Annex 5
referred to in Chapter 7

Telecommunications Services

Article 1
Scope

1. This Annex shall apply to measures affecting trade in telecommunications services.

2. This Annex shall not apply to measures affecting broadcasting services as defined in the laws and regulations of each Party.

3. Nothing in this Annex shall be construed to:

(a) require a Party to authorize a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services other than as provided for in its Schedule of Specific Commitments in Annex 6; or

(b) require a Party (or require a Party to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

Article 2
Definitions

For the purposes of this Annex:

(a) the term "cost-oriented" means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

(b) the term "cross-subsidization" means the practice of using profits generated from one product or service to support another provided by the same juridical person;

(c) the term "end user" means a final consumer of or subscriber to public telecommunications transport networks or services, including a service supplier other than a supplier of public telecommunications transport networks or services;

(d) the term "essential facilities" means facilities of a public telecommunications transport network or service that:

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

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(e) the term "interconnection" means linking with suppliers providing public telecommunications transport networks or services in order to allow the end users of one supplier to communicate with the end users of another supplier and to access services provided by another supplier;

(f) the term "major supplier" means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for basic telecommunications services as a result of:

(i) control over essential facilities; or

(ii) use of its position in the market;

(g) the term "non-discriminatory" means treatment no less favorable than that accorded to any other user of like public telecommunications transport networks or services under like circumstances;

(h) the term "public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;