

UNITED STATES – BAHRAIN FREE TRADE AGREEMENT

Summary of the Agreement

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

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

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

Chapter Two: National Treatment and Market Access for Goods

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

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

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

Import/Export Restrictions, Fees, and Formalities. The Agreement incorporates the prohibition on import and export restrictions set out in Article XI of the General Agreement on Tariffs and Trade (“GATT”) 1994 and specifies that these include: (1) export and import price requirements (except under antidumping and countervailing duty orders); (2) import licensing conditioned on

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

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

Chapter Three: Textiles and Apparel

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

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

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

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

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

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

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

Chapter Four: Rules of Origin

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

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

- When the good is wholly grown, produced, or manufactured in one or both of the Parties (*e.g.*, crops grown or minerals extracted in the United States);
- When the good: (1) is not covered by the rules in Annex 3-A or Annex 4-A; (2) is a “new or different article of commerce” that has been grown, produced, or manufactured in the territory of one or both of the Parties; and (3) the sum of (a) the value of materials produced in the territory of one or both of the Parties and (b) the “direct costs of processing operations” performed in the territory of one or both of the Parties is at least 35 percent of the appraised value of the good at the time it is imported into the territory of a Party; or

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

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

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

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

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

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

Chapter Five: Customs Administration

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

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

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

Chapter Six: Sanitary and Phytosanitary Measures

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

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

Chapter Seven: Technical Barriers to Trade

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

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

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations

emphasize the need for openness and consensus in the development of international standards. Chapter Seven requires the Parties to apply these principles.

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

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

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

Chapter Eight: Safeguards

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

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

Absent agreement by the other Party, a Party may only apply a safeguard measure to a good during the first 10 years that the FTA is in force. A safeguard measure may take one of two forms – a temporary increase in duties to NTR (MFN) levels or a temporary suspension of duty reductions called for under the Agreement. A safeguard measure may last for a maximum aggregate period of three years. If a measure lasts more than one year, the Party must liberalize it at regular intervals. Chapter Eight incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter Eight requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on the amount or nature of the

compensation, the Party entitled to compensation may suspend “substantially equivalent” trade concessions that it has made to the other Party. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. Special safeguard provisions are set out for textile and apparel goods in Chapter Three (Textiles and Apparel).

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

Chapter Nine: Government Procurement

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

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

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

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

Tendering Rules. Chapter Nine provides rules for setting deadlines on “tendering” (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders.

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

Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service. It also sets out rules that procuring entities must follow when they use limited tendering, *i.e.*, when they limit the set of suppliers that may bid on a contract.

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

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

Chapter Ten: Cross-Border Trade in Services

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

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

- from the territory of one Party into the territory of the other (*e.g.*, electronic delivery of services from the United States to Bahrain);
- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, a Bahraini company provides services to U.S. visitors in Bahrain); and
- by a national of a Party in the territory of the other Party (*e.g.*, a U.S. lawyer provides legal services in Bahrain).

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

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

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

Exclusions. Chapter Ten excludes any service supplied "in the exercise of governmental authority," that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Ten also does not generally apply to government subsidies, although the Parties have undertaken a commitment relating to cross-subsidization of express delivery services. The Parties have also negotiated an Annex regarding the regulation of professional services. Under Annex 10-B, the Parties will endeavor to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers. Such standards and criteria may be developed with regard, among other things, to: (1) accreditation of schools or academic programs; (2) qualifying examinations for licensing; (3) standards of professional conduct and the nature of disciplinary action for non-conformity with those standards; (4) requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and (5) consumer protection.

Investment. In 1999, the United States and Bahrain negotiated a comprehensive bilateral investment treaty ("BIT"), the *Treaty Between the Government of the United States of America*

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

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

Chapter Eleven: Financial Services

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

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

General Principles. Chapter Eleven's core obligations parallel those in Chapter Ten (Cross-Border Trade in Services). Specifically, Chapter Eleven imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. These rules apply to measures affecting financial institutions, including pre-establishment, and to financial service suppliers that are currently supplying or seek to supply on a cross-border basis.

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

Other Provisions. Chapter Eleven includes provisions on transparency, as well as rules regarding “new” financial services, self-regulatory organizations (the Agreement allows Bahrain

up to two years to comply with certain such provisions), and the expedited availability of insurance products.

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

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

Chapter Twelve: Telecommunications

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

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

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

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

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in its territory at reasonable rates;
- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities of dominant carriers, such as buildings, where they can install equipment, thus facilitating cost-effective investment;
- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from dominant domestic suppliers and resell them in order to build a customer base; and

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

- ensure that they will maintain open and transparent telecommunications regulatory regimes, including requirements to publish licensing requirements and criteria and other government measures relating to public telecommunications services;
- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;
- may elect to deregulate telecommunications services when competition exists and certain standards are met; and
- may not prevent telecommunications service suppliers from choosing the technologies they consider appropriate for supplying their services, subject to legitimate public policy requirements.

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

Chapter Thirteen: Electronic Commerce

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

Customs Duties. Chapter Thirteen provides that a Party may not impose customs duties on digital products of the other Party that are transmitted electronically. The Chapter does not preclude a Party from imposing duties on digital products of the other Party that are fixed on a

carrier medium, provided that the duty is based on the cost or value of that medium alone, rather than the cost or value of the digital content stored on that medium.

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

Chapter Fourteen: Intellectual Property Rights

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

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

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

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

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

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

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

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

Enforcement Provisions. Chapter Fourteen also creates obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for award of damages based on a fixed range (*i.e.*, “statutory

damages”), on the election of the right holder in cases involving infringement of copyright and related rights and trademark counterfeiting.

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

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

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

Chapter Fifteen: Labor

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

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

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

establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources. The U.S. commitment includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws.

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

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

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

Chapter Sixteen: Environment

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

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

environmental protection. The Parties also must ensure that opportunities exist for the public to provide input concerning the implementation of the Chapter.

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

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

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

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

Chapter Seventeen: Transparency

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

actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

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

Chapter Eighteen: Administration of the Agreement

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

Chapter Nineteen: Dispute Settlement

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

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

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

Unless the Parties agree otherwise, a panel is to present its initial report within 180 days after the chair is selected. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to

provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

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

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

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

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

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

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

Chapter Twenty: Exceptions

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

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

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

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

Chapter Twenty-One: Final Provisions

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

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