba oil) and fractions thereof, whether or not refined, but not chemically modified.	CC
15.16	Animal or vegetable fats and oil and fractions thereof, partly or wholly hydrogenated, interesterified, reesterified or elaidinized, whether or not refined, but not further prepared.	CC
15.17	Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than ediblefats or oils or their fracitions of heading 15.16.	CC
16.01	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products.	WO
16.02	Other prepared or preserved meat, meat offal or blood.	CC except from heading 02.01, 02.02, 02.03 and 02.07
17.01	Cane or beet sugar and chemically pure sucrose, in solid form.	WO

HS code	Article Description	Criteria
17.02	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel.	WO
17.04	Sugar confectionery.	WO
18.01	Cocoa beans, whole or broken, raw or roasted.	WO
18.02	Cocoa shells, husks, skins and other cocoa waste.	WO
18.03	Cocoa paste, whether or not defatted.	WO
18.04	Cocoa butter, fat and oil.	WO
18.05	Cocoa powder, not containing added sugar or other sweetening matter.	WO
1901.10	Preparations suitable for infants or young children, put up for retail sale.	CC except from Chapter 04
1901.90	Other.	CC except from Chapter 04
1904.10	Prepared foods obtained by the swelling or roasting of cereals or cereal products.	CC except from heading 10.06
1904.90	Other.	CC except from heading 10.06
1905.31	Sweet biscuits.	CC except from heading 11.01
1905.90	Other.	CC except from heading 11.01
2001.90	Other.	CC except from

HS code	Article Description	Criteria
		Chapter 07
20.02	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid.	CC
2004.10	Potatoes.	CC except from Chapter 07
2005.20	Potatoes.	CC except from Chapter 07
2008.11	Groundnuts.	WO
22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher; ethyl alcohol and other spirits, denatured, of any strength.	WO
2208.40	Rum and other spirit obtained by distilling fermented sugarcane products.	WO
24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.	CTH
26	Ores, slag and ash.	WO
37.01	Photographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in the flat, sensitized, unexposed, whether or not in packs.	CTH except from subheading 3707.10
37.02	Photographic film in rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in rolls, sensitized, unexposed.	CTH except from subheading 3707.10
37.03	Photographic paper, paperboard and textiles, sensitized, unexposed.	CTH except from subheading 3707.10

HS code	Article Description	Criteria
38.08	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers).	CTH except when change to the heading is only through packagin or presenting goods for retail sale.
39.26	Other articles of plastics and articles of other materials of headings 3901 to 3914.	CTH
40.01	Natural rubber, balata, gutta-percha, guayule, chicle and similar natural gums, in primary forms or in plates, sheets or strip.	WO
44	wood and articles of wood; wood charcoal.	WO
52.01	Cotton, not carded or combed.	WO
52.03	Cotton, carded or combed.	WO
52.08	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing not more than 200 g/m2.	CTH
54.01	Sewing thread of man-made filaments, whether or not put up for retail sale.	CTH
55.12	Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres.	CTH
58.01	Woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806.	CTH
61	Articles of apparel and clothing accessories, knitted or crocheted.	CTH
62	Articles of apparel and clothing accessories, not knitted or crocheted.	CTH

HS code	Article Description	Criteria
85.44	Insulated (including enamelled or anodized) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors.	CTH

ANNEX 3-B

CERTIFICATE OF ORIGIN

<table>
<tr><td colspan="3">1. Exporter’s full name, address and country:</td><td colspan="4">Certificate No.:

CERTIFICATE OF ORIGIN

China-Nicaragua Free Trade Agreement

Issued in: _____</td></tr>
<tr><td colspan="3">2. Consignee’s full name, address, country</td><td colspan="4">For official use only:</td></tr>
<tr><td colspan="3">3. Means of transport and route (as far as known)

Departure date:

Vessel/Flight/Train/Vehicle No.:
Port of loading:

Port of discharge:</td><td colspan="4">4. Remarks:</td></tr>
<tr><td>5. Item number</td><td colspan="2">6. Marks and numbers on packages;
Number and kind of packages; Description of goods</td><td>7. HS code (6-digit code)</td><td>8. Origin criterion</td><td>9. Quantity (e.g. Quantity Unit, litres, m^3)</td><td>10.Number,
Date of Invoice</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
</table>

11. Declaration by the producer/exporter	12. Certification
The undersigned hereby declares that the above stated information is correct and that the goods exported to _____ (Importing Party) comply with the origin requirements specified in the China-Nicaragua Free Trade Agreement. Place, date and signature of authorized person	On the basis of the control carried out, it is hereby certified that the information herein is correct and that the described goods comply with the origin requirements of the China-Nicaragua Free Trade Agreement. Place and date Signature and stamp of the Authorized Body

Overleaf Instruction

Box 1: State the full legal name and address of the exporter in China or Nicaragua.

Box 2: State the full legal name and address of the importer in China or Nicaragua, if known. If unknown, add "***" (three stars).

Box 3: Complete the means of transport and route and specify the departure date, transport vehicle number, and port of loading and discharge, as far as known. If unknown, add "***" (three stars).

Box 4: Customer's Order Number, Letter of Credit Number, among others, may be included. If the Certificate of Origin has not been issued before or at the time of shipment, the authorized body should mark "ISSUED RETROSPECTIVELY" here.

Box 5: State the item number.

Box 6: State the shipping marks and numbers on packages, when such marks and numbers exist.

The number and kind of packages shall be specified. Provide a full description of each good. The description should be sufficiently detailed to enable the products to be identified by the Customs Officers examining them and relate it to the invoice description and to the HS description of the good. If goods are not packed, state "in bulk". When the description of the goods is finished, add "***" (three stars) or " \ " (finishing slash).

Box 7: For each good described in Box 6, identify the HS tariff classification to a six-digit code.

Box 8: For each good described in Box 6, state which criterion is applicable, in accordance with the following instructions. The rules of origin are contained in Chapter 3 (Rules of Origin and Implementation Procedures) and Annex 3-A (Product Specific Rules of Origin).

Origin Criterion	Insert in Box 8
The good is "wholly obtained" in the territory of a Party, as referred to in Article 3.2 (Goods Wholly Obtained) or required so in Annex 3-A (Product Specific Rules of Origin).	WO
The good is produced entirely in the territory of a Party, exclusively from materials whose origin conforms to the provisions of Chapter 3 (Rules of Origin and Implementation Procedures).	WP
General rule as ≥ 40% regional value content.	RVC
The good is produced in the territory of a Party, using non-originating materials that comply with the Product Specific Rules and other applicable provisions of Chapter 3 (Rules of Origin and Implementation Procedures).	PSR

Box 9: State quantity with units of measurement for each good described in Box 6. Other units of measurement, e.g. volume or number of items, which would indicate exact quantities may be used where customary.

Box 10: The number and date of invoice (including the invoice issued by a non-Party operator) should be shown here.

Box 11: The box must be completed by the producer or exporter. Insert the place date and signature of authorized person.

Box 12: The box must be completed, dated, signed and stamped by the authorized person of the authorized body.

CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Scope and Objectives

1. This Chapter shall apply, in accordance with the international obligations and customs law of the Parties, to customs procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.

2. For the purposes of this Chapter, the Parties shall:

(a) promote the simplification and harmonization of their customs procedures;

(b) facilitate trade between them; and

(c) promote cooperation between their customs administrations.

Article 4.2: Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and trade facilitating.

2. Each Party shall, where possible and to the extent permitted by their respective customs law, conform its customs procedures with the standards and recommended practices of the World Customs Organization (WCO) to which that Party is a contracting party, in particular those of the International Convention on the Simplification and Harmonization of Customs Procedures (as amended), known as the Revised Kyoto Convention.

3. Each Party shall provide a focal point, electronic or otherwise, through which its traders may submit, where possible, required regulatory information in order to obtain clearance, including release of goods.

Article 4.3: Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of GATT 1994 and the Customs Valuation Agreement.

Article 4.4: Tariff Classification

The Parties shall apply the Harmonized System to goods traded between them.

Article 4.5: Customs Cooperation

1. To the extent permitted by the laws and regulations of the Parties, the customs administrations of the Parties shall assist each other, in relation to:

(a) the implementation and operation of this Chapter;

(b) simplifying and harmonising customs procedures;

(c) developing and implementing customs best practice and risk management techniques; and

(d) such other issues as the Parties mutually determine.

2. The customs administrations of the Parties shall push forward cooperation based on "Smart Customs, Smart Borders and Smart Connectivity", in order to enhance mutual trust and promote trade facilitation to achieve a high-level connectivity between the Parties.

Article 4.6: Transparency

1. Each Party shall promptly publish, including on the Internet, its laws, regulations, and where applicable, administrative rules or procedures, of general application relevant to trade in goods between the Parties.

2. Each Party shall designate one or more enquiry points to address enquiries from interested persons on customs matters, and shall make available on the Internet information concerning procedures for making such enquiries.

3. To the extent practicable and in a manner consistent with its domestic law and legal system, each Party shall publish, in advance on the Internet, draft laws and

regulations of general application relevant to trade between the Parties, with a view to affording the public, especially interested persons, an opportunity to provide comments.

4. To the extent practicable and in a manner consistent with its domestic law and legal system, each Party shall ensure that a reasonable interval is provided between the publication and the entry into force of new or amended laws and regulations of general application relevant to trade between the Parties.

Article 4.7: Advance Rulings

1. The customs administration of each Party shall issue an advance ruling, prior to the importation of a good into its customs territory, at the written request containing all necessary information, on an application of the exporter, importer or any person with a justifiable cause or a representative thereof[2], with respect to:

(a) origin of a good;

(b) tariff classification of a good; and

(c) such other matters as the Parties may decide.

2. The customs administration of the importing Party shall issue an advance ruling within 90 days from the receipt of all necessary information, provided that the applicant has submitted all the information required, including a sample of the goods.

3. In issuing an advance ruling, the customs administration of the importing Party shall take into account facts and circumstances the applicant provided. For greater certainty, a Party may decline to issue an advance ruling if the facts or circumstances forming the basis of this advance ruling are the subject of administrative or judicial review. A Party that pursuant to this paragraph, declines to issue an advance ruling shall promptly notify the applicant in writing, setting forth the relevant facts, circumstances, and the basis for its decision to decline to issue the advance ruling.

[2] An applicant for an advance ruling from China shall be registered with China Customs.

4. Each customs administration of the Party shall provide that an advance ruling shall take effect on the date it is issued, or another date specified in the ruling, provided that the laws, regulations, administrative rules, or facts and circumstances on which the ruling is based remain unchanged.

5. The customs administration of the importing Party may modify or revoke the said advance ruling, with the notification of the decision to the applicant:

(a) if the advance ruling was based on an error of fact;

(b) if there is a change in the material facts or circumstances on which the advance ruling was based;

(c) if information was provided false or relevant information was withheld; or

(d) to conform with a change in its domestic laws, a judicial decision or a modification of this Chapter.

6. Each customs administration may publish any information on advance rulings, including on the Internet, subject to confidential requirements in its domestic laws and regulations.

7. If an applicant provides false information, omits relevant facts or circumstances relating to the advance ruling, or does not act in accordance with the terms and conditions of the advance ruling, the issuing customs administration may apply appropriate measures to the applicant, including criminal and administrative actions, penalties, or other sanctions in accordance with its laws and regulations.

Article 4.8: Review and Appeal

Each Party shall, in accordance with its domestic laws and regulations, provide that the importer, exporter or any other person affected by that administrative determinations or decisions, have access to:

(a) a level of administrative review of determinations by its customs administration, independent of the official or office responsible for the decision under review; and

(b) judicial review of the administrative determinations subject to its laws and regulations.

Article 4.9: Penalties

In accordance with its domestic laws and regulations, each Party shall adopt or maintain measures that allow for the imposition of administrative penalties and where appropriate, criminal sanctions for violations of its customs law, including but not limited to those governing tariff classification, customs valuation, rules of origin, quarantine and inspection, and claims for preferential tariff treatment under this Agreement.

Article 4.10: Application of Information Technology

1. The customs administrations of the Parties shall use information technology to support customs operations, including sharing best practices with each other for the purpose of improving their customs procedures, where it is cost-effective and efficient, particularly in the paperless trading context, taking into account developments of WCO in this area.

2. The customs administrations of the Parties are encouraged to focus on the application of new technologies, including the development of hardware facilities and software systems, as to accelerate customs operations and increase the accuracy and impartiality of customs control.

Article 4.11: Risk Management

1. The customs administration of each Party shall focus measures of control on high-risk goods and facilitate the clearance of low-risk goods in administering customs procedures.

2. The customs administration of each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination or disguised restrictions on international trade.

Article 4.12: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good where its requirements for release have not been met.

2. In accordance with paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide for the release of goods as rapidly as possible after arrival, provided all other regulatory requirements have been met; and

(b) as appropriate, provide for advance electronic submission and processing of information before the physical arrival of goods with a view to expediting the release of goods.

Article 4.13: Authorized Economic Operator

1. The customs administrations of the Parties shall establish the program of Authorized Economic Operators (hereinafter referred to as the "AEO") to promote informed compliance and efficiency of customs control, and to share best practices between the Parties.

2. The customs administrations of the Parties shall endeavour to work towards mutual recognition of AEO.

Article 4.14: Consultation

1. The customs administration of each Party may at any time request consultations with the customs administration of the other Party on any matter arising from the operation or implementation of this Chapter, in cases where there are reasonable grounds provided by the requesting Party. Such consultations shall be conducted through the relevant Contact Points, and shall commence within 30 days of the request, except as the customs administrations of both Parties mutually determine otherwise.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Committee on CPTF set forth on Article 4.15 for consideration.

3. Each customs administration shall designate one or more Contact Points for the purposes of this Chapter and provide details of such Contact Points to the other Party. Customs administrations of the Parties shall notify each other promptly of any amendments to the details of their Contact Points.

Article 4.15: Committee on Customs Procedures and Trade Facilitation

1. The Parties, with the view to an effective implementation and operation of this Chapter, hereby establish a Committee on Customs Procedures and Trade Facilitation (hereinafter referred to as the "Committee on CPTF").

2. The Committee on CPTF shall be composed by representatives of customs administrations, and upon mutual agreement relevant government authorities of the Parties.

3. The functions of the Committee on CPTF shall be as follows:

(a) ensure the proper functioning of this Chapter and resolve all issues arising from its application;

(b) review the operation and implementation of this Chapter, as well revise this Chapter as appropriate;

(c) identify areas related to this Chapter to be improved for facilitating trade between the Parties; and

(d) make recommendations and report to the FTA Joint Commission.

3. The Committee on CPTF shall meet at such venues and times as agreed by the Parties.

Article 4.16: Definitions

For the purposes of this Chapter:

customs law means the statutory and regulatory provisions relating to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically charged to the customs administration, and any regulations made by the customs administration under its statutory powers;

customs procedures means the treatment applied by each customs administration to goods and the means of transport that are subject to customs control; and

means of transport means various types of vessels, vehicles and aircrafts which enter or leave the customs territory carrying persons and/or goods.

CHAPTER 5

SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Objectives

The objectives of this Chapter are to:

(a) promote and facilitate the trade of animals, products of animal origin, plants and products of vegetal origin between the Parties, protecting at the same time public health, animal and vegetable health;

(b) improve between the Parties the implementation of the *Agreement of Sanitary and Phytosanitary Measures* (hereinafter referred to as the "SPS Agreement"), contained in Annex 1A to the WTO Agreement;

(b) provide a forum to approach bilateral sanitary and phytosanitary measures, to solve the problems of trade that from them derives, and to expand trade opportunities; and

(c) provide mechanisms of communication and cooperation to resolve sanitary and phytosanitary issues in a prompt and efficient manner.

Article 5.2: Scope and Definitions

1. This Chapter shall apply to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.

2. For the purposes of this Chapter, the definitions in Annex A to the SPS Agreement shall apply.

Article 5.3: Affirmation

Except as otherwise provided for in this Chapter, the SPS Agreement shall apply between the Parties and is hereby incorporated into and form an integral part of this Agreement, *mutatis mutandis*.

Article 5.4: Risk Analysis

The Parties recognise that risk analysis is an important tool for ensuring that SPS measures have scientific basis. The Parties shall ensure that their SPS measures are based on an assessment of the risks to human, animal or plant life or health as provided in Article 5 of the SPS Agreement, taking into account the risk assessment techniques developed by the relevant international organisations.

Article 5.5: Regionalisation

1. The Parties shall accept the principle of regionalisation provided for in the SPS Agreement.

2. The Parties take note of the *Guidelines to further the Practical Implementation of Article 6 of the Agreement on the Application of Sanitary and Phytosanitary Measures* (G/SPS/48), adopted by the WTO Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as the "WTO/SPS Committee") and of relevant standards developed by *World Organization for Animal Health* (WOAH) and *International Plant Protection Convention* (IPPC).

Article 5.6: Equivalence

1. Each Party shall accept the sanitary or phytosanitary measures of the other Party as equivalent, if the other Party objectively demonstrates to the Party that its measures achieve the Party's appropriate level of sanitary and phytosanitary protection.

2. The Parties shall, if necessary, give positive consideration to establishing a procedure to expedite recognition on equivalence of their sanitary and phytosanitary measures, on the basis of the relevant procedures established by the relevant international organizations and the WTO/SPS Committee.

Article 5.7: Transparency

1. The Parties agree the full implementation of Article 7 of the SPS Agreement in accordance with the provisions of Annex B of the SPS Agreement.

2. The Parties shall make endeavor to exchange information on, include but not limited to, SPS measures, pest status and noncompliance cases.

3. The sanitary and phytosanitary enquiry points of the Parties established under the SPS Agreement, shall set up a bilateral mechanism for further communication. The Parties shall provide upon request a copy of the full text of the proposed regulation notified and allow at least 60 days for comments.

Article 5.8: Emergency Measures

Emergency measures imposed by an importing Party shall be notified to the other Party as rapidly as possible, and upon request, the communication between the competent authorities shall be held in a timely manner. The Parties shall consider any information provided through such communication.

Article 5.9: **Technical Cooperation**

1. The Parties agree to strengthen bilateral technical cooperation on sanitary and phytosanitary issues, with a view to improving mutual understanding of the regulatory systems of the Parties and facilitating access to the respective markets.

2. The Parties agree to explore cooperation programs for a better application of this Chapter in terms of strengthening technical capacities, technological exchange, and related activities, such as laboratory diagnosis, sampling methods, control of pests and diseases, risk analysis, and control, inspection and approval activities.

Article 5.10: Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures (the "SPS Committee"), composed of government representatives of each Party.

2. The functions of the SPS Committee shall be:

(a) monitoring the implementation of this Chapter;

(b) coordinating technical cooperation activities mentioned in Article 5.9;

(c) facilitating technical consultations;

(d) identifying areas for enhanced cooperation, including giving favorable consideration to any specific proposal made by either Party;

(e) establishing a dialogue between competent authorities in accordance with the objectives of this Chapter;

(f) consulting on related issues prior to meetings of relevant international organisations, as appropriate; and

(g) carrying out other functions mutually agreed by the Parties.

3. The SPS Committee shall be co-chaired and meet once a year, except as otherwise agreed by the Parties. The SPS Committee meetings may be conducted by any agreed method on a case by case basis.

4. The SPS Committee may establish ad-hoc working groups to accomplish specific tasks.

Article 5.11: Contact Points and Competent Authorities

1. Each Party shall designate a Contact Point which shall have responsibility for coordinating the implementation of this Chapter. The contact points will be:

(a) for China, the Department of International Cooperation of the General Administration of Customs of the People‘s Republic of China or its successor; and

(b) for Nicaragua, the Ministry of Development, Industry and Trade (*Ministerio de Fomento, Industria y Comercio* (MIFIC)) and the Institute for Agricultural Protection and Health (*Instituto de Protección y Sanidad Agropecuaria* (IPSA)) or their successors.

2. For the purposes of this Chapter, the competent authorities on Sanitary and Phytosanitary Measures are:

(a) for China, the General Administration of Customs or its successor; and

(b) for Nicaragua, the Institute for Agricultural Protection and Health (*Instituto de Protección y Sanidad Agropecuaria* (IPSA) or its successor.

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CHAPTER 6

TECHNICAL BARRIERS TO TRADE

Article 6.1: Objectives

The objectives of this Chapter are to:

(a) facilitate and promote trade in goods between the Parties by ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary technical barriers to trade;

(b) strengthen cooperation, including information exchange in relation to the preparation, adoption and application of standards, technical regulations, and conformity assessment procedures;

(c) promote mutual understanding of the Parties' standards, technical regulations, and conformity assessment procedures; and

(d) facilitate implementation of the principles of the *Agreement on Technical Barriers to Trade* (hereinafter referred to as the "TBT Agreement"), contained in Annex 1A to the WTO Agreement.

Article 6.2: Scope

This Chapter shall apply to all national standards, technical regulations, and conformity assessment procedures of the Parties that may, directly or indirectly, affect trade in goods between the Parties. It shall exclude:

(a) the SPS measures which are covered in Chapter 5 (Sanitary and Phytosanitary Measures); and

(b) purchasing specifications prepared by governmental bodies for production or consumption requirements are not subject to the provisions of this Agreement but are addressed in the *Agreement on Government Procurement*, according to its coverage.

Article 6.3: General Provision

Except as otherwise provided for in this Chapter, the TBT Agreement shall apply between the Parties and is hereby incorporated into and form an integral part of this Agreement, *mutatis mutandis*.

Article 6.4: International Standards

1. Where standards, technical regulations or conformity assessment procedures are required, and relevant international standards exist or are about to be developed, the Parties shall use relevant international standards or the relevant parts of them as a basis for their standards, technical regulations or relevant conformity assessment procedures, except where such international standards or relevant parts are invalid or inappropriate for achieving the legitimate objectives of the Parties.

2. For the purpose of this Chapter, standards issued by the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and Codex Alimentarius Commission (CAC) shall be considered as relevant international standards in the sense of the TBT Agreement.

Article 6.5: Technical regulations

Each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from their own, provided that they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

Article 6.6: Conformity Assessment Procedures

1. The Parties, with a view to increasing efficiency and ensuring cost effectiveness of conformity assessment, shall enhance cooperation in information exchange of each other's conformity assessment system through bilateral visits, technical training and seminars, etc.

2. When cooperating in the area of conformity assessment, the Parties shall take into consideration their participation in relevant international organizations.

3. In case that a compulsory conformity assessment procedure is required, upon request of one Party, the other Party undertakes to provide in English the list of products which are subject to these procedures.

Article 6.7: Measures at the Border

Where a Party detains, at a port of entry, goods exported from the other Party due to a perceived failure to comply with a technical regulation or a conformity assessment procedure, the reasons for the detention shall be promptly notified to the importer or his or her representative. Official measures taken in relation to such goods shall be proportionate to the risk associated with such goods.

Article 6.8: Transparency and Information Exchange

1. The Parties affirm their commitment to ensuring that information regarding proposed new or amended technical regulations, conformity assessment procedures or standards is made available in accordance with the Article 2.9, Article 5.6, and Annex 3 of the TBT Agreement.

2. A Party shall make available the full text of its notified technical regulations and conformity assessment procedures to the requesting Party within 15 working days of receiving the written request. English version shall prevail if available.

3. Each Party shall allow at least 60 days following the notification of its proposed technical regulations and conformity assessment procedures to WTO for the other Party to present comments except where risks to health, safety, and the environment arising or threatening to arise warrant urgent actions.

4. A Party may request information from the other Party on a matter arising under this Chapter. The requested Party shall endeavour to provide available information to the requesting Party within 30 days of the request.

5. The Parties agree to shall give favorable consideration to conduct meetings between the competent authorities of each Party to improve understanding regarding the requirements that apply to specific products. These meetings may be performed virtually or by any method agreed on a case-by-case basis.

Article 6.9: Technical Consultations

1. Where a Party considers that a standard, relevant technical regulation or conformity assessment procedure of the other Party has constituted unnecessary obstacles to its exports, it may request technical consultations. The requested Party shall respond as early as possible to such a request.

2. The requested Party shall enter into technical consultations within a period mutually agreed, with a view to reaching a solution. Technical consultations may be conducted via any means mutually agreed by the Parties.

Article 6.10: Cooperation

With a view to increasing mutual understanding of their respective systems and facilitating bilateral trade, the Parties shall strengthen their technical cooperation in the following areas:

(a) communication between competent authorities of the Parties;

(b) exchange of information in respect of standards, technical regulations, conformity assessment procedures, and good regulatory practices;

(c) encouraging, where possible, cooperation between standardization , metrology and conformity assessment bodies of the Parties including training programmes, workshops, technical assistance programs and related activities;

(d) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures;

(e) related activities in General Vocabulary defined in ISO/IEC Guide 2; and

(f) other areas mutually agreed by the Parties.

Article 6.11: Contact Point

1. Each Party shall designate a Contact Point which shall, for that Party, has the responsibility for coordinating the implementation of this Chapter. The Contact Points will be:

(a) for China, the State Administration for Market Regulation or its successor; and

(b) for Nicaragua, the Ministry of Development, Industry and Trade (*Ministerio de Fomento, Industria y Comercio (MIFIC)*) or its successor.

2. A Party shall provide the other Party with the contact details of the relevant officials in their respective Contact Points, including telephone, facsimile, email, and any other relevant details.

3. A Party shall notify the other Party promptly of any change in its Contact Points or any amendment to the details of the relevant officials acting as or on behalf of its Contact Point.

Article 6.12: Definitions

For the purposes of this Chapter, the terms and definitions, set out in Annex 1 to the TBT Agreement shall apply.

CHAPTER 7

TRADE REMEDIES

Section A: Bilateral Safeguard Measures

Article 7.1: Application of a Bilateral Safeguard Measure

1. During the transition period only, if as a result of the reduction or elimination of a customs duty provided under this Agreement, any product originating in a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to domestic industry producing a like or directly competitive product, the importing Party may apply a bilateral safeguard measure described in paragraph 2.

2. If the conditions in paragraph 1 are met, a Party may:

(a) suspend the further reduction of any rate of customs duty on the product provided for under this Agreement; or

(b) increase the rate of customs duty on the product to a level not exceeding the lesser of:

(i) the most-favored-nation (hereinafter referred to as "MFN") applied rate of customs duty in effect on the product on the day immediately preceding the date of entry into force of this Agreement[3]; or

(ii) the MFN applied rate of customs duty in effect on the product on the date on which the measure is applied.

Article 7.2: Scope and Duration of Bilateral Safeguard Measures

1.. Neither Party may apply or maintain a bilateral safeguard measure:

[3] The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of safeguard measure.

(a) except to the extent and for such time as may be necessary to prevent or remedy serious injury, and to facilitate adjustment; or

(b) for a period exceeding two years, except that the period may be extended by up to one year, if the competent authorities determine, in conformity with the procedures set out in Section A, that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting.

(c) without prejudice of subparagraph (a) and (b), regardless of its duration, such measure shall terminate at the end of the transition period.

2. In order to facilitate adjustment in a situation where the bilateral safeguard measure is extended, the Party extending the measure shall liberalise at regular intervals.

3. Neither Party may apply a safeguard measure more than once on the same product.

4. On the termination of a bilateral safeguard measure, the Party that applied the bilateral safeguard measure shall apply the rate of customs duty set out in its schedule to Annex 2-A (Schedule of Tariff Commitments) of this Agreement on the date of termination as if the bilateral safeguard measure has never been applied.

Article 7.3: Investigation Procedures

Bilateral safeguard measure shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation by a competent authority of the Parties and in accordance with the related procedures laid down in the Agreement on Safeguards.

Article 7.4: Provisional Measure

1. In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury to a domestic industry.

2. Before taking a provisional measure, the applying Party shall notify the other Party and shall, on request of the other Party, initiate consultations after applying such a measure.

3. The duration of a provisional safeguard measure shall not exceed 200 days, during which period the pertinent requirement of Article 7.1, 7.2 and 7.3 shall be met. Such a provisional safeguard measure should take the form of a suspension of the further reduction of any rate of customs duty provided for under this Agreement on the product or an increase in the duties not exceeding the lesser of the rates in Article 7.1.2 (b). Any additional duties or guarantees collected shall be promptly refunded if the subsequent investigation referred to in Article 7.3 determines that increased imports have not caused or threatened to cause serious injury to a domestic industry.

4. The duration of any such provisional safeguard measure shall be counted as a part of the initial period and any extension of bilateral safeguard measure.

Article 7.5: Notification and Consultation

1. A Party shall immediately notify the other Party, in writing on:

   (a) initiating a bilateral safeguard investigation;

   (b) making a finding of serious injury or threat thereof caused by increased imports;

   (c) taking a decision to apply or extend a bilateral safeguard measure; and

   (d) taking a decision to liberalise a bilateral safeguard measure previously applied, in accordance with Article 7.2.2.

2. In making the notification referred to in subparagraphs 1 (b) and 1 (c), the Party applying a bilateral safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved, the proposed bilateral safeguard measure, the proposed date of introduction and its expected duration. In the case of an extension of a bilateral safeguard measure, the written results of the determination required by Article 7.3, including evidence that the continued application of the measure is necessary to prevent or remedy serious injury and that the domestic industry is adjusting shall also be provided.

3. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, *inter alia*, reviewing the information provided under paragraph 2 of this Article, exchanging views on the bilateral safeguard measure and, in the case of extending a transitional safeguard measure reaching an agreement on compensation as set forth in Article 7.6.1.

4. A Party shall provide to the other Party a copy of the publicly available version of the report of its competent authorities in accordance with the Agreement on Safeguards as soon as it is available.

Article 7.6: Compensation

1. A Party extending a bilateral safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. Such consultations shall begin within 30 days of the extension of the bilateral safeguard measure.

2. If the Parties are unable to reach an agreement on compensation within 30 days after the consultation commences, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party extending the bilateral safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concession under paragraph 2.

4. The applying Party's obligation to provide compensation under paragraph 1 and the other Party's right to suspend concessions under paragraph 2 shall terminate on the date of the termination of the bilateral safeguard measure.

Article 7.7: Procedural Rules

For the application of bilateral safeguard measures, the competent authority shall comply with the provisions of this Section and in cases not covered by this Section, the competent authority may apply national procedural rules that are consistent with the Agreement on Safeguards.

Section B: Global Safeguards Measures

Article 7.8: General Provisions

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards.

2. Neither Party may apply, with respect to the same good, during the same period:

(a) a bilateral safeguard measure pursuant to Article 7.1; and

(b) a measure under Article XIX of the GATT 1994 and the Agreement on Safeguards.

Section C: Antidumping and Countervailing Duties

Article 7.9: General Provisions

1. Except as otherwise provided by paragraph 3, each Party retains its rights and obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994,* contained in Annex 1A to the WTO Agreement.

2. Each Party retains its rights and obligations under the *Agreement on Subsidies and Countervailing Measures,* contained in Annex 1A to the WTO Agreement.

3. Neither Party shall use a methodology based on surrogate value of a third country for the purpose of determining normal value when calculating dumping nmargin in an anti-dumping investigation.

Article 7.10: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement for any issue arising from or relating to Section B and C of this Chapter.

Section D: Definitions

Article 7.11: Definitions

For the purposes of this Chapter:

bilateral safeguard measure means a measure described in Article 7.1;

competent authority means:

(a) for China, the Ministry of Commerce *(MOFCOM)* or its successor; and

(b) for Nicaragua, the Directorate for the Implementation and Negotiation of Trade Agreements of the Ministry of Development, Industry and Commerce (*Dirección de Aplicación y Negociación de Acuerdos Comerciales del Ministerio de Fomento, Industria y Comercio* (*MIFIC*)) or its successor;

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

global safeguard measure means a measure applied under Article XIX of GATT 1994 and the Agreement on Safeguards;

serious injury means a significant overall impairment of the position of a domestic industry;

threat of serious injury means the clear imminence of serious injury based on facts and not merely on allegation, conjecture or remote possibility; and

transition period means the ten-year period following the date this Agreement enters into force, except that for any good for which the Schedule to Annex 2-A (Schedule of Tariff Commitments) of the Party applying the safeguard measure provides for the Party to eliminate its tariffs on the good over a period of more than ten years, transition period means the tariff elimination period for the good set out in that Schedule.

CHAPTER 8

CROSS-BORDER TRADE IN SERVICES

Article 8.1: Scope

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

(a) the production, distribution, marketing, sale, and delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of the other Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. Notwithstanding paragraph 1, Articles 8.4, 8.7, and 8.8 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment[4].

3. This Chapter shall not apply to:

(a) services supplied in the exercise of governmental authority;

(b) government procurement;

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

(d) cabotage in maritime transport services;

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[4] For greater certainty, the scope of Articles 8.4, 8.7, and 8.8 applying to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment is limited to the scope specified in Article 8.1, subject to any applicable non-conforming measures and exceptions. Nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B (Investor-State Dispute Settlement) of Chapter 11 (Investment).

(e) measures affecting air traffic rights, however granted, or measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services;

(f) financial services as defined in Article 9.21 (Definitions), except that paragraph 2 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 9.21) in the Party's territory; or

(g) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding citizenship, residence or employment on a permanent basis.

Article 8.2 National Treatment[5]

Each Party shall accord to service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances[6], to its own service suppliers[7].

Article 8.3: Most-Favored-Nation Treatment

Each Party shall accord to service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to service suppliers of a non-Party[8].

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[5] For greater certainty, nothing in Articles 8.2 or 8.3 shall be interpreted as extending the scope of this Chapter.

[6] For greater certainty, whether treatment is accorded in "like circumstances" under Articles 8.2 or 8.3 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services and service suppliers on the basis of legitimate public welfare objectives.

[7] Nothing in this Article shall be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

[8] For the purposes of this Article, the term "non-Party" shall not include the following WTO members within the meaning of the WTO Agreement: (1) Hong Kong, China; (2) Macao, China; and (3) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei).

Article 8.4: Market Access

Neither Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of 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[9]; or

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

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

Article 8.5: Local Presence

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

Article 8.6: Non-Conforming Measures

1. Articles 8.2, 8.3, 8.4 and 8.5 shall not apply to:
   (a) any existing non-conforming measure that is maintained by a Party at:

[9] This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

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

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

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraphs (a), to the extent that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 8.2, 8.3, 8.4 and 8.5.

2. Articles 8.2, 8.3, 8.4 and 8.5 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities as set out by that Party in its Schedule to Annex II.

Article 8.7: Transparency

Further to Chapter 17 (Transparency):

(a) each Party shall maintain or establish appropriate mechanisms through the Contact Points stipulated in Article 20..4 (Contact Point), for responding to inquiries from interested persons of a Party regarding its laws and regulations relating to the subject matter of this Chapter; and

(b) to the extent possible, each Party shall allow a reasonable period of time between publication of final laws and regulations related to the subject matter of this Chapter and their effective date.

Article 8.8: Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party, for the prompt review of, and where justified,

appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

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

4. While recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet national policy objectives, and 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, each Party shall aim to ensure that such measures are:

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

(b) not more burdensome than necessary to ensure the quality of the service; and

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

5. For the purpose of this Chapter, Reference Paper on Services Domestic Regulation is incorporated into and form an integral part of this Chapter, *mutatis mutandis*.

Article 8.9: Recognition

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met or licences or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Party and the particular country concerned or their relevant competent bodies, or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the

education or experience obtained, requirements met, or licences or certifications granted in the territory of a non-Party, nothing in Article 8.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the territory of the other Party.

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

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.

Article 8.10: Payments and Transfers

1. Each Party shall permit all transfers and payments related 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 related 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 related to:

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

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

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

(d) criminal or penal offences; or

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

proceedings.

4. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund (hereinafter referred to as the "Articles of Agreement"), including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its commitments under this Chapter regarding such transactions, except at the request of the International Monetary Fund.

Article 8.11: 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 adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

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 in the territory of the other Party.

Article 8.12: Public Telecommunications Services[10]

1. For the purpose of this Chapter, the Annex on Telecommunications of the GATS Agreement and Telecommunications Reference Paper are incorporated into and form an integral part of this Chapter ,*mutatis mutandis*.

2. Neither Party shall prevent suppliers of public telecommunications services from choosing the technologies or telecommunication facilities they wish to use to supply their services.

3. Relating to non-discriminatory treatment of telecommunication facilities:

(a) neither Party shall accord less favourable treatment to telecommunication facilities created, produced, supplied, leased or sold by any enterprise of the other Party than it accords to other like telecommunication facilities; and

[10] For greater certainty, this Article does not prohibit either Party from requiring a service supplier to establish a commercial presence and obtain a licence to supply a public telecommunications network or service in its territory.

(b) neither Party shall take any unreasonable or discriminatory measures to prevent an enterprise of the other Party from supplying, leasing or selling their telecommunication facilities in the territory of the former Party.

Article 8.13: Definitions

For the purposes of this Chapter:

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

computer reservation system 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;

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

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to the service consumer of the other Party; or

(c) by a service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party,

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

measure means a measure as defined in Article 1.5 (General Definitions) and includes any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

measures adopted or maintained by a Party means measures taken 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;

natural person of a Party means a national or a permanent resident of a Party under its laws. Until such time as China enacts its law on treatment of permanent residents of foreign countries, the obligations of each Party with respect to the permanent residents of the other Party shall be limited to the extent of its obligations under the GATS;

person means a natural person or an enterprise;

qualification procedures means administrative procedures relating to the administration of qualification requirements;

qualification requirements means substantive requirements which a service supplier is required to fulfil in order to obtain certification or a license;

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;

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; and

service supplier of a Party means a person of that Party that seeks to supply a service.

CHAPTER 9

FINANCIAL SERVICES

Article 9.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting trade in financial services relating to:

(a) financial institutions of the other Party;

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

(c) cross-border trade in financial services.

2. Chapters 11 (Investment) and 8 (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

(a) Articles 11.4 (Minimum Standard of Treatment), 11.6 (Expropriation and Compensation), 11.7 (Transfers), 11.11 (Special Formalities and Information Requirements), 11.13 (Denial of Benefits), 11.15 (Financial Services) and Articles 8.11 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

(b) Section B (Investor-State Dispute Settlement) of Chapter 11 (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Article 11.6 (Expropriation and Compensation), 11.7 (Transfers), 11.11 (Special Formalities and Information Requirements) or 11.13 (Denial of Benefits), as incorporated into this Chapter.[11]

3. This Chapter does not apply to measures:

(a) adopted or maintained by a Party relating to activities or services forming part of a statutory system of social security or public retirement plan;

(b) adopted or maintained by a Party relating to activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities; or

(c) conducted by a central bank, monetary authority or any other public entity

[11] For greater certainty, Section B (Investor-State Dispute Settlement) of Chapter 11 (Investment) shall not apply to cross-border trade in financial services.

of a Party in pursuit of monetary or exchange rate policies.

Notwithstanding the above, this Chapter shall apply to the extent a Party allows any of the activities or services referred to in subparagraph (a) and (b) to be conducted by its financial institutions in competition with a public entity or a financial service supplier.

4. This Chapter does not apply to government procurement of financial services.

5. This Chapter shall not apply to subsidies or grants with respect to the supply of financial services, including government-supported loans, guarantees and insurance.

Article 9.2: National Treatment[12]

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

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

3. Each Party shall accord to cross-border financial service suppliers of the other Party seeking to supply or supplying the financial services as specified by the Party in Annex 9 treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances.

Article 9.3: Most-Favored-Nation Treatment

1. Each Party shall accord to:

(a) investors of the other Party, treatment no less favourable than that it accords to investors of a non-Party, in like circumstances;

12 For greater certainty, whether treatment is accorded in "like circumstances" under Articles 9.2 or 9.3 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors, investments, financial institutions or financial service suppliers on the basis of legitimate public welfare objectives.

(b) financial institutions of the other Party, treatment no less favourable than that it accords to financial institutions of a non-Party, in like circumstances;

(c) investments of investors of the other Party in financial institutions, treatment no less favourable than that it accords to investments of investors of a non-Party in financial institutions, in like circumstances; and

(d) cross-border financial services suppliers of the other Party, treatment no less favourable than that it accords to cross-border financial services suppliers of a non-Party in financial institutions, in like circumstances.

2. For greater certainty, the treatment referred to in paragraph 1 does not encompass international dispute resolution procedures or mechanisms such as those included in Article 9.1.2 (b).

Article 9.4: Market Access for Financial Institutions

A Party shall not adopt or maintain, with respect to financial institutions of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

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

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

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

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

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

Article 9.5: Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 9.

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

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

Article 9.6: New Financial Services

1. Each Party shall permit financial institutions of the other Party established in the territory of the Party to supply a new financial service in the territory of the Party that the Party would permit its own financial institutions, in like circumstances, to supply without adopting or modifying a law[13].

2. Where an application is approved, the supply of the new financial service is subject to relevant licensing, institutional or juridical form, or other requirements of the Party.

Article 9.7: Treatment of Certain Information

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

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

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

[13] For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

(c) any confidential or proprietary information in the possession of public entities.

Article 9.8: Senior Management and Boards of Directors

1. Neither Party may require that a financial institution of the other Party appoint to senior management positions natural persons of any particular nationality.

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

Article 9.9: Non-Conforming Measures

1. Articles 9.2, 9.3, 9.4, 9.5, and 9.8 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party as set out by that Party in Section A of its Schedule to Annex III;

(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 9.2, 9.3, 9.4, 9.5 and 9.8.

2. Articles 9.2, 9.3, 9.4, 9.5, and 9.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by that Party in Section B of its Schedule to Annex III.

3. A non-conforming measure set out in a Party's Schedule to Annex I or Annex II as a measure to which Article 11.2 (National Treatment) or 11.3 (Most-Favored-Nation Treatment - Investment) or Article 11.9 (Senior Management and Boards of Directors), Article 8.2 (National Treatment), 8.3 (Most-Favored-Nation Treatment) or 8.4 (Market Access - Services) does not apply, shall be treated as a non-conforming measure to which Article 9.2, 9.3, 9.4, 9.5 or, 9.8, as the case may be, does not apply, to the extent that the measure, sector, subsector, or activity set out in the Schedule is covered by this Chapter.

Article 9.10: Exceptions

1. Notwithstanding any other provision of this Chapter, a Party shall not be prevented from adopting or maintaining measures relating to financial services for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity and stability of the financial system.[14] Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter applies to non-discriminatory measures of general application in pursuit of monetary and related credit policies or exchange rate policies.[15] This paragraph shall not affect a Party's obligations under Article 11.7 (Transfers).

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

Article 9.11: Transparency and Administration of Certain Measures

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

2. Each Party shall ensure that all measures of general application to which this

[14] It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or the financial system, as well as the maintenance of the safety and financial and operational integrity of payment and clearing systems.

[15] For greater certainty, measures of general application taken in pursuit of monetary and related credit policies or exchange rate policies do not include measures that expressly nullify or amend contractual provisions that specify the currency of denomination or the rate of exchange of currencies.

Chapter shall apply are administered in a reasonable, objective, and impartial manner.

3. In lieu of paragraph 1 of Article 17.1 (Publication), each Party shall, to the extent practicable:

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

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

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

5. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organisations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.[16]

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

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

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

9. A Party's regulatory authority shall make an administrative decision on a complete application of an investor in a financial institution, a financial institution, a financial service supplier or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 180 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held, and all necessary information is received. Where it is not practicable for a decision to be made within 180 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

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[16] For greater certainty, the Parties agreed that such information may be published in each Parties' chosen languages.

10. On the request of an unsuccessful applicant in writing, a regulatory authority that has denied an application shall, to the extent possible, inform the applicant of the reasons for denial of the application.

Article 9.12: Self-Regulatory Organisations

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation to provide a financial service in or into the territory of that Party, the Party shall ensure that the self-regulatory organisation observes the obligations of Articles 9.2 and Article 9.3.

Article 9.13: Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory access to payment and clearing systems[17] operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article 9. 14: Transfers of Information and Processing of Information

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information and the processing of information[18].

2. A Party shall not take measures that prevent:

(a) transfers of information, including transfers of data by electronic or other means, necessary for the conduct of the ordinary business of a financial service supplier in its territory; or

(b) processing of information necessary for the conduct of the ordinary business of a financial service supplier in its territory.

3. Nothing in paragraph 2 prevents a regulatory authority of a Party, for regulatory or prudential reasons, from requiring a financial service supplier in its territory to comply with its laws and regulations in relation to data management and storage and system maintenance, as well as to retain within its territory copies of records,

[17] For greater certainty, for China, the High Value Payment System and the Bulk Electronic Payment System are provided by the People's Bank of China.

[18] For greater certainty, a Party may adopt a different regulatory approach, and this paragraph does not affect and is without prejudice to a Party's rights and obligations under this Article.

provided that such requirements shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

4. Nothing in paragraph 2 restricts the right of a Party to protect personal data, personal privacy, and the confidentiality of individual records and accounts including in accordance with its laws and regulations, provided that such a right shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

5. Nothing in paragraph 2 shall be construed to require a Party to allow the cross-border supply or consumption abroad of services in relation to which it has not made commitments, including to allow non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, the provision and transfer of financial information and financial data processing as referred to in Article 9.21 and Article 9.5.

Article 9.15: Recognition

1. A Party may recognise prudential measures of any international standard setting body, or a non-Party in determining how the Party's measures relating to financial services shall be applied[19]. That recognition may be:

(a) accorded autonomously;

(b) achieved through harmonisation or other means; or

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

2. A Party according recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

3. Where a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances described in paragraph 2 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 9.16: Financial Services Committee

1. The Parties hereby establish a Financial Services Committee. The Financial

[19] For greater certainty, nothing in Article 9.3 shall be construed to require a Party to accord such recognition to prudential measures of the other Party.

Services Committee shall comprise officials of each Party responsible for financial services as set out in paragraph 4.

2. The Committee shall:

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

(b) consider issues regarding financial services that are referred to it by a Party, including ways for the Parties to cooperate more effectively in the financial services sector and

(c) participate in the dispute settlement procedures in accordance with Article 11.15 (Financial Services).

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

4. The authorities responsible for financial services are:

(a) for China, the People's Bank of China, State Administration for Finance regulation, China Securities Regulatory Commission, and State Administration of Foreign Exchange or their successors; and

(b) for Nicaragua, the Ministry of Development, Industry and Trade (*Ministerio de Fomento, Industria y Comercio (MIFIC))*; the Superintendency of Banks and other Financial Institutions (*Superintendencia de Bancos y de otras Instituciones Financiera*s *(SIBOIB)*) and the Central Bank of Nicaragua (*Banco Central de Nicaragua (BCN)) or their successors*.

Article 9.17: Supervisory Cooperation

The Parties support the efforts of their respective financial regulations to provide assistance to the regulators of the other Party to enhance consumer protection and those regulators' ability to prevent, detect, and prosecute unfair and deceptive practices. Each Party confirms that its financial regulators have the legal authority to exchange information in support of those efforts. The Parties shall encourage financial regulators to continue their ongoing efforts to strengthen this cooperation through bilateral consultations or bilateral or multilateral international cooperative mechanisms, such as memoranda of understanding of ad hoc undertakings.

Article 9.18: Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request.

2. Consultations under this Article shall include officials of the authorities specified in Article 9.20 .

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

Article 9.19: Dispute Settlement

1. Chapter 21 (Dispute Settlement) shall apply to the settlement of disputes arising under this Chapter.

2. Arbitral tribunals for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

Article 9.20: Contact Points

For the purposes of this Chapter, the authorities responsible for financial services are:

(a) for China, the People's Bank of China, State Administration for Finance Regulation, China Securities Regulatory Commission, and State Administration of Foreign Exchange; and

(b) for Nicaragua, the Ministry of Development, Industry and Trade (*Ministerio de Fomento, Industria y Comercio (MIFIC)*); the Central Bank of Nicaragua (*Banco Central de Nicaragua (BCN)*) and the Superintendency of Banks and other Financial Institutions (*Superintendencia de Bancos y de Otras Instituciones Financieras (SIBOIB)*) or their successors.

2. A Party shall promptly notify the other Party of any change of its contact point.

Article 9.21: Definitions

For the purposes of this Chapter:

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

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

(a) from the territory of one Party into the territory of the other Party;

(b) in the territory of one Party by a person of that Party to a person of the other Party; or

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

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

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

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

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

Insurance and insurance-related services

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

(i) life,

(ii) non-life;

(b) Reinsurance and retrocession;

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

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

Banking and other financial services (excluding insurance)

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

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

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit cards, traveller's cheques, and bankers drafts;

(i) Guarantees and commitments;

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

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

(ii) foreign exchange;

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

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

(v) transferable securities; and

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

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

(l) Money broking;

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

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

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

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

financial service supplier means any person of a Party seeking to supply or

supplying financial services but the term "financial service supplier" does not include a public entity;

investment means "investment" as defined in Article 11.28 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

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

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

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 11(Investment), if such loan or debt instrument meets the criteria for investments set out in Article 11.28 (Definitions);

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

new financial service means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.

person means a person as defined in Article 1.5 (General Definitions). For greater certainty, a person does not include a branch of an enterprise of a non-Party;

public entity means a government, a central bank or monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.;and

self-regulatory organisation means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions, by statute or delegation from central, regional, or local governments or authorities.

ANNEX 9

CROSS-BORDER TRADE

Section A: CHINA[20]

Insurance and insurance-related services

1. Article 9.5.1 (Cross-border Trade) applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 9.21 (Definition) with respect to:

(a) Insurance of risks relating to:

(i) International marine, aviation, and transport insurance;

(ii) Brokerage for large scale commercial risks, international marine, aviation, and transport insurance, and reinsurance.

(b) Reinsurance;

Banking and other financial services (excluding insurance)

2. Article 9.5.1 (Cross-border Trade) applies to the cross-border supply of or trade in financial services as referred to in subparagraph (a) of the definition of cross-border supply of financial services in Article 9.21 (Definition) with respect to:

(a) The provision and transfer of financial information, and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service in Article 9.21 (Definition), which shall be authorized by relevant regulatory institution[21] as required.

(b) Advisory and other auxiliary services relating to banking and other financial services, excluding intermediation, credit services and other auxiliary services such as advisory services related to securities investment, funds investment and futures transaction, as referred to in subparagraph (p) of the definition of financial services in Article 9.21.

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[20] For further explanation, China require the cross-border financial services supplier establish local agency and keep record.

[21] Each party understand that if the financial information and financial data processing referred to in (a) and (b) involves personal data, the processing of such personal information shall comply with Chinese laws and regulations on protecting such data.

3. A foreign institution that provides bank card clearing services of foreign currencies solely for the purpose of cross-border transactions are not required to establish a bank card clearing institution in the territory of People's Republic of China in principle. The institution shall report its business operation to the People's Bank of China and the National Administration of Financial Regulation of China, and shall comply with relevant regulatory requirements.

Section B: NICARAGUA

Insurance and Insurance-Related Services

1. Article 9.5.1 (Cross-border Trade) applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

(a) insurance of risk relating to:

(i) International marine, aviation, and transport insurance, with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) brokerage of insurance risks relating to paragraphs (a)(i) and (a)(ii); and

(d) auxiliary services to insurance as referred to in subparagraph (d) of the definition of financial services. These auxiliary services will only be provided to an insurance supplier.

2. Article 9.5.1 (Cross-border Trade) applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services. The commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

Banking and Other Financial Services (Excluding Insurance)

3. Article 9.5.1 (Cross-border Trade) applies with respect to:

(a) the provision and transfer of financial information as described in subparagraph (o) of the definition of financial service;

(b) financial data processing and related software as described in subparagraph (o) of the definition of financial service, subject to prior authorization from the relevant regulator, as required; and

(c) advisory and other auxiliary financial service[22] excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

Nicaragua's law regulating protection of personal information applies where the financial information or financial data processing referred to in subparagraphs (a) and (b) involves such protected information.

[22] It is understood that advisory services includes portfolio management. Additionally, auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 9.21.

CHAPTER 10

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 10.1: Objectives

The objective of this Chapter, which reflects the preferential trading relationship between the Parties and their mutual desire to facilitate temporary entry of natural persons, is to establish transparent criteria and streamlined procedures for temporary entry, while recognizing the need to ensure border security and to protect the domestic labour force in the territories of the Parties.

Article 10.2: Scope

1. This Chapter applies to measures under this Agreement affecting the temporary entry of business persons of a Party into the territory of the other Party.

2. Nothing in this Chapter, Chapter 8 (Cross-Border Trade in Services) or Chapter 11 (Investment) shall apply to measures pertaining to citizenship, nationality, residence or employment on a permanent basis.

3. Nothing contained in this Chapter, Chapter 8 (Cross-Border Trade in Services) or Chapter 11 (Investment) shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided such measures are not applied in a manner so as to nullify or impair the benefits accruing to the other Party under this Agreement.[23]

Article 10.3: Expeditious Application Procedures

1. Each Party shall process expeditiously applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof, so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement. Each Party shall notify applicants for temporary entry, either directly or through their

[23] The sole fact of requiring a visa for natural persons of a Party and not for those of non-Parties shall not be regarded as nullifying or impairing trade in goods or services or conduct of investment activities under this Agreement.

authorized representative or their prospective employer, of the outcome of their applications, including the period of stay and other conditions.

2. Each Party shall, within 10 working days after an application requesting temporary entry is considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application, or advise the applicant when a decision will be made. At the request of the applicant, the Party shall provide, without undue delay, information concerning the status of the application. The contact point for each Party for such queries is set out in Article 10.6.

3. Any fees imposed in respect of the processing of an immigration formality shall be limited to the approximate cost of services rendered.

Article 10.4: Grant of Temporary Entry

1. The Parties make commitments in respect of temporary entry of natural persons. Such commitments and the conditions governing are inscribed in Annex 10.

2. Where a Party makes a commitment under paragraph 1, that Party shall grant temporary entry to the extent provided for in that commitment, provided that such natural persons are otherwise qualified under all applicable immigration rules and measures.

3. In respect of the commitments on temporary entry in Annex 10, unless otherwise specified therein, neither Party may:

(a) require labour certification tests, or other procedures of similar effect;

(b) impose or maintain any numerical restriction relating to temporary entry; or

(c) require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry.

4. Any fees imposed by a Party in respect of the processing of an immigration formality shall be reasonable in that they do not, in themselves, represent an unjustifiable impediment to the movement of natural persons of another Party under this Chapter.

5. The temporary entry granted by virtue of this Chapter does not replace the requirements needed to carry out a profession or activity according to the specific

laws and regulations in force in the territory of the Party authorizing the temporary entry.

Article 10.5: Transparency

Each Party shall:

(a) publish or otherwise make publicly available explanatory material on relevant immigration formalities which pertain to or affect the operation of this Chapter;

(b) publish or otherwise make publicly available in its territory and to the other Parties, the requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable natural persons of the other Parties to become acquainted with those requirements;

(c) upon modifying or amending immigration measure that affects temporary entry of natural persons of another Party, ensure that the information published or otherwise made publicly available pursuant to subparagraph (b) is updated as soon as possible; and

(d) maintain mechanisms to respond to enquiries from interested persons regarding its laws and regulations affecting the temporary entry and temporary stay of natural persons.

Article 10.6: Contact Points

Each Party shall designate a contact point to facilitate communication and the effective implementation of this Chapter, and respond to inquiries from the other Party regarding regulations affecting the temporary entry of business persons between the Parties or on any matter covered by this Chapter, and shall provide details of this contact point to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact point. The contact point should identify and recommend areas for and ways of furthering cooperation between the Parties.

Article 10.7: Committee on Temporary Entry of Business Persons

1. The Parties hereby establish a Committee on Temporary Entry of Business

Persons that shall meet on the request of either Party or the FTA Joint Commission to consider any matter arising under this Chapter.

2. The Committee's functions shall include:

(a) reviewing the implementation and operation of this Chapter;

(b) identification and recommendation of measures to facilitate the temporary entry of business persons between the Parties; and

(c) considering other issues with respect to temporary entry of business persons of interest to a Party and improving the commitments undertaken by the Parties under this Chapter on a mutually advantageous basis.

Article 10.8: Cooperation

Taking into account the principles set out in Article 10.1, the Parties shall:

(a) exchange information and experiences on regulations and implementation of programs and technology in the framework of migratory issues, including those related to the use of biometric technology, advanced passenger information systems, frequent passenger programs and security of travel documents;

(b) endeavour to coordinate actively in multilateral fora, in order to promote the facilitation of temporary entry of business persons;

(c) encourage capacity building and promote technical assistance among migratory authorities; and

(d) endeavour to take measures to facilitate the temporary entry of business persons of the other Party in accordance with its domestic laws and regulations.

Article 10.9: Definitions

For the purposes of this Chapter:

accompanying spouse, parent or dependent child means a spouse, parent or

dependent child of a natural person of either Party who has been granted the right of entry and temporary stay under this Chapter for a period of longer than 12 months;

business visitor means a natural person of either Party who is:

(a) a service seller being a natural person who is a sales representative of a service supplier of that Party and is seeking temporary entry into the other Party for the purpose of negotiating the sale of services for that service supplier, where such representative will not be engaged in making direct sales to the general public or in supplying services directly;

(b) an investor of a Party, as defined in Chapter 11 (Investment), or a duly authorized representative of an investor of a Party, seeking temporary entry into the territory of the other Party to establish, expand, monitor, or dispose of an investment of that investor; or

(c) a goods seller, being a natural person who is seeking temporary entry into the territory of the other Party to negotiate for the sale of goods where such negotiations do not involve direct sales to the general public;

contractual service supplier means a natural person of a Party who:

(a) is an employee of a service supplier or an enterprise of a Party, whether a company, partnership or firm, who enters the territory of the other Party temporarily in order to perform a service pursuant to a contract(s) between his or her employer and a service consumer(s) in the territory of the other Party;

(b) is employed by a company, partnership or firm of the Party, which has no commercial presence in the territory of the other Party where the service is to be provided;

(c) receives his or her remuneration from that employer;

(d) has appropriate educational and professional qualifications relevant to the service to be provided;

intra-corporate transferee means a manager, an executive, or a specialist, who is an employee of a service supplier or investor of a Party with a commercial presence, as defined in Chapter 8 (Cross-Border Trade in Services), in the territory of the other

Party;

executive means a natural person within an organization who primarily directs the management of the organization, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives, the board of directors or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service nor the operation of an investment;

manager means a natural person within an organization who primarily directs the organization or a department or subdivision of the organization, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorization), and exercises discretionary authority over day-to-day operations;

immigration measure means related law, regulation, policy or procedure affecting the entry and sojourn of foreign nationals;

immigration formality means a visa, permit, pass, or other document or electronic authority granting a natural person of one Party the right to enter, reside or work in the territory of the other Party;

installer or servicer means a natural person who is an installer or servicer of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract;

natural person or **natural person of a Party** means a natural person of a Party as defined in Chapter 8 (Cross-Border Trade in Services);

specialist means a natural person within an organization who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organization's service, research equipment, techniques or management;

temporary entry means entry by a business visitor, an intra-corporate transferee, an independent professional, a contractual service supplier, or an installer or servicer, as the case may be, without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes. Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or enterprise which employs that visitor in the visitor's home country.

ANNEX 10

SCHEDULE OF SPECIFIC COMMITMENTS ON TEMPORARY ENTRY OF BUSINESS PERSONS

Section A: China's Commitments

The following Schedule sets out China's specific commitments in accordance with Chapter 10 in respect of the temporary entry of natural persons.

Temporary entry in the following categories	**Conditions (including duration of stay)**
Business Visitors	Periods of stay up to a maximum of six months.
Intra-corporate Transferees	Managers, executives and specialists defined as senior employees of a corporation of Nicaragua, being engaged in the foreign invested enterprises in the territory of China for conducting business, temporarily moving as intra-corporate transferees, shall be granted a long-term stay permit as stipulated in the terms of contracts concerned or an initial stay of up to three years, whichever is shorter.
Contractual Service Suppliers	Temporary entry and temporary stay for a Contractual Service Suppliers is subject to the duration of contract, but shall not exceed one year. The services provided by Contractual Service Suppliers are only limited to the specific sectors as follows: (1) Accounting Services (2) Medical and dental services (3) Architectural services (4) Engineering services (5) Urban planning services (except general urban planning) (6) Computer and related services (7) Construction and Related Engineering Services

	(8) Education Services: Contractual Service Suppliers shall acquire a bachelor's degree or above, receive appropriate professional titles or certificates, and have at least two-year professional work experience. The Chinese party involved in the contract shall be a juridical person which has the function of providing education service (9) Tourism Services
Installers/Servicers	Temporary entry and temporary stay for such natural persons is subject to the duration of contract, but shall not exceed six months.
Accompanying Spouse, Parent or Dependent Child	Accompanying Spouse, Parent or Dependent Child of Nicaragua entrants defined in Intra-corporate Transferees or Contractual Service Suppliers are accorded the same period of stay as for the entrants, provided that the stay in China of those entrants is greater than 12 months. The working rights of the qualified accompanying spouses in China are subject to relevant laws, regulations, and rules of China.

Section B: Nicaragua's Commitments

The following Schedule sets out Nicaragua´s specific commitments in accordance with Chapter 10 in respect of the temporary entry of natural persons.

Temporary entry in the following categories	**Conditions (including duration of stay)**
Business Visitors	Periods of stay up to a maximum of six months.
Intra-corporate Transferees	Managers, executives and specialists defined as senior employees of a corporation of China, being engaged in the foreign invested enterprises in the territory of Nicaragua for conducting business, temporarily moving as intra-corporate transferees, shall be granted a long-term stay permit as stipulated in the terms of contracts concerned or an

	initial stay of up to three years, whichever is shorter.
Contractual Service Suppliers	Temporary entry and temporary stay for a Contractual Service Suppliers is subject to the duration of contract, but shall not exceed one year.
Installers/Servicers	Temporary entry and temporary stay for such natural persons is subject to the duration of contract, but shall not exceed six months.
Accompanying Spouse, Parent or Dependent Child	Accompanying Spouse, Parent or Dependent Child of China entrants defined in Intra-corporate Transferees or Contractual Service Suppliers are accorded the same period of stay as for the entrants, provided that the stay in Nicaragua of those entrants is greater than 12 months. The working rights of the qualified accompanying spouses in Nicaragua are subject to relevant laws, regulations, and rules of Nicaragua

CHAPTER 11

INVESTMENT

Section A: Investment

Article 11.1 Scope and Coverage

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

   (a) investors of the other Party; and

   (b) covered investments.

2. A Party's obligations under this Section shall apply to:

   (a) all levels of government of that Party; and

   (b) any non-governmental body when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party[24].

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

4. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 8 (Cross Border Trade in Services) or Chapter 10 (Temporary Entry for Business Persons).

5. Notwithstanding paragraph 4, for the purposes of protection of investment with respect to the commercial presence mode of service supply, Articles 11.4, 11.5, 11.6, 11.7, 11.12, 11.13 shall apply to any measure affecting the supply of a service by a service supplier of a Party through commercial presence, only to the extent that they relate to a covered investment. Section B shall apply to Articles 11.4, 11.5, 11.6,

[24] For greater certainty, governmental authority is delegated under the law of a Party, including through a legislative grant, and a government order, directive or other action transferring to the person, or authorizing the exercise by the person of, governmental authority. For greater certainty, "governmental authority" refers to the power that is vested in the government of a Party, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

11.7, 11.12, 11.13 with respect to the supply of a service through commercial presence, only to the extent that they relate to a covered investment.

Article 11.2: National Treatment[25]

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

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

Article 11.3: Most-Favored-Nation Treatment

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

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

3. Paragraphs 1 and 2 of this Article shall not be construed to oblige any Party to extend to the investors of the other Party or covered investment any treatment, preference or privilege by virtue of any bilateral or multilateral agreement relating to investment in force or signed prior to the date of entry into force of this Agreement.

4. For greater certainty, the treatment referred to in this Article does not encompass dispute resolution mechanisms or procedures, such as those included in Section B, that are provided for in international investment or trade agreements.

[25] For greater certainty, whether treatment is accorded in "like circumstances" under Articles 11.2 or 11.3 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

Article 11.4: Minimum Standard of Treatment[26]

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

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

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

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

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

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

Article 11.5: Compensation for Losses

1. Notwithstanding Article 11.10.5 (b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, a state of national emergency, or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred

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[26] Minimum standard of Treatment shall be interpreted in accordance with Annex 11-A.

to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

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

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

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be made in accordance with Articles 11.6.2, 11.6.3 and 11.6.4, *mutatis mutandis*.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 11.2 but for Article 11.10.5 (b).

Article 11.6: Expropriation and Compensation[27]

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of compensation in accordance with this Article; and

(d) in accordance with due process of law.

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

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced or when the expropriation took place ("the date of expropriation"), whichever is earlier; and

(c) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value

[27] Article 11.6 shall be interpreted in accordance with Annexes 11-A and 11-B.

on the date of public announcement of expropriation or on the date of expropriation, whichever is earlier, plus interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment, as appropriate.

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

(a) the fair market value on the date of public announcement of expropriation or on the date of expropriation, whichever is earlier, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

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

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

6. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute an expropriation, even if there is loss or damage to the covered investment as a result.

Article 11.7: Transfers[28]

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

(a) contributions to capital;

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

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

[28] Article 11.7 does not affect each Party's ability to administer its capital account for the maintenance of the stability and soundness of its financial system, such as the foreign exchange market, stock market, bond market and financial derivatives market. For greater certainty, Annex 11-C applies to this Article.

other fees;

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

(e) payments made pursuant to Articles 11.5 and 11.6;

(f) payments arising out of a dispute; and

(g) earnings and remuneration of a national of a Party who works in a covered investment in the territory of the other Party.

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

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

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

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

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

(c) criminal or penal offenses;

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

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

5. For greater certainty, provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1 through 3 shall not be construed to prevent a Party from adopting or maintaining measures that are necessary to secure compliance with laws and regulations, including those relating to the prevention of deceptive and fraudulent practices, that are not inconsistent with this Chapter.

Article 11.8: Performance Requirements

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of the other Party or of a non-Party in its territory, impose or enforce any requirement or enforce any commitment or undertaking:[29]

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

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

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

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

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

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

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

(h) to locate the headquarters for a specific region or the world market in its territory; or

(i) to achieve a given percentage or value of research and development in its territory.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of the other Party or of a non-Party, on compliance with any requirement:

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

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

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

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

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

3. (a) Nothing in paragraph 1 shall be construed to prevent a Party, in connection with an investment in its territory of an investor of the other Party or of a non-Party, from imposing or enforcing a requirement or enforcing a commitment or undertaking to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided that such measure is consistent with paragraphs 1(f) and 1(i).

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

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

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

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.[30]

(d) Provided that such measures are not applied in an arbitrary or unjustifiable

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

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

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

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

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

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

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

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

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

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

Article 11.9: Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management position natural persons of any particular nationality.

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

Article 11.10: Non-Conforming Measures

1. Articles 11.2, 11.3, 11.8 and 11.9 do not apply to:

   (a) any existing non-conforming measures that is maintained by a Party as set out by that Party in its Schedule to Annex I or Annex III;

   (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 11.2, 11.3, 11.8 and 11.9.

2. Articles 11.2, 11.3, 11.8 and 11.9 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 11.2 and 11.3 do not apply to any measure covered by an exception to, or derogation from, the obligations under Article 3 or 4 of the TRIPS Agreement, as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

5. Articles 11.2, 11.3, 11.8 and 11.9 do not apply to:

   (a) government procurement; or

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

Article 11.11: Special Formalities and Information Requirements

1. Nothing in Article 11.2 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement on the filing for establishment of and changes to the covered investments of the other Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 11.2 and 11.3, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical or administrative purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 11.12: Subrogation

If a Party (or any statutory body, governmental agency or institution, or corporation designated by the Party) makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party, in whose territory the covered investment was made, shall recognize the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, including any rights under Section B, and the investor shall be precluded from pursuing such rights to the extent of the subrogation.

Article 11.13: Denial of Benefits

1. A Party may, at any time, including after the institution of arbitration proceedings in accordance with Section B, deny the benefits[31] of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if a non-Party, or persons of a non-Party own or control the enterprise and the denying Party:

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

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

2. A Party may, at any time, including after the institution of arbitration proceedings in accordance with Section B, deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor

[31] For greater certainty, benefits referred to in this Article include the rights of an investor of a Party to resort to the dispute settlement mechanism set out in Section B.

if the enterprise has no substantial business activities in the territory of the other Party and a non-Party, persons of a non-Party, or of the denying Party, own or control the enterprise.

Article 11.14: Disclosure of Information

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

Article 11.15: Financial Services

1. Where an investor submits a claim to arbitration under Section B, and the disputing Party invokes paragraphs (1) and (2) of this Article, the investor-State tribunal established pursuant to Section B may not decide whether and to what extent it is a valid defence to the claim of the investor. It shall seek a report in writing from the Parties on this issue. The investor-State tribunal may not proceed pending receipt of such a report or of a decision of a State-State arbitral tribunal, should such a State-State arbitral tribunal be established.

2. Pursuant to a request for a report received in accordance with the above paragraph, the financial services authorities of the Parties shall engage in consultations. If the financial services authorities[32] of the Parties reach a joint decision on the issue of whether and to what extent the relevant paragraphs of this Article is a valid defence to the claim of the investor, they shall prepare a written report describing their joint decision. The report shall be transmitted to the investor-State tribunal, and shall be binding on the investor-State tribunal.

3. If, after 120 days, the financial services authorities of the Parties are unable to reach a joint decision on the issue of whether and to what extent the relevant paragraphs of this Article is a valid defence to the claim of the investor, the issue shall, within 30 days, be referred by either Party to a State-State arbitral tribunal established pursuant to Chapter 21 (Dispute Settlement). In such a case, the provisions requiring consultations between the Parties in Chapter 21 (Dispute Settlement) shall not apply. The decision of the State-State arbitral tribunal shall be

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[32] For the purposes of this Article, the "financial services authorities" means:
(a) for China, the one that the Party designates and notifies the other Party through the Contact Point established in Article 9.20 (Contact Point); and
(b) for Nicaragua, the one that the Party designates and notifies the other Party through the Contact Point established in Article 20.4 (Contact Point) .

transmitted to the investor-State tribunal, and shall be binding on the investor-State tribunal. All of the members of any such State-State arbitral tribunal shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

4. If the respondent or the non-disputing Party has not submitted such issue to arbitration in accordance with Chapter 21 (Dispute Settlement) pursuant to paragraph 3 within 10 days of the expiration of the 120 day period referred to in paragraph 3, the arbitration under Section B may proceed with respect to the claim.

Article 11.16: Taxation

1. Except as provided in this Article, nothing in this Section shall impose obligations with respect to taxation measures.

2. Article 11.6 shall apply to all taxation measures[33], except that a claimant that asserts that a taxation measure involves an expropriation may submit a claim to arbitration under Section B only if:

(a) the claimant has first referred to the competent tax authorities[34] of both Parties in writing the issue of whether that taxation measure involves an expropriation; and

(b) within 180 days after the date of such referral, the competent tax authorities of both Parties fail to agree that the taxation measure is not an expropriation.

3. Nothing in this Chapter shall affect the rights and obligations of a Party under any tax convention. In the event of any inconsistency between this Chapter and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Chapter and that convention.

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[33] For greater certainty, measures regarding tax preservation or punishment against illegal activities that are non-discriminatory and adopted or implemented for the purpose of levying or collecting taxes in a fair and effective manner, do not constitute expropriations as provided in Article 11.6.

[34] For the purposes of this Article, "competent tax authorities" means:
(a) for China, the Ministry of Finance and State Administration of Taxation or an authorized representative of the Ministry of Finance and State Administration of Taxation; and
(b) for Nicaragua, the Ministry of Finance and Public Credit (Ministerio de Hacienda y Crédito Público (MHCP) or its successor.

Section B: Investor-State Dispute Settlement

Article 11.17: Consultations

1. In the event of an investment dispute, if the claimant intends to submit the dispute to arbitration, it shall deliver a request for consultations to the respondent[35] at least 180 days prior to submission of the dispute to arbitration. The request shall:

(a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;

(b) list evidences that the claimant is an investor under this Chapter;

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

(d) for each claim, identify the measures or events giving rise to the claim;

(e) for each claim, provide a brief summary of the legal and factual basis; and

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

2. After a request for consultations is made pursuant to this Section, the claimant and the respondent shall enter into consultations[36] with a view to reaching a mutually satisfactory solution.

Article 11.18: Submission of a Claim to Arbitration

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultations pursuant to Article 11.17 and 180 days have elapsed since the date of the request for consultations:

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

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[35] For greater certainty, the request for consultations shall be sent to the central government body as listed out in Annex 11-D.

[36] Unless otherwise agreed by the parties to the dispute, the place for consultation should be the capital of the respondent.

(i) that the respondent has breached

(A) an obligation under Articles 11.2 and 11.3, provided that the claim does not in any way relate to treatment with respect to establishment, acquisition or expansion of investments in the territory of the respondent;

(B) Articles 11.4, 11.5, 11.6, 11.7, 11.8 or 11.9; or

(C) an investment agreement; and

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

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

(i) that the respondent has breached

(A) an obligation under Articles 11.2 and 11.3, provided that the claim does not in any way relate to treatment with respect to establishment, acquisition or expansion of investments in the territory of the respondent;

(B) Articles 11.4, 11.5, 11.6, 11.7, 11.8 or 11.9; or

(C) an investment agreement; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach[37],

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

2. An investor of a Party may not initiate or continue a claim under this Section if a claim involving the same measure or measures alleged to constitute a breach under this Article and arising from the same events or circumstances is initiated or

[37] For greater certainty, a minority non-controlling shareholder of an enterprise may not submit a claim on behalf of that enterprise.

continued pursuant to an agreement between the respondent and a non-Party by:

(a) an enterprise of a non-Party that owns or controls, directly or indirectly, the investor of a Party, or

(b) an enterprise of a non-Party that is owned or controlled, directly or indirectly, by the investor of a Party.

Notwithstanding the previous paragraph, the claim may proceed if the respondent agrees that the claim may proceed, or if the investor of a Party and the enterprise of a non-Party agree to consolidate the claims under the respective agreements before a tribunal constituted under this Section.

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

(a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;

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

(c) under the UNCITRAL Arbitration Rules[38]; or

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

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

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

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

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules, are received by the respondent; or

[38] In the case of arbitration under Section B pursuant to the UNCITRAL Arbitration Rules, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall not be applicable unless the disputing parties otherwise agree.

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

When the claimant submits a claim pursuant to subparagraphs 1(a)(i)(C) or 1(b)(i)(C), the respondent may make a counterclaim in connection with the factual and legal basis of the claim or rely on a claim for the purpose of a set off against the claimant.

5. In addition to any other information required by the applicable arbitral rules, the notice of arbitration shall also include information addressing each of the categories in Article 11.17.1.

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

Article 11.19: Consent of Each Party to Arbitration

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

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

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

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

Article 11.20: Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 11.18.1 and knowledge that the claimant (for claims brought under Article 11.18.1(a)) or the enterprise (for claims brought under Article 11.18.1(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section by national who had the nationality of the Party to the dispute on the date on which the parties consented to submit such dispute to arbitration pursuant to Article 11.18.

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

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

(b) the claim arises from measures included in the request for consultations submitted by the claimant in accordance with Article 11.17; and

(c) the notice of arbitration is accompanied,

(i) for claims submitted to arbitration under Article 11.18.1(a) , by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 11.18.1(b) , by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 11.18.

4. Notwithstanding paragraph 3(c)(ii), a waiver from the enterprise shall not be required if the respondent has deprived the claimant of its ownership or control of the enterprise.

Article 11.21: Constitution of the Tribunal

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

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

3. If a tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration under this Section, the appointing authority, on the request of a disputing party, shall appoint, in his or her discretion and after consulting with the disputing parties, the arbitrator or arbitrators not yet appointed.

4. The appointing authority may not appoint a presiding arbitrator who is a national of a Party, unless the disputing parties to the dispute otherwise agree.

5. In the event that the appointing authority appoints a presiding arbitrator in

accordance with relevant arbitration rules, the presiding arbitrator being appointed should be a recognized expert in public international law, and should be experienced in investor-state dispute settlement.

Article 11.22: Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 11.18.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

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

3. After consulting the disputing parties, the tribunal may allow a person or entity that is not a disputing party to file a written *amicus curiae* submission with the tribunal regarding a matter within the scope of the dispute. Such a submission shall provide the identity of such person or entity (including any controlling entity and any source of substantial financial assistance in either of the two years preceding the submission, e.g. funding around 20% of an entity's overall operations annually), disclose any connection with any disputing party, and identify any person, government or other entity that has provided or will provide any financial or other assistance in preparing the submission. In determining whether to allow such a filing, the tribunal shall consider, among other things, the extent to which:

(a) the *amicus curiae* submission would assist the tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge, or insight that is different from that of the disputing parties;

(b) the *amicus curiae* submission would address a matter within the scope of the dispute; and

(c) the *amicus curiae* has a significant interest in the proceeding.

The tribunal shall ensure that the *amicus curiae* submission does not disrupt the proceeding or unduly burden or unfairly prejudice either disputing party, and that the disputing parties are given an opportunity to present their observations on the *amicus curiae* submission.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a

claim for which an award in favor of the claimant may be made under this Section.

5. In deciding an objection under paragraph 4, the tribunal shall assume to be true claimant's factual allegations. The tribunal may also consider any relevant facts not in dispute. The tribunal shall decide on the objection on an expedited basis, and issue a decision or award on the objection(s) no later than 150 days after the date on which such objection(s) is submitted.

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

7. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under Article 11.25 should be subject to that appellate mechanism.

Article 11.23: Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 11.18.1 (a)(i)(A), 11.18.1(a)(i)(B), 11.18.1(b)(i)(A) or 11.18.1(b)(i)(B), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law[39].

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 11.18.1(a)(i)(C) or 11.18.1(b)(i)(C), the tribunal shall apply:

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

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

(i) the law of the respondent, including its rules on the conflict of laws;[40] and

[39] For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent where it is relevant to the claim as a matter of fact.

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

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

3. A joint decision of the Parties declaring their interpretation of a provision of this Agreement shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by such a tribunal must be consistent with that joint decision.

Article 11.24: Discontinuance

If, following the submission of a claim under this Section, the claimant fails to take any steps in the proceeding during 180 consecutive days or such periods as the disputing parties may agree, the claimant shall be deemed to have withdrawn its claim and to have discontinued the proceedings. In case that a Tribunal has been established according to this Section, it shall, at the request of the respondent, and after notice to the disputing parties, take note of the discontinuance in an order and issue an award on costs. After such an order has been rendered, the authority of the Tribunal shall lapse. The claimant may not subsequently submit a claim on the same matter. This Article is without prejudice to the Tribunal's authority to discontinue the proceedings in according with the applicable arbitrations rules.

Article 11.25: Awards

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

(a) monetary damages and any applicable interest; and

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

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

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 11.18.1(b):

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

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

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

3. A tribunal may not award punitive damages.

4. The award shall be made available to the public promptly.[41]

5. A disputing party shall not seek enforcement of a final award until:

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

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

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

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 11.18.4(d) :

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

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

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

Article 11.26: Expert Reports

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

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[41] For greater certainty, nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance Article 11.14.

Article 11.27: Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 11-D.

Article 11.28: Definitions

For purposes of this Chapter:

central level of government means:

(a) for China, the central level of government; and

(b) for Nicaragua, the central level of government;

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

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

covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

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

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

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

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

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

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

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

(a) an enterprise;

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

(c) bonds, debentures, loans, and other debt instruments, including debt instruments issued by a Party or an enterprise;[42]

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

(d) futures, options and other derivatives;

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

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;[43, 44] and

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

investment agreement means a written agreement[45] between a national authority[46] of a Party and a covered investment or an investor of the other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

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

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

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

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

[45] "Written agreement" refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 11.23.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

[46] For purposes of this definition, "national authority" means (a) for China, an agency of the central government; and (b) for Nicaragua, the Ministry of Development, Industry and Trade (*Ministerio de Fomento, Industria y Comercio (MIFIC))*.

telecommunications; or

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

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

investor of a Party means a Party, a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party;

national means:

(a) for China, a natural person who is a national of the People's Republic of China as defined in the Nationality Law of the People's Republic of China; and

(b) for Nicaragua, a Nicaraguan (*nicaragüense*) as defined in Article 15 of the Political Constitution of the Republic of Nicaragua.

For the purposes of this Chapter, a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality.

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

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

person means a natural person or an enterprise;

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

protected information means confidential business information or information that is

privileged or otherwise protected from disclosure under a Party's law;

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

Secretary-General means the Secretary-General of ICSID;

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

ANNEX 11-A

CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 11.4 and Annex 11-B results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 11.4, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

ANNEX 11-B

EXPROPRIATION

The Parties confirm their shared understanding that:

1. Article 11.6.1 is intended to reflect customary international law concerning the obligation of States with respect to expropriation.

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

3. Article 11.6.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

4. The second situation addressed by Article 11.6.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

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

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

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

(iii) the character and objective of the government action.

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

ANNEX 11-C

TEMPORARY SAFEGUARD MEASURES

1. In the event of serious balance-of-payments difficulties, external financial difficulties, or threat thereof, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital.

2. Any measures adopted or maintained under paragraph 1 shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;

(b) be temporary and be phased out progressively as the situation specified in paragraph 1 improves, and shall not exceed 18 months in duration; however, if extremely exceptional circumstances arise, a Party may extend such measures for one 12-month period after advance notice and consultations with the other Party;

(c) not be inconsistent with Articles 11.2 and 11.3;

(d) not be inconsistent with Article 11.6;

(e) not result in multiple exchange rates; and

(f) be promptly notified to the other Party and published as soon as practicable.

ANNEX 11-D

SERVICE OF DOCUMENTS ON A PARTY

China

Notices and other documents in disputes under Section B shall be served on China by delivery to:
Department of Treaty and Law
Ministry of Commerce of the People's Republic of China
2 Dong Chang'an Avenue
Beijing, 100731
People's Republic of China

Nicaragua

Notices and other documents in disputes under Section B shall be served on Nicaragua by delivery to:
General Directorate of Foreign Trade (*Dirección General de Comercio Exterior*)
Ministry of Development, Industry and Trade (*Ministerio de Fomento, Industria y Comercio (MIFIC))*
Km. 6, Carretera a Masaya,
Managua, Nicaragua.

CHAPTER 12

DIGITAL ECONOMY

Article 12.1: General Provisions

1. The Parties recognize the pivotal role of the digital economy for the modernization and transformation of the industry, promotion of inclusive economic growth, facilitation of decision-making process and stimulation of the national economies to meet the *UN 2030 Agenda for Sustainable Development Goals*.

2. The objective of this Chapter is to build a forward-looking, inclusive and open digital economy partnership framework, to explore ways to leverage digital opportunities, accelerate digital transformation and create new drivers for sustainable development.

3. The Parties shall, in principle, endeavour to ensure that bilateral trade in electronic commerce shall be no more restricted than comparable non-electronic bilateral trade.

Article 12.2: Domestic Electronic Transactions Framework

1. The Parties shall adopt or maintain measures regulating electronic transactions based on the following principles:

(a) a transaction including a contract shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of an electronic communication; and

(b) Parties should not arbitrarily discriminate between different forms of electronic transactions.

2. Nothing in paragraph 1 prevents a Party from making exceptions in its domestic law to the general principles outlined in paragraph 1.

3. The Parties shall:

(a) minimise the regulatory burden on electronic commerce; and

(b) ensure that regulatory frameworks support development of electronic commerce.

Article 12.3: Electronic Signatures

1. No Party may adopt or maintain legislation for electronic signature that would deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. The Parties shall maintain domestic legislation for electronic signature that permits parties to electronic transaction to mutually determine the appropriate electronic signature unless there is a domestic or international legal requirement to the contrary.

3. The Parties shall work towards the mutual recognition of digital certificates and electronic signatures.

4. The Parties shall encourage the use of digital certificates in the business sector.

Article 12.4: Online Consumer Protection

The Parties shall, to the extent possible and in a manner considered appropriate, adopt or maintain measures which provide protection for consumers using electronic commerce that is at least equivalent to measures which provide protection for consumers of other forms of commerce.

Article 12.5: Online Personal Data Protection

Recognizing the importance of protecting personal information in electronic commerce, the Parties shall adopt or maintain domestic laws and other measures which ensure the protection of the personal information of the users of electronic commerce.

Article 12.6: Paperless Trading

1. A Party shall endeavour to accept electronic versions of trade administration documents used by the other Party as the legal equivalent of paper documents, except where:

(a) there is a domestic or international legal requirement to the contrary; or

(b) doing so would reduce the effectiveness of the trade administration process.

2. The Parties shall work towards developing a single window to government incorporating relevant international standards for the conduct of trade administration, recognizing that the Parties will have their own unique requirements and conditions.

3. Subject to domestic laws and regulations and taking into account capacity constraints, the Parties encourage the use of electronic means to promote trade facilitation, such as paperless customs clearance, use of electronic documents, mutual recognition of electronic signature, and use of electronic payment.

4. The Parties encourage cooperation in the field of Information and Communications Technology (ICT), including exchange of experiences and good practices on managing E-ports, national single windows and port community system, to improve port management, logistics, supply chain and trade facilitation work.

Article 12.7: Medium, Small and Micro Enterprises

1. The Parties encourage cooperation to support the increased participation of Medium, Small and Micro Enterprises (hereinafter referred to as "MSMEs") in the digital economy by building a conducive policy environment and enhancing MSMEs' digital capacities.

2. The Parties shall consider exchanging good practices in leveraging digital tools including digital platform for supporting entrepreneurs and technologies to improve MSME's' access to capital and credit, and non-financial support measures.

3. The Parties shall consider fostering close cooperation on the digital economy between MSMEs of the Parties by holding relevant events and activities among the government officials, business communities, academia and other stakeholders.

Article 12.8: Cooperation on Digital Economy

1. The Parties shall encourage cooperation in research and training activities that would enhance the development of electronic commerce, including by sharing best practices on electronic commerce development.

2. The Parties shall encourage cooperative activities to promote electronic commerce, including those that would improve the effectiveness and efficiency of electronic commerce.

3. The cooperative activities referred to in paragraphs 1 and 2 may include, but are not limited to:

(a) sharing best practices about regulatory frameworks;

(b) sharing best practices about on-line consumer protection, including unsolicited commercial electronic messages;

(c) working together to assist small and medium enterprises to overcome obstacles to participation in digital economy;

(d) cooperating on matters relating to digital inclusion, expanding and promoting digital economy opportunities by removing barriers;

(e) cooperating in the implementation or technological improvement related to electronic identity management and electronic signature services**,** and

(f) further areas as agreed between the Parties.

4. The Parties shall endeavour to undertake forms of cooperation that build on and do not duplicate existing cooperation initiatives pursued in international forums.

Article 12.9: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement for any issue arising from or relating to this Chapter.

Article 12.10: Definitions

For the purposes of this Chapter:

certificate means a data message or other record confirming the link between a signatory and signature creation data;

data message means information generated, sent, received or stored by electronic, optical, magnetic or similar means;

electronic signature has for each Party the meaning set out in its laws and regulations;

electronic version of a trade administration document means a trade administration document prescribed by a Party made by means of data messages;

personal data means all kinds of information related to identified or identifiable natural persons that are electronically or otherwise recorded, excluding information that has been anonymized; and

trade administration documents means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods.

CHAPTER 13

COMPETITION POLICIES

Article 13.1: Objectives and principles

1. The Parties understand that proscribing anti-competitive business practices, implementing competition policies, and cooperating on competition issues contribute to enhancing trade liberalization and promoting economic efficiency and consumer welfare.

2. The Parties therefore agree anti-competitive business practices means business conduct or transactions that adversely affect competition in the territory of a Party, such as:

(a) agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition;

(b) any abuse of a dominant position by one or more undertakings in the territory of any of the Parties as a whole or in a substantial part thereof;

(c) concentrations between undertakings that significantly impede effective competition; or

(d) acts of unfair competition;

as specified in their respective competition laws.

Article 13.2: Competition Laws and Authorities

1. The Parties shall maintain or enforce competition laws[47] that promote and protect the competitive process in their markets by proscribing conduct or transactions referred to in Article 13.1.

2. The Parties shall maintain an authority or authorities responsible for the enforcement of their national competition laws.

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[47] Parties understand that the term includes all domestic regulations.

Article 13.3: Implementation of Competition Laws

1. The Parties shall be consistent with the principles of transparency, non-discrimination, and procedural fairness in their competition law enforcement.

2. The Parties shall treat persons who are not persons of that Party no less favourably than persons of that Party in like circumstances in the competition law enforcement.

3. The Parties shall ensure that before they impose administrative punishment or restrictive conditions against a person for violation of their national competition laws, they afford that person the reasonable opportunity to present opinion or evidence in its defence in accordance with the legislation of each party.

4. The Parties shall ensure that all final administrative decisions finding a violation of their national competition laws are in written form and set out any relevant findings of fact and legal basis on which the decision is based.

Article 13.4: Transparency

1. The Parties shall make public their competition laws and regulations.

2. The Parties shall make public the decisions and any orders impementing them in accordance with their national competition laws and regulations. The Parties shall ensure that the version of the decisions or orders that the Parties make available to the public do not include business confidential information that is protected from public disclosure or other information that is not suitable for disclosure by their national laws.

Article 13.5: Cooperation in Law Enforcement

1. The Parties recognise the importance of cooperation and coordination between their respective competition authorities, to promote effective competition law enforcement in the free trade area. Accordingly, each Party shall cooperate through

exchange of non-confidential information and experience, consultations and technical assistance, in accordance with the legislation of each Party.

2. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resources.

Article 13.6: Information Exchange and Confidentiality [48]

The competition authority of a Party shall, upon request of the competition authority of the other Party, endeavor to provide non-confidential information to facilitate the effective enforcement of its respective competition laws, provided that such information does not affect an ongoing investigation and is consistent with the laws of each Party.

Article 13.7: Technical Cooperation

The Parties may promote technical cooperation including exchange of experiences, capacity building through training programs, workshops and research collaborations for the purposes of enhancing each Party's capacity related to competition policy and law enforcement.

Article 13.8: Consultations

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 without prejudice to the autonomy of each developing Party, to maintain and implement its competition legislation.

2. The Party to which a request for consultations has been addressed shall give full and sympathetic consideration to the concerns of the other Party.

Article 13.9: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement for any issue arising from or relating to this Chapter.

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[48] For each Party, the term confidential information, includes any information defined as 'confidential' according to its law.

Article 13.10: Definitions

For purposes of this Chapter:

competition authority means:

(a) for China, the State Administration for Market Regulation or its successor; and

(b) for Nicaragua, the National Institute of Promotion to the Competition (*Instituto Nacional de Promoción de la Competencia (ProCompetencia)*) or its successor; and,

competition laws means:

(a) for China, the *Anti-monopoly Law* of the People's Republic of China, the *Anti-Unfair Competition Law of the People's Republic of China; and*

(b) for Nicaragua, the *Law on the Promotion of Competition (Ley de Promoción de la Competencia), approved by Law No. 601 of September 28, 2006,* and

its implementing regulations and amendments.

CHAPTER 14

INTELLECTUAL PROPERTY

Article 14.1: Purposes and Principles

1. The purpose of this Chapter is to increase the benefits from trade and investment through the protection and enforcement of intellectual property rights.

2. The Parties recognize that:

(a) establishing and maintaining transparent intellectual property systems and promoting and maintaining adequate and effective protection and enforcement of intellectual property rights provide certainty to right holders and users;

(b) protecting and enforcing intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology;

(c) intellectual property protection promotes economic and social development, and can reduce distortion and obstruction to international trade;

(d) intellectual property systems should support open, innovative and efficient markets, including through the effective creation, utilization, protection, and enforcement of intellectual property rights, appropriate limitations and exceptions, and an appropriate balance between the legitimate interests of rights holders, users and the public interest;

(e) intellectual property systems should not themselves become barriers to legitimate trade;

(f) appropriate measures, provided they are consistent with the provisions of the TRIPS Agreement[49] and this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders, or the resort to practices which unreasonably restrain trade, are anti competitive or adversely affect the international transfer of technology; and

[49] For greater certainty, "TRIPS Agreement" includes any amending protocol in force and any waiver made betwen the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

(g) appropriate measures to protect public health and nutrition may be adopted provided they are consistent with the TRIPS Agreement and this Chapter.

Article 14.2: Scope of Intellectual Property

For the purposes of this Chapter, except as otherwise provided, intellectual property rights refers to copyright and related rights, rights in trademarks, geographical indications, industrial designs, patents and layout-designs (topographies), rights in plant varieties, and rights in undisclosed information, as defined or described in the TRIPS Agreement.

Article 14.3: Obligations are Minimum Obligations

Each Party shall, at a minimum, give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, and enforcement of, intellectual property rights than this Chapter requires, provided that this additional protection and enforcement is not inconsistent with the provisions of this Agreement. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

Article 14.4: International Agreements

Each Party affirms its commitment to the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which both Parties are party.

Article 14.5: Intellectual Property and Public Health

The Parties recognize the principles established in the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the WTO and confirm that the provisions of this Chapter are without prejudice to this Declaration.

Article 14.6: Exhaustion

Nothing in this Chapter shall affect the freedom of the Parties to determine whether, and under what conditions, the exhaustion of intellectual property rights applies. The Parties agree to further discuss relevant issues relating to the exhaustion of patent.

Article 14.7: Procedures on Acquisition and Maintenance

Each Party shall:

(a) continue to work to enhance its examination and registration systems, including through improving examination procedures and quality systems;

(b) provide applicants with a communication in writing of the reasons for any refusal to grant or register an intellectual property right;

(c) provide an opportunity for interested parties to oppose the grant or registration of an intellectual property right, or to seek either revocation, cancellation or invalidation of an intellectual property right;

(d) require that opposition, revocation, cancellation, or invalidation decisions be reasoned and in writing; and

(e) for the purposes of this Article, "writing" and "communication in writing" may include writing and communications in an electronic form.

Article 14.8: Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.

2. The Parties may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect order public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their domestic laws.

3. The Parties may also exclude from patentability:

(a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

Article 14.9: Amendments, Corrections and Observations on Patent Applications

Each Party shall provide patent applicants with opportunities to make amendments, corrections and observations in connection with their applications in

accordance with each Party's domestic laws, regulations and rules.

Article 14.10: Transparency

1. In order to ensure transparency of the system of protection and enforcement of intellectual property rights, each Party shall ensure that all domestic laws, regulations and procedures relating to the protection or enforcement of intellectual property rights are published in writing or, where publication is not feasible, made available to the public in their national language, in order to make them known to governments and rights holders.

2. To assist with the transparency of the operation of its intellectual property system, each Party shall make its related information on granted or registered patent for invention, utility model, industrial design, plant variety, trademark and geographical indication easily available.

Article 14.11: Types of Signs as Trademarks

The Parties agree to cooperate on the means to protect types of signs as trademarks, including visual and sound signs.

Article 14.12: Well-Known Trademarks

The Parties shall provide protection for well-known trademarks at least in accordance with Articles 16.2 and 16.3 of the TRIPS Agreement and Article 6 bis of the Paris Convention for the Protection of Industrial Property, done at Paris on 20 March 1883.

Article 14.13: Geographical Indications

1. Each Party recognizes that geographical indications may be protected through a trade mark or *sui generis* system or other legal means.[50]

2. For the purposes of this Agreement, "geographical indications" are indications which identify a product as originating in the territory of a Party, or a region or a locality in that territory, where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin.

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[50] The Parties exchanged English translation of their existing legislations on geographical indications for reference. After entry into force of any new legislation and/or amendments to the existing legislations, the Parties agree to provide reliable English translation thereof for reference.

3. Without prejudice to Articles 22 and 23 of the TRIPS Agreement, the Parties shall take all necessary measures, in accordance with this Agreement, to ensure mutual protection of the geographical indications referred to in paragraph 2 that are used to refer to goods originating in the territory of the Parties. Each Party shall provide interested parties with the legal means to prevent the use of such geographical indications for identical or similar goods not originating in the place indicated by the geographical indication in question.

Article 14.14: Plant Breeders' Rights

The Parties, through their competent agencies, shall cooperate to encourage and facilitate the protection and development of plant breeders' rights with a view to:

(a) better harmonising the plant breeders' rights administrative systems of both Parties, including enhancing the protection of species of mutual interest and exchanging information; and

(b) reducing unnecessary duplicative procedures between their respective plant breeders' rights examination systems.

Article 14.15: Copyrights

1. Each Party shall provide that authors, performers, producers of phonograms broadcasting organizations shall have the right to authorize or prohibit any reproduction of their works, performances, phonograms and broadcasts in any manner or form.

2. Each Party shall grant authors, performers, producers of phonograms and broadcasting organizations the right to authorize the making available to the public of the original or copies of their works, performances, phonograms and broadcasting by sale or other means of transfer of ownership.

Article 14.16: Collective Management of Copyright

1. The Parties recognize the importance of the collective management of copyright and the establishment of agreements between them.

2. Each Party shall foster the establishment of appropriate bodies for the collective management of copyright and shall encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.

Article 14.17: Genetic Resources, Traditional Knowledge and Folklore

1. The Parties recognize the contribution made by genetic resources, traditional knowledge and folklore to scientific, cultural and economic development.

2. The Parties acknowledge and reaffirm the principles and provisions established in the Convention on Biological Diversity adopted on 5th June 1992 and encourage the effort to establish a mutually supportive relationship between the TRIPS Agreement and the Convention on Biological Diversity, regarding genetic resources and the protection of traditional knowledge and folklore.

3. Subject to the international obligations of each Party and its domestic laws, the Parties may adopt or maintain measures to promote the conservation of biological diversity, equitably share the benefits derived from the use of traditional knowledge, innovations and practices relevant to the conservation of biodiversity and the sustainable use of its components in accordance with the Convention on Biological Diversity and its Protocols.

4. The Parties agree to explore the possibility to further discuss relevant issues concerning genetic resources, traditional knowledge and folklore, taking into account future developments in their respective domestic laws and in multilateral agreements to which both Parties are party.

Article 14.18: Enforcement

1. Each Party commits to implementing effective intellectual property enforcement systems with a view to eliminating trade in goods and services infringing intellectual property rights.

2. Each Party reaffirm its rights and commitments under the TRIPS Agreement, and in particular Part III thereof, and shall adopt or maintain the measures, procedures and additional resources necessary to ensure the enforcement of property rights intellectual. Such measures, procedures and remedies shall be fair, proportionate and equitable and shall not be unnecessarily complex or costly, nor will they cause unreasonable deadlines or delays unnecessary.

3. Each Party shall provide for criminal procedures and penalties in accordance with the TRIPS Agreement to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, and consistent with the level of penalties applied for crimes of a corresponding gravity.

Article 14.19: Ex officio compliance at the border

Each Party shall provide that the competent authorities are authorized to initiate border measures ex officio. Such measures shall be applied where there is reason to believe or suspect that the goods being imported or destined for export are counterfeit or pirated, subject to domestic law that is in compliance with each Party's international obligations.

Article 14.20: Cooperation-General

1. Each Party shall, on request of the other Party, exchange information:

(a) relating to intellectual property policies in their respective administrations;

(b) on changes to, and developments in the implementation of, their national intellectual property systems; and

(c) on the administration and enforcement of intellectual property rights.

2. Each Party shall, on request of the other Party, consider intellectual property rights issues and questions of interest to private stakeholders.

3. The Parties will consider opportunities for cooperation in areas of mutual interest that aim to improve the operation of the intellectual property rights system, including administrative processes, in each other's jurisdictions. This cooperation could include:

(a) enforcement of intellectual property rights;

(b) raising public awareness on intellectual property issues;

(c) specialized training and courses for public officials on intellectual property and other mechanisms; and

(d) other activities and initiatives mutually agreed by the Parties.

CHAPTER 15

ENVIRONMENT AND TRADE

Article 15.1: Context

The Parties reaffirm their commitments to promoting the development of international trade in such a way as to contribute to the objective of sustainable development and will strive to ensure that this objective is integrated and reflected at every level of their trade relationship.

Article 15.2: Objectives

The Parties recognize that economic development, social development and environmental protection are interdependent and mutually supportive components of sustainable development. The Parties underline the benefits of cooperation on environmental issues as part of a global approach to sustainable development.

Article 15.3: Scope

This Chapter shall apply to measures adopted or maintained by the Parties affecting trade-related aspects of environmental issues.

Article 15.4: Levels of Protection

1. The Parties reaffirm each Party's sovereign right to establish its own levels of environmental protection and its own environmental development priorities and to adopt or modify its environmental laws and policies.

2. The Parties shall seek to ensure that their environmental laws and policies provide for, and encourage high levels of environmental protection, and shall strive to continue to improve their respective levels of environmental protection.

3. In this regard, the Parties:

(a) recognize their commitments to promote compliance and effective implementation of each Party's environmental law;

(b) will strive to promote the conservation and sustainable use of biodiversity, and the preservation of traditional knowledge relevant to the conservation of biological diversity and the sustainable use of its components; and

(c) reaffirm their intention to strengthen cooperation on environmental matters.

Article 15.5: Enforcement of Environmental Laws and Regulations

1. A Party shall not fail to effectively enforce its environmental laws and regulations, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their environmental laws and regulations. Accordingly, neither Party shall waive or otherwise derogate from such laws and regulations in a manner that weakens or reduces the protections afforded in those laws and regulations.

3. The Parties agree that environmental laws and regulations shall not be used for trade protectionist purposes.

4. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 15.6: Multilateral Environmental Agreements

1. The Parties recognize that multilateral environmental agreements (hereinafter referred to as the "MEAs") play an important role globally and domestically in protecting the environment. Accordingly, the Parties reaffirm their commitments to the effective implementation in their laws and practices of the MEAs to which both Parties are party.

2. The Parties agree to dialogue and cooperate, as appropriate, with respect to environmental issues of mutual interest related to MEAs to which they are parties, in particular on trade-related issues with a view to strengthening the cooperation between them.

Article 15.7: Review of Environmental Impact

The Parties shall endeavor to review the impact of the implementation of this Agreement on environment, at appropriate time after the entry into force of this Protocol, through their respective participative processes and institutions.

Article 15.8: Cooperation

1. Recognizing the importance of cooperation in the field of environment in achieving the goals of sustainable development, the Parties commit to building on the existing bilateral agreements and to further strengthening cooperative activities in areas of common interest, as appropriate, in particular trade related environmental issues in manners that the Parties deem appropriate.

2. The Parties hereby agree to promote cooperation activities on mutual interest.

3. The Parties shall endeavor to assure that cooperation activities:

(a) are consistent with the programs, strategies of development, and national priorities of each Party;

(b) would create opportunities for the public to take part in the development and implementation of such activities; and

(c) would take into consideration the economy, and the legal system of each Party.

Article 15.9: Institutional Arrangements

1. With a view to facilitating the implementation of this Chapter and the related communications, the following Contact Points are designated:

(a) for China, the Ministry of Commerce (MOFCOM) or its successor; and

(b) for Nicaragua, the Ministry of Development, Industry, and Trade (*Ministerio de Fomento, Industria y Comercio* (*MIFIC*)) or its successor.

2. A Party may, through the Contact Points referred to in paragraph 1, request consultations within the FTA Joint Commission regarding any matter arising under

this Chapter. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

Article 15.10: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement for any issue arising from or relating to this Chapter.

CHAPTER 16

SMALL AND MEDIUM ENTERPRISES

Article 16.1: Objectives

1. The Parties recognize that small and medium enterprises, including micro enterprises, contribute significantly to economic growth, employment, and innovation, and therefore seek to promote information sharing and cooperation in increasing the ability of small and medium enterprises to utilize and benefit from the opportunities created by this Agreement.

2. The Parties acknowledge the provisions of various Chapters in this Agreement that contribute to encouraging and facilitating the participation of small and medium enterprises in this Agreement.

Article 16.2: Information Sharing

1. Each Party shall promote the sharing of information related to this Agreement that is relevant to small and medium enterprises, including through the establishment and maintenance of its publicly accessible information platform, and information exchange to share knowledge, experiences, and best practices among the Parties.

2. Each Party shall take reasonable steps to ensure the information is accurate and up-to-date.

Article 16.3: Cooperation

The Parties shall strengthen their cooperation under this Chapter, which may include:

(a) encouraging small and medium enterprises (hereinafter referred to as the "SMEs") service agencies of both countries to deepen cooperation in such areas as information exchange and business surveys, and build bridges of cooperation between SMEs of the two countries;

(b) encouraging SMEs to participate in trade fairs of the two countries;

(c) supporting the development of entrepreneurs and innovators;

(d) supporting the organization of investment forums to promote bilateral investment activities; and

(e) encouraging service providers to establish a one-stop service system to support the development of SMEs in both countries.

Article 16.4: Contact Points

Each Party shall designate a Contact Point to facilitate cooperation and information sharing under this Chapter. Each Party shall notify the other Party of any change to the details of those Contact Points.

Article 16.5: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement for any issue arising from or relating to this Chapter.

CHAPTER 17

TRANSPARENCY

Article 17.1: Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application that may affect any matter covered by this Agreement are promptly published, including through the internet where feasible, or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. The Parties shall promptly respond through the Contact Point set out in Article 20.4 (Contact Point) to specific questions and provide, upon request, full information to each other on matters referred to in paragraph 1.

Article 17.2: Notification and Provision of Information

1. Each Party shall endeavour to notify the other Party the information on any measure that the Party considers might materially affect the operation of this Agreement.

2. The information referred to under this Article shall be considered to have been provided when it has been made available by appropriate notification to the WTO or when it has been made publicly available in accordance with the legislation of the Party concerned or has been published on the official, public and fee-free accessible website of the Party concerned.

3. Any notification, request, or information under this Article shall be conveyed to the other Party through Contact Point designated in Article 20.4 (Contact Point)

Article 17.3: Incorporation

For the purpose of this Agreement, Article X of GATT 1994 and Article III of GATS are incorporated into and form an integral part of this Agreement, *mutatis mutandis.*

Article 17.4: Definitions

For purposes of this Chapter:

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

(a) a determination or ruling made in an administrative proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

CHAPTER 18

ECONOMIC COOPERATION

Section A: General Provisions

Article 18.1: Objectives

1. The Parties agree to strengthen economic cooperation with the aim of enhancing the mutual benefits of this Agreement in accordance with their national strategies and policy objectives.

2. The cooperation under this Chapter shall pursue the following objectives:

(a) promoting economic and social development of the Parties;

(b) strengthening the capacities of the Parties to maximise opportunities and benefits derived from this Agreement;

(c) stimulating productive synergies creating new opportunities for trade and investment and promoting competitiveness and innovation;

(d) reinforcing collaboration and exchanges in areas of mutual interest;

(e) supporting and promoting the development of micro, small and medium-sized enterprises (hereinafter referred to as the "MSMEs") in order to achieve their insertion in international trade or global value chains; and

(f) on the basis of fully respecting sovereignty and territorial integrity of all states, examining the opportunities of international cooperation through the *Belt and Road Initiative and the implementation of the 2030 Agenda for Sustainable Development.*

Article 18.2: Methods and Means

1. Cooperation between the Parties will be implemented through the tools, resources and mechanisms available to them, following the rules and procedures and through the appropriate agencies.

2. Cooperation between the Parties may be effected through separate exchange of diplomatic notes, memoranda of understanding, agreements or protocols or agreed frameworks to be concluded between authorised institutions or bodies in accordance with the laws and regulations in force in each Party.

Article 18.3: Scope

1. Cooperation between the Parties under this Chapter will supplement the cooperation and cooperative activities between the Parties set out in other Chapters of this Agreement.

2. The Parties affirm the importance of all forms of cooperation, including economic, technical and commercial cooperation, in contributing towards implementation of the objectives and principles of this Agreement taking into account their different levels of development and the size of their economies.

3. The areas of cooperation include, but are not limited to, those listed in Section B, and shall be subject to revision and update as may be decided after mutual consultation between the Parties with the objective of including other sectors or areas of interest.

Article 18.4: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement for any issue arising from or relating to this Chapter.

Section B: Areas of Cooperation

Article 18.5: Agricultural Cooperation

1. Promote exchange of experience, establish partnerships and conduct project cooperation in areas of mutual interests, such as agricultural innovation and technology transfer for smallholder development, conservation and management of water resources for agriculture, promotion of advanced agricultural and agro-to-industrial technologies and digital agriculture.

2. Strengthen institutional capabilities of government agencies, research institutions, universities and businesses, in the areas of scientific investigation and

transfer and validation of technologies including, among others, soil management and nutrition, irrigation and drainage, animal nutrition, horticulture under protected environments, traceability and safety.

3. Promote effective risk management in the agribusiness chains aiming to incorporate measures for adaptation and mitigation of climate change.

4. Encourage capacity building, technology transfer, and research and development of agricultural and livestock biotechnology and bio-safety.

5. Explore opportunities for cooperation in global food security through relevant regional and international forums.

Article18.6: Other areas of Cooperation

1. The Parties will promote the use of instruments and mechanisms of cooperation through mutually advantageous conditions, including but not limited to the following areas:

(a) micro, small and medium-sized enterprises;
(b) culture (including tourism and audiovisual services);
(c) promotion of a more favorable business environment;
(d) healthcare industry;
(e) textile and apparel;
(f) science and technology (including information technology and communication);
(g) transport, logistics and distribution;
(h) trade and sustainable development (including forestry and renewable energy);
(i) fisheries and aquaculture; and
(j) other areas agreed by the Parties.

2. The Parties shall endeavor to develop, promote and strengthen cooperation in the areas described in paragraph 1 as well as the activities or areas of cooperation established in other Chapters of this Agreement.

Article 18.7: Cooperation in the Law-Based Internet Governance

The Parties recognize the importance of and are committed to enhancing exchanges and cooperation in the law-based Internet governance.

CHAPTER 19

GENERAL PROVISIONS AND EXCEPTIONS

Article 19.1: Disclosure and Confidentiality of Information

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

2. Except as otherwise provided in this Agreement, where a Party provides written information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except where such use or disclosure is necessary to comply with legal or constitutional requirements or for the purpose of judicial proceedings.

Article 19.2: General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Implementation Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Technical Barriers to Trade), and the Annexes to the Chapters abovementioned, Article XX of GATT 1994, including its interpretative notes, is, incorporated into and form an integral part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX (b) of GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX (g) of GATT 1994 applies to measures relating to the conservation of living and nonliving exhaustible natural resources, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in goods.

2. For the purposes of Chapter 8 (Cross-border Trade in Services), Chapter 9 (Financial Services), Chapter 10 (Temporary Entry for Business Persons), Chapter 11 (Investment) and Chapter 12 (Digital Economy) and its Annexes, Article XIV of GATS, including its footnotes, is incorporated into and form an integral part of this

Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV (b) of GATS include environmental measures necessary to protect human, animal, or plant life or health, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services and investment.

Article 19.3: Security Exceptions

Nothing in this Agreement shall be construed:

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

(b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to fissionable and fusionable materials or the materials from which they are derived;

(ii) relating to the supply of services as carried out directly for the purpose of provisioning a military establishment;

(iii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iv) taken in time of war or other emergency in international relations; or

(c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for maintenance of international peace and security.

Article 19.4: Taxation

1. For the purposes of this Article, the item "taxation measures" shall not include any customs or import duties.

2. Except as otherwise provided in this Article, nothing in this Agreement shall apply to taxation measures.

3. This Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under the Article III of GATT 1994.

4. Notwithstanding paragraph 3, nothing in this Agreement shall:

(a) oblige a Party to apply any most-favoured-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to any tax convention;[51]

(b) apply to:

(i) a non-conforming provision of any taxation measure that is maintained by a Party on the date of entry into force of this Agreement;

(ii) the continuation or prompt renewal of a non-conforming provision of any such taxation measure; or

(iii) an amendment to a non-conforming provision of any such taxation measure to the extent that the amendment does not decrease the conformity of the tax measure with the Agreement, as it existed before the amendment;

(c) prevent the adoption or enforcement by a Party of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes; or

(d) prevent the adoption or enforcement by a Party of a provision that conditions the receipt, or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

5. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail to the extent of the inconsistency. With respect to tax convention between the Parties,

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[51] For the purposes of this Agreement, "tax convention" means a convention for the avoidance of double taxation or other international taxation agreement or arrangement to which both Parties are party.

any consultation about whether any inconsistency exists shall include the competent authorities of each Party under that tax convention.

Article 19.5: Review of Agreement

The Parties shall undertake a general review of the Agreement, with a view to furthering its objectives, within three years from the date of entry into force of this Agreement and at least every five years thereafter except as otherwise agreed by the Parties. The review shall include, but not be limited to, consideration of further liberalisation and expansion of market access.

Article 19.6: Measures to Safeguard the Balance-of-Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in case of trade in goods, in accordance with GATT 1994 and the *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement, adopt restrictive import measures;

(b) in case of trade in services, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments.

2. Restrictions adopted or maintained under paragraph 1(b) shall:

(a) be consistent with the Articles of *Agreement of the International Monetary Fund*;

(b) avoid unnecessary damage to the commercial, economic, and financial interests of the other Party;

(c) not exceed those necessary to deal with the circumstances described in paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and

(e) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party.

3. In determining the incidence of restrictions adopted or maintained under paragraph 1, a Party may give priority to economic sectors which are more essential to its economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

4. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified promptly to the other Party.

5. If a Party considers that the restrictive measure adopted or maintained affects the bilateral trade relationship, it may request consultations with the other Party in order to review the restrictions applied by it, and the other Party shall commence such consultations.

CHAPTER 20

INSTITUTIONAL PROVISIONS

Article 20.1: FTA Joint Commission

1. The Parties hereby establish the China-Nicaragua Free Trade Agreement Joint Commission (hereinafter referred to as the "FTA Joint Commission") comprising representatives of each Party. The Parties shall be represented by senior officials designated by them for this purpose.

2. The FTA Joint Commission shall:

(a) consider matters relating to the implementation of this Agreement;

(b) consider issues referred to it by either Party, or by the committees or working groups established under this Agreement;

(c) in accordance with the objectives of this Agreement, explore possibilities for the further expansion of trade and promotion of investment between the Parties;

(d) consider any proposal to amend this Agreement and make recommendations to the Parties; and

(e) consider any other matter that may affect the operation of this Agreement.

3. The FTA Joint Commission may:

(a) establish additional committees or ad hoc working groups as necessary, and refer matters to any committee or working group for advice;

(b) further the implementation of this Agreement through implementing arrangements;

(c) further the implementation of the Agreement's objectives by approving any modifications of:

(i) Annex 2-A (Schedule of Tariff Commitments) with the purposes of adding one or more goods excluded in the Schedule of a Party or by accelerating the tariff reduction;

(ii) Annex 3-A (Product Specific Rules of Origin);

(iii) Annex 3-B (Certificate of Origin);

(iv) the Common Guidelines referred to in Chapter 3 (Rules of Origin and Implementation Procedures);

(v) issue interpretations of the provisions of this Agreement;

(d) seek to resolve any differences or disputes that may arise regarding the interpretation or application of this Agreement;

(e) seek the advice of non-governmental persons or groups on any matter falling within its responsibilities where this would assist it in discharging its responsibilities; and

(f) take such other action in the exercise of its functions as the Parties may agree.

Article 20.2: Rules of Procedure of the FTA Joint Commission

1. The FTA Joint Commission shall take decisions and make recommendations on any matter within its functions, as set out in Article 20.1, by mutual agreement. The decisions will be adopt in duplicate in the Chinese, Spanish and English languages and their enforcement of the decisions shall be subject to the fulfilment of domestic legal requirements in either of the Parties.

2. The FTA Joint Commission shall convene in regular session every year and at other times at the request of either Party. Regular sessions of the FTA Joint Commission shall be chaired successively by each Party. Other sessions of the FTA Joint Commission shall be chaired by the Party hosting the meeting.

3. The FTA Joint Commission shall ordinarily meet at the level of senior officials, unless there is a request by either Party to convene the meeting at Ministerial level.

4. Subject to paragraph 3, each Party shall be responsible for the composition of its delegation to the FTA Joint Commission.

5. The Party chairing a session of the FTA Joint Commission shall provide any necessary administrative support for such session, and shall record any decisions taken by the FTA Joint Commission, copies of which shall be provided to the other Party.

Article 20.3: Free Trade Agreement Coordinators

1. Each Party shall appoint a Free Trade Agreement Coordinator (hereinafter referred to as the "Coordinators").

2. The Coordinators shall work jointly to develop agendas and make other preparations for Commission meetings, and shall follow-up on Commission decisions, as appropriate.

Article 20.4: Contact Point

1. For the purpose of facilitating communication between the Parties on any matter covered by this Agreement, the following Contact Points are designated:

(a) for China, the Ministry of Commerce (MOFCOM) or its successor; and

(b) for Nicaragua, the Ministry of Development, Industry and Trade (*Ministerio de Fomento, Industria y Comercio* (*MIFIC*)) or its successor.

2. Each Party shall notify the other Party in writing, through this Contact Point, of all contact points designated in this Agreement and the details of relevant officials, no later than 60 days after the date of its entry into force.

3. A Party shall promptly notify the other Party in writing, through this Contact Point, of any change in designated Contact Points.

CHAPTER 21

DISPUTE SETTLEMENT

Article 21.1: Cooperation

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

Article 21.2: Scope of Application[52]

Except as otherwise provided in this Agreement, wherever a Party considers that a measure of the other Party is inconsistent with its obligations under this Agreement or the other Party has otherwise failed to carry out its obligations under this Agreement, the dispute settlement provisions of this Chapter shall apply.

Article 21.3: Choice of Forum

1. Where a dispute regarding the same measure arises under this Agreement and under any other agreement to which both Parties are party, including the WTO agreements, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested establishment of, or otherwise referred a matter to, a panel or tribunal under an agreement referred to in paragraph 1, the forum selected with respect to the same measure shall be used to the exclusion of other fora.

Article 21.4: Consultations

1. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any dispute through consultations under this Article or other consultative provisions of this Agreement.

2. The request for consultations shall be made in writing and shall set out the reasons for the request, including identification of the measure at issue and an

[52] For greater certainty, this Chapter does not apply to proposed measures and/or claims in cases where there is no violation (nullification or impairment of a benefit in cases where there is no violation of the provisions of the Treaty).

indication of the legal basis for the complaint. The complaining Party shall deliver the request to the responding Party.

3. If a request for consultations is made, the responding Party shall reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith, with a view to reaching a mutually satisfactory solution, within a period of no more than:

(a) 15 days after the date of receipt of the request for urgent matters concerning perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

4. If the responding Party does not reply or enter into consultations within the timeframe specified in paragraph 3, then the complaining Party may proceed directly to request the establishment of an arbitral tribunal.

5. The consultations shall be confidential and are without prejudice to the rights of either Party in any further proceedings.

Article 21.5: Good Offices, Conciliation and Mediation

1. The Parties may at any time voluntarily agree to good offices, conciliation and mediation. These procedures may begin at any time and be terminated at any time.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during those proceedings, shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.

Article 21.6: Establishment of an Arbitral Tribunal

1. If the consultation referred to in the Article 21.4 fails to resolve a matter within 60 days or 30 days in relation to urgent matters concerning perishable goods, after receipt of the request for consultations, the complaining Party may request in writing the establishment of an arbitral tribunal to consider the matter.

2. The complaining Party shall indicate in the request whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly, and shall deliver the request to the responding Party. An arbitral tribunal is established upon receipt of a request.

Article 21.7: Composition of an Arbitral Tribunal

1. An arbitral tribunal shall comprise three members.

2. Within 15 days after the establishment of an arbitral tribunal, each Party shall appoint one arbitrator of the arbitral tribunal respectively.

3. The Parties shall appoint by common agreement the third arbitrator within 30 days after the establishment of an arbitral tribunal. The arbitrator thus appointed shall chair the arbitral tribunal.

4. If any arbitrator of the arbitral tribunal has not been appointed within 30 days after the establishment of an arbitral tribunal, either Party may request that the Director-General of the WTO designate an arbitrator within 30 days of that request. If one or more arbitrators are designated according to this paragraph, the Director-General of the WTO shall be authorized to designate the chair of the arbitral tribunal. In the event that the Director General of the WTO is a national of either Party or unable to perform this task, the Deputy Director-General of the WTO who is not a national of either Party shall be requested to perform such task.

5. The chair of the arbitral tribunal shall:

(a) not be a national of either Party;

(b) not have his or her usual place of residence in the territory of either Party;

(c) not be employed by either Party; and

(d) not have dealt with the matter in any capacity.

6. All arbitrators shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

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

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

(d) comply with a code of conduct in conformity with the rules established in the document WT/DSB/RC/1 of the WTO or the document that is in force, unless otherwise agreed by the Parties; and

(e) not have participated in the dispute in any other capacity in accordance with Article 21.5.

7. If an arbitrator appointed under this Article resigns or becomes unable to act, a

successor shall be appointed in the same manner and timeframe as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the replacement of the successor.

8. The procedures set out in this Article shall apply in those cases where the original arbitral tribunal, or some of its members, are unable to reconvene pursuant to Articles 21.13, 21.14, 21.15 and 21.16. In these cases, the period for notifying the report shall be counted from the date on which the last arbitrator is appointed.

Article 21.8: Functions of Arbitral Tribunal

1. The function of an arbitral tribunal is to make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement.

2. Except as the Parties otherwise agree within 20 days from the date of the establishment of the arbitral tribunal, the terms of reference shall be:

> "To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 21.6 and to make findings of law and fact together with the reasons as well as recommendations, if any, for the resolution of the dispute."

3. Where an arbitral tribunal concludes that a measure is inconsistent with this Agreement, it shall recommend that the responding Party bring the measure into conformity with this Agreement.

4. The arbitral tribunal shall consider this Agreement in accordance with customary rules of interpretation of public international law. The arbitral tribunal, in their findings and recommendations, cannot add to or diminish the rights and obligations provided in this Agreement.

Article 21.9: Rules of Procedure of an Arbitral Tribunal

1. Except as the Parties agree otherwise, the arbitral tribunal shall follow the rules of procedure set out in Annex and may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with Annex.

2. Except as the Parties otherwise agree, the remuneration of the arbitrators and other expenses of the arbitral tribunal shall be borne by the Parties in equal shares.

Article 21.10: Suspension or Termination of Proceedings

1. The Parties may agree that the arbitral tribunal suspends its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse except as the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral tribunal.

Article 21.11: Report of the Arbitral Tribunal

1. The arbitral tribunal shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties and other information, if any, it has obtained pursuant to paragraph 14 of Annex.

2. Except as the Parties to the dispute otherwise agree, the arbitral tribunal shall issue the initial report to the Parties within 120 days after the date of its composition or in case of urgent matters concerning perishable goods, within 90 days after the date of its composition.

3. In exceptional cases, if the arbitral tribunal considers it cannot issue its initial report within 120 days or within 90 days in case of urgent matters concerning perishable goods, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Any delay shall not exceed a further period of 30 days except as the Parties otherwise agree.

4. Each Party may submit written comments to the arbitral tribunal within 15 days of the issuance of the initial report. After considering these written comments by the Parties and making any further examination it considers appropriate, the arbitral tribunal shall present the Parties its final report within 30 days of issuance of the initial report, except as the Parties otherwise agree.

5. The arbitral tribunal shall make every effort to make its decisions by consensus. If the arbitral tribunal is unable to reach consensus, it may make its decision by majority vote. Arbitrators may furnish separate opinions on matters not unanimously agreed. All opinions expressed in the arbitral tribunal's report by individual arbitrators shall be anonymous.

6. The final report of the arbitral tribunal is final and has no binding force except between the Parties and in respect of the matter to which the report refers.

7. Except as the Parties otherwise agree, the final report shall be made available to the public no later than 15 days after its issuance to the Parties, subject to the protection of confidential information.

Article 21.12: Implementation of Arbitral Tribunal's Final Report

1. Where the arbitral tribunal concludes that a Party has not conformed to its obligations under this Agreement, the resolution, whenever possible, shall be to eliminate the non-conformity.

2. Unless the Parties reach agreement on compensation or other mutually satisfactory solution, the responding Party shall implement the recommendations and rulings in the final report of the arbitral tribunal. If it is not practicable to comply immediately, the responding Party shall implement the recommendations and rulings within a reasonable period of time.

Article 21.13: Reasonable Period of Time

1. The reasonable period of time referred to in Article 21.12 shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days after the issuance of the arbitral tribunal's final report, either Party may, to the extent possible, refer the matter to the original arbitral tribunal, which shall determine the reasonable period of time.

2. The arbitral tribunal shall provide its determination to the Parties within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will provide its determination. Any delay shall not exceed a further period of 30 days except as the Parties otherwise agree.

3. The reasonable period of time normally should not exceed 15 months from the date of issuance of the arbitral tribunal's final report.

Article 21.14: Compliance Review

1. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the recommendations and rulings of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures under this Chapter, including wherever possible by resort to the original arbitral tribunal.

2. The arbitral tribunal shall provide its report to the Parties within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will provide its report. Any delay shall not exceed a further period of 30 days except as the

Parties otherwise agree.

Article 21.15: Suspension of Concessions or Other Obligations

1. If the arbitral tribunal under Article 21.14 finds that the responding Party fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations and rulings of the arbitral tribunal within the reasonable period of time established, or the responding Party express in writing that it will not implement the recommendations and rulings, such Party shall, if so requested by the complaining Party, enter into negotiations with the complaining Party, with a view to agreeing on a mutually acceptable compensation. If the Parties fail to reach an agreement on compensation within 20 days after entering into negotiation for compensation, or if no such request has been made, the complaining Party may suspend the application of concessions or other obligations to the Party complained against. The complaining Party shall notify the responding Party 30 days before suspending concessions or other obligations. The notification shall indicate the level and scope of the suspension of concessions or other obligations.

2. The level of the suspension of concessions or other obligations shall be equivalent to the level of the nullification or impairment.

3. In considering what concessions or other obligations to suspend:

(a) the complaining Party should first seek to suspend concessions or other obligations in the same sector(s) as that affected by the measure that the arbitral tribunal has found to be inconsistent with the obligations under this Agreement ; and

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector(s), it may suspend concessions or other obligations in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

4. Upon written request of the responding Party, the original arbitral tribunal shall determine whether the level of concessions or other obligations to be suspended by the complaining Party is excessive pursuant to paragraph 2 and/or whether paragraph 3 has not been followed. If the arbitral tribunal cannot be established with its original members, it shall be composed in accordance with the procedures set out in Article 21.7.

5. The arbitral tribunal shall present its determination within 60 days from the request made pursuant to paragraph 4, or if an arbitral tribunal cannot be established with its original members, from the date on which the last arbitrator is appointed.

6. The complaining Party may not suspend the application of concessions or other

obligations before the issuance of the arbitral tribunal's determination pursuant to this Article.

Article 21.16: Post Suspension

1. Without prejudice to the procedures in Article 21.15, if the responding Party considers that it has eliminated the non-conformity that the arbitral tribunal has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original arbitral tribunal within 60 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions or other obligations.

2. The arbitral tribunal shall issue its report within 60 days after the referral of the matter by the complaining Party pursuant to paragraph 1. If the arbitral tribunal concludes that the responding Party has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions or other obligations.

Article 21.17: Private Rights

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ANNEX 21

RULES OF PROCEDURE OF ARBITRAL TRIBUNAL

First Written Submissions

1. The complaining Party is proposed to deliver its first written submission no later than 20 days after the appointment of the last arbitrator. The Responding Party is proposed to deliver its first written submission no later than 30 days after the date of delivery of the complaining Party's first written submission, except as the arbitral tribunal otherwise decides.

2. A Party shall provide a copy of its first written submission to each of the arbitrators and to the other Party. A copy of the documents shall also be provided in electronic format.

Hearings

3. The chair of the arbitral tribunal shall fix the date and time of the hearing after consultation with the Parties and other members of the arbitral tribunal. The venue of the hearings shall be agreed by the Parties. If there is no agreement, the venue shall alternate between the territories of the Parties with the first hearing to be held in the territory of the Party complained against. The chair of the arbitral tribunal shall notify in writing to the Parties of the date, time and venue of the hearing. Unless either Party disagrees, the arbitral tribunal may decide not to convene a hearing.

4. The arbitral tribunal may convene additional hearings.

5. All arbitrators shall be present at hearings.

6. The hearings of the arbitral tribunal shall be held in closed session.

Supplementary Written Submissions

7. Within 20 days after the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arose during the hearing. The supplementary written submissions shall be delivered in accordance with paragraph 2 of these Rules.

Questions in Writing

8. The arbitral tribunal may at any time during the proceedings put questions in

writing to the Parties.

9. A Party shall deliver the written reply to the arbitral tribunal and the other Party in accordance with the timetable established by the arbitral tribunal. Each Party shall be given the opportunity to provide written comments on the reply of the other Party.

Confidentiality

10. The arbitral tribunal's hearings and the documents submitted to it shall be kept confidential. Nothing in this Chapter shall preclude a Party from disclosing statements of its own positions to the public. The information submitted by a Party to the arbitral tribunal which that Party has designated as confidential shall be treated as confidential.

***Ex parte* Contacts**

11. The arbitral tribunal shall not meet or contact a Party in the absence of the other Party.

12. No Party may contact any arbitrator in relation to the dispute in the absence of the other Party or other arbitrators.

13. No arbitrator may discuss any aspect of the subject matter of the proceeding with a Party or both Parties in the absence of other arbitrators.

Role of Experts

14. Upon request of a Party or on its own initiative, the arbitral tribunal may seek information and technical advice from any individual or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as such Parties may agree. Any information so obtained shall be provided to the Parties for comments.

Working Language

15. Except as otherwise agreed by the Parties, the working language of the dispute settlement proceedings shall be English.

CHAPTER 22

FINAL PROVISIONS

Article 22.1: Annexes

The Annexes and footnotes to this Agreement constitute an integral part of this Agreement.

Article 22.2: Entry Into Force

This Agreement shall enter into force 30 days after the receipt of the last written notification by which the Parties shall notify each other on the completion of internal procedures necessary for the entry into force of the Agreement.

Article 22.3: Amendments

1. The Parties may agree in writing to amend this Agreement. Any amendment shall enter into force in accordance with the procedure required for the entry into force of this Agreement. Such amendment shall constitute an integral part of this Agreement.

2. If any amendment is made to the provision of the WTO Agreement or any other international agreement to which both Parties are party that has been incorporated into this Agreement, the Parties shall consult on whether to amend this Agreement accordingly, except as this Agreement provides otherwise.

Article 22. 4: Termination

1. This Agreement shall remain in force unless either Party notifies the other Party in writing to terminate this Agreement. Such termination shall take effect 180 days after the date of receipt of the notification.

2. Within 30 days of notification under paragraph 1, either Party may request consultations regarding whether the termination of any provision of this Agreement should take effect on a later date than provided under paragraph 1. Such consultations shall commence within 30 days from the delivery of such request to the other Party.

Article 22.5: Relation to the Early Harvest Arrangement

As of the entry into force of this Agreement, in the event of any inconsistency between the provisions of this Agreement and the provisions of the *Early Harvest Arrangement*, the provisions of this Agreement shall prevail.

Article 22.6: Authentic Texts

This Agreement is done in duplicate in Chinese, Spanish and English languages. All texts shall be equally authentic. In case of any divergence, the English text shall prevail.

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

DONE in Beijing and Managua, on the thirty first day of August in the year of two thousand and twenty three, each Party shall keep one copy in Chinese, Spanish and English languages.

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA	FOR THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA