

# Agreement between Japan and the Republic of the Philippines for an Economic Partnership

Preamble Japan and the Republic of the Philippines (hereinafter referred to in this Agreement as "the Philippines"), Cognizant of their warm relations and strong economic and political ties, including shared perceptions on various issues, that have developed through many years of fruitful and mutually beneficial cooperation;

Recognizing that a dynamic and rapidly changing global environment brought about by globalization and technological progress presents many new economic and strategic challenges and opportunities to the Parties;

Acknowledging that encouraging innovation and competition and improving their attractiveness to capital and human resources can enhance their ability to respond to such new challenges and opportunities;

Recognizing that the economic partnership of the Parties would create larger and new markets, and would improve their economic efficiency and consumer welfare, enhancing the attractiveness and vibrancy of their markets, and expanding trade and investment not only between them but also in the region;

Reaffirming that such partnership will provide a useful framework for enhanced regulatory cooperation between the Parties to meet new challenges posed by emerging market developments and to improve their market infrastructure;

Recognizing the importance of the implementation of measures by the Governments of the Parties in accordance with their respective laws and regulations;

Bearing in mind their rights and obligations under other international agreements to which they are parties, in particular those of the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994;

Recalling Article XXIV of the General Agreement on tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services, respectively in Annex 1A and Annex 1B to the above-mentioned Agreement; Reaffirming the importance of the multilateral trading system embodied by the World Trade Organization;

Recognizing the catalytic role which regional and bilateral trade agreements that are consistent with the rules of the World Trade Organization can play in accelerating global and regional trade and investment liberalization and rule-making;

Realizing that enhancing economic ties between the parties would strengthen Japan's involvement in Southeast Asia;

Observing in particular that such ties would help catalyze trade and investment liberalization in Asia-Pacific;

Bearing in mind the Framework for Comprehensive Economic Partnership between Japan and the Association of Southeast Asian Nations, signed in Bali, Indonesia on October 8, 2003;

Convinced that stronger economic linkages between the Parties would provide greater opportunities, larger economies of scale and a more predictable environment for economic activities not only for Japanese and Philippine businesses but also for other businesses in Asia; and Determined to create a legal framework for an economic partnership between the Parties;

HAVE AGREED as follows:

## Chapter 1. General Provisions

### Article 1. Objectives

The objectives of this Agreement are to:

- (a) liberalize and facilitate trade in goods and services between the Parties;
- (b) facilitate the mutual recognition of the results of conformity assessment procedures for products or processes;
- (c) increase investment opportunities and strengthen protection for investments and investment activities in the Parties;
- (d) enhance protection of intellectual property and strengthen cooperation in the field thereof to promote trade and investment between the Parties;
- (e) promote transparency in government procurement in the Parties;
- (f) promote competition by addressing anticompetitive activities and cooperate in the field of competition;
- (g) establish a framework for further bilateral cooperation and improvement of business environment;
- (h) promote transparency in the implementation of laws and regulations respecting matters covered by this Agreement; and
- (i) create effective procedures for the implementation and operation of this Agreement and for the resolution of disputes.

### Article 2. General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) the term "Area" means: with respect to Japan, the territory of Japan, and the exclusive economic zone and the continental shelf with respect to which Japan exercises sovereign rights or jurisdiction in accordance with its laws and regulations and international law; and with respect to the Philippines, the national territory as defined in Article I of its Constitution. The term "national territory" also includes the exclusive economic zone and the continental shelf to which the Philippines exercises sovereign rights or jurisdiction in accordance with its laws and regulations and international law; Note: Nothing in this subparagraph shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea.

(b) the term "existing" means in effect on the date of entry into force of this Agreement;

(c) the term "GATS" means the General Agreement on Trade in Services in Annex 1B to the Marrakesh Agreement Establishing the World Trade Organization;

(d) the term "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization. For the purposes of this Agreement, references to articles in GATT 1994 include the interpretative notes;

(e) the term "Harmonized System (HS)" means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System and adopted and implemented by the Parties in their respective domestic laws;

(f) the term "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(g) the term "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

(h) the term "person" means either a natural person or a juridical person; and

(i) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization.

### **Article 3. Transparency**

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party, respecting any matter covered by this Agreement.

2. Each Party shall make publicly available the names and addresses of competent authorities responsible for laws, regulations, administrative procedures and administrative rulings, referred to in paragraph 1 above (hereinafter referred to in this Chapter as "the competent authorities").

3. Each Party shall, upon request by the other Party, within a reasonable period of time, respond to specific questions from, and provide information to, the other Party, to the extent possible in English, with respect to matters referred to in paragraph 1 above.

### **Article 4. Review of Laws and Regulations**

Each Party shall examine the possibility of amending or repealing laws and regulations that pertain to or affect the implementation and operation of this Agreement, if the circumstances or objectives giving rise to their adoption no longer exist or if such circumstances or objectives can be addressed in a less trade-restrictive manner.

### **Article 5. Public Comment Procedures**

The Government of each Party shall, in accordance with the laws and regulations of the Party, endeavor to provide, except in cases of emergency or of purely minor nature, a reasonable opportunity for comments by the public before the adoption, amendment or repeal of regulations of general application that affect any matter covered by this Agreement.

### **Article 6. Administrative Procedures**

1. Where measures are to be adopted which pertain to or affect the implementation and operation of this Agreement, the competent authorities of a Party shall, in accordance with the laws and regulations of the Party:

(a) inform the applicant within a reasonable period of time of the decision concerning an application considered complete under the laws and regulations of the Party, taking into account the established standard period of time referred to in paragraph 3 below; and

(b) provide, without undue delay, information concerning the status of the application, at the request of the applicant.

2. The competent authorities shall, in accordance with the laws and regulations of the Party, establish standards for taking measures in response to submitted applications. The competent authorities shall:

- (a) make such standards as specific as possible; and
  - (b) make such standards publicly available except when it would extraordinarily raise administrative difficulties for the Party.
3. The competent authorities shall, in accordance with the laws and regulations of the Party:
- (a) endeavor to establish standard periods of time between receipt of applications by the competent authorities and measures taken in response to submitted applications; and
  - (b) make such periods of time publicly available, if it is established.
4. Where measures are to be adopted by the competent authorities which pertain to or affect the implementation and operation of this Agreement and which impose obligations on or restrict rights of a person, such competent authorities shall, prior to any final decision, when time, the nature of the measures and public interest permit and in accordance with the laws and regulations of the Party, provide that person with:
- (a) a reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure will be based, and the facts which may be a cause of taking such measure; and
  - (b) a reasonable opportunity to present facts and arguments in support of the position of such person.

## **Article 7. Review and Appeal**

1. Each Party shall ensure that judicial remedies are available under its laws and regulations for the impartial and independent review and, where warranted, correction of actions taken by relevant authorities regarding matters covered by this Agreement.
2. Each Party shall ensure that the parties to any such judicial remedies are provided with the right to:
  - (a) a reasonable opportunity to support or defend their respective positions; and
  - (b) a decision based on the evidence and submissions of record.
3. Each Party shall ensure, subject to appeal or further review as provided in its laws and regulations, that decisions referred to in paragraph 2(b) above with respect to the actions referred to in paragraph 1 above are implemented by the competent authorities.

## **Article 8. Measures Against Corruption**

Each Party shall ensure that measures and efforts are undertaken to prevent and combat corruption regarding matters covered by this Agreement in accordance with its laws and regulations.

## **Article 9. Confidential Information**

1. Unless otherwise provided for in this Agreement, nothing in this Agreement shall be construed to require a Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular juridical persons, public or private.
2. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided as confidential by the other Party pursuant to this Agreement.

## **Article 10. Taxation**

1. Except as otherwise provided for in this Agreement, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. Note: The term "tax convention" means a convention for the avoidance of double taxation.

## **Article 11. Relation to other Agreements**

1. The Parties reaffirm their rights and obligations under the WTO Agreement or any other agreements to which both Parties are parties.
2. In the event of any inconsistency between this Agreement and the WTO Agreement, the WTO Agreement shall prevail to the extent of the inconsistency.
3. In the event of any inconsistency between this Agreement and the Treaty of Amity, Commerce and Navigation between Japan and the Republic of the Philippines, this Agreement shall prevail to the extent of the inconsistency.
4. In the event of any inconsistency between this Agreement and any agreements other than the WTO Agreement and the Treaty of Amity, Commerce and Navigation between Japan and the Republic of the Philippines, to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

5. In the event of an amendment of the agreements to which both Parties are parties and which are referred to in this Agreement, relevant principles of international law, including those in the Vienna Convention on the Law of Treaties, shall apply.

In the event of the amendment of the agreements referred to in this paragraph, the Parties may consult with each other as necessary.

## **Article 12. Implementing Agreement**

The Governments of the Parties shall conclude a separate agreement setting forth the details and procedures for the implementation of this Agreement (hereinafter referred to in this Agreement as "the Implementing Agreement").

## **Article 13. Joint Committee**

1. The Joint Committee composed of representatives of the Governments of the Parties shall be established under this Agreement.

2. The functions of the Joint Committee shall be:

(a) reviewing the implementation and operation of this Agreement and, when necessary, making appropriate recommendations to the Parties;

(b) considering and recommending to the Parties any amendments to this Agreement;

(c) supervising and coordinating the work of all Sub-Committees established under this Agreement;

(d) adopting;

(i) the Operational Procedures on Trade in Goods and Rules of Origin referred to in Article 25 and the Operational Procedures on Mutual Recognition referred to in Article 65;

(ii) the Rules of Procedure referred to in Article 159; and

(iii) any necessary decisions; and

(e) performing other functions as the Parties may agree.

3. The Joint Committee may:

(a) establish Sub-Committees and delegate its responsibilities thereto; and

(b) take such other action in the exercise of its functions as the Parties may agree.

4. The following Sub-Committees shall be established on the date of entry into force of this Agreement:

(a) Sub-Committee on Trade in Goods

(b) Sub-Committee on Rules of Origin

(c) Sub-Committee on Customs Procedures

(d) Sub-Committee on Mutual Recognition

(e) Sub-Committee on Trade in Services

(f) Sub-Committee on Investment

(g) Sub-Committee on Movement of Natural Persons

(h) Sub-Committee on Intellectual Property

(i) Sub-Committee on Government Procurement

(j) Sub-Committee on Improvement of the Business Environment

(k) Sub-Committee on Cooperation Other Sub-Committees may be established as the Parties may agree.

5. The details of the Sub-Committees may be specified in the Implementing Agreement.

6. The Joint Committee shall convene once a year alternately in Japan and the Philippines, unless the Parties agree otherwise.

## **Article 14. Communications**

Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement.

## **Chapter 2. Trade In Goods**

### **Article 15. Definitions**

For the purposes of this Chapter:

(a) the term "customs value of goods" means the value of goods for the purposes of levying ad valorem customs duties on imported goods; (b) the term "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods; (c) the term "emergency measure" means an emergency

measure provided for in paragraph 1 of Article 22;

(d) the term "originating goods" means goods which qualify as originating goods under the provisions of Chapter 3;

(e) the term "other duties or charges" means those provided for in subparagraph 1(b) of Article I of the GATT 1994;

(f) the term "provisional emergency measure" means a provisional emergency measure provided for in subparagraph 4(a) of Article 22;

(g) the term "serious injury" means a significant overall impairment in the position of a domestic industry; and

(h) the term "threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

## **Article 16. Classification of Goods**

The classification of goods in trade between the Parties shall be in conformity with the Harmonized System.

## **Article 17. National Treatment**

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994.

## **Article 18. Elimination of Customs Duties**

1. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods of the other Party designated for such purposes in its Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

2. On the request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

3. Each Party shall eliminate other duties or charges of any kind imposed on or in connection with the importation of originating goods of the other Party, customs duties of which shall be eliminated or reduced in accordance with paragraph 1 above, if any. Neither Party shall introduce other duties or charges of any kind imposed on or in connection with the importation of those originating goods of the other Party.

4. Nothing in this Article shall prevent a Party from imposing, at any time, on the importation of any goods of the other Party:

(a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;

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

(c) fees or other charges commensurate with the cost of services rendered.

## **Article 19. Customs Valuation**

For the purposes of determining the customs value of goods traded between the Parties, provisions of Part I of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement (hereinafter referred to in this Agreement as "the Agreement on Customs Valuation") shall apply mutatis mutandis.

## **Article 20. Export Duties**

Each Party shall exert its best efforts to eliminate its duties on goods exported from the Party to the other Party.

## **Article 21. Non-tariff Measures**

Each Party shall not introduce or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party which are inconsistent with its obligations under the WTO Agreement.

## **Article 22. Emergency Measures**

1. Subject to the provisions of this Article, each Party may, as an emergency measure, to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment:
  - (a) suspend the further reduction of any rate of customs duty on the originating good provided for in this Chapter; or
  - (b) increase the rate of customs duty on the originating good to a level not to exceed the lesser of:
    - (i) the most-favored-nation applied rate of customs duty in effect on the day when the emergency measure is taken; and
    - (ii) the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement; if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 18, is being imported into the former Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of that originating good constitute a substantial cause of serious injury, or threat thereof, to a domestic industry of the former Party.
2. Each Party shall not apply emergency measures on an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with Schedule in Annex 1.
3. (a) A Party may take an emergency measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the procedures provided for in each Party's relevant domestic laws and regulations that are consistent with Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to in this Chapter as "the Agreement on Safeguards").  
(b) The investigation referred to in subparagraph (a) above shall in all cases be completed within one (1) year following its date of initiation.
4. (a) In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may take a provisional emergency measure, which shall take the form of the measures set out in subparagraph 1(a) or (b) above, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry.  
(b) The Party shall deliver a written notice to the other Party prior to applying a provisional emergency measure. Consultations between the Parties on the application of the provisional emergency measure shall be initiated immediately after the provisional emergency measure is taken.  
(c) The duration of the provisional emergency measure shall not exceed two hundred (200) days. During that period, the pertinent requirements of paragraph 3 above shall be met. The duration of the provisional emergency measure shall be counted as a part of the period referred to in subparagraph 5(e) below.  
(d) Paragraph 2 and subparagraph 5(g) of this Article shall be applied mutatis mutandis to the provisional emergency measure. The customs duty imposed as a result of the provisional emergency measure shall be refunded if the subsequent investigation referred to in subparagraph 3(a) above does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.
5. The following conditions and limitations shall apply with regard to an emergency measure:
  - (a) A Party shall immediately deliver a written notice to the other Party upon:
    - (i) initiating an investigation referred to in subparagraph 3(a) above relating to serious injury, or threat thereof, and the reasons for it; and
    - (ii) taking a decision to apply or extend an emergency measure.
  - (b) The Party making the written notice referred to in subparagraph (a) above shall provide the other Party with all pertinent information, which shall include:
    - (i) in the written notice referred to in subparagraph (a)(i) above, the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation and its subheading of the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and
    - (ii) in the written notice referred to in subparagraph (a)(ii) above, evidence of serious injury or threat thereof caused by the increased imports of an originating good, a precise description of the originating good subject to the proposed emergency measure and its subheading of the Harmonized System, a precise description of the emergency measure, the proposed date of its introduction and its expected duration.
  - (c) When the Party provides the other Party with pertinent information that includes confidential information, the other Party may only disclose non-confidential part, summary or version thereof to the public.
  - (d) A Party proposing to apply or extend an emergency measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in subparagraph 3(a) above, exchanging views on the emergency measure and reaching an agreement on compensation set out in paragraph 6 below.
  - (e) No emergency measure shall be maintained except to the extent and for such period as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such period shall not exceed three (3) years. However, in very exceptional circumstances, an emergency measure may be maintained for up to a total maximum period of four (4) years. In order to facilitate adjustment in a situation where the expected duration of an emergency measure is over one (1) year, the Party maintaining the emergency measure shall progressively liberalize the emergency measure at regular intervals during the period of application.
  - (f) No emergency measure shall be applied again to the import of a particular originating good which has been subject to such an emergency measure, for a period of time equal to the duration of the previous emergency measure or one (1)

year, whichever is longer.

(g) Upon the termination of an emergency measure, the rate of customs duty shall be the rate which would have been in effect but for the emergency measure.

6. (a) A Party proposing to apply or extend an emergency measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions of customs duties whose levels are substantially equivalent to the value of the additional customs duties expected to result from the emergency measure.

(b) If the Parties are unable to agree on the compensation within thirty (30) days after the commencement of the consultations pursuant to subparagraph 5(d) above, the Party against whose originating good the emergency measure is taken shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to the emergency measure. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the emergency measure is maintained.

(c) The right of suspension provided for in subparagraph (b) above shall not be exercised for the first twelve (12) months that an emergency measure is in effect, provided that the emergency measure has been taken as a result of an absolute increase in imports and that such an emergency measure conforms to the provisions of this Article.

7. Written notice referred to in subparagraphs 4(b) and 5(a) above and any other communication, including in the form of documents, between the Parties shall be made in English.

8. Each Party shall ensure the consistent, impartial and reasonable administration of its laws and regulations relating to the emergency measure and the provisional emergency measure.

9. Each Party shall ensure equitable, timely, transparent and effective procedures relating to the emergency measure and the provisional emergency measure.

10. Notwithstanding subparagraph 1(b) and 4(a) above, if a decision to apply an emergency measure or a preliminary determination to apply a provisional emergency measure is taken by the last day of the seventh year, each Party may increase the rate of customs duty on the originating good up to the level of the rate of customs duty which is applied on a non-discriminatory basis to the members of the World Trade Organization in effect on the day when the emergency measure or the provisional emergency measure is taken, provided that such an emergency measure or such a provisional emergency measure shall satisfy the condition set out in subparagraph 1(b) above at the latest as from the first day of the eighth year. Note: For the purpose of this paragraph, the term "year" means, with respect to the first year, the period from the date of entry into force of this Agreement until the coming March 31 and, with respect to each subsequent year, the period of twelve (12) months which starts on April 1 of that year.

11. Each Party may take safeguard measures to the originating goods in accordance with:

(a) Article XIX of the GATT 1994 and the Agreement on Safeguards, provided that the originating good is the subject of the concession of that Party under the GATT 1994 and, by such a safeguard measure, that Party suspends the obligation of that Party under the GATT 1994 or withdraws or modifies the concession of that Party under the GATT 1994; or (b) Article 5 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (hereinafter referred to in this Chapter as "the Agreement on Agriculture"), provided that the originating good is the subject of the concession of that Party under the GATT 1994 and, by such a safeguard measure, that Party imposes the additional duty under Article 5 of the Agreement on Agriculture.

12. The Parties shall review the provisions of this Article, if necessary, after ten (10) years of the date of entry into force of this Agreement.

## **Article 23. General and Security Exceptions**

For the purposes of this Chapter, Article XX and XXI of the GATT 1994 respectively, shall apply mutatis mutandis.

## **Article 24. Restrictions to Safeguard the Balance of Payments**

1. Nothing in this Chapter shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under Article XII and Section B of Article XVIII of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement.

2. Nothing in this Chapter shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund.

## **Article 25. Operational Procedures on Trade In Goods and Rules of Origin**

Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures on Trade in Goods and Rules of Origin that provide detailed regulations pursuant to which the customs authorities, the competent governmental authorities defined in Article 28 and the relevant authorities of the Parties shall implement their functions under this Chapter and Chapter 3.

## **Article 26. Sub-committee on Trade In Goods**

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Goods (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13.
2. The functions of the Sub-Committee shall be:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) reporting the findings of the Sub-Committee to the Joint Committee; and
  - (c) performing other functions which may be delegated by the Joint Committee pursuant to Article 13.
3. (a) The Sub-Committee shall establish a Special Sub-Committee on Iron and Steel Products and a Special Sub-Committee on Automobile and their Parts. The Sub-Committee may establish any other Special Sub-Committees, if necessary.
  - (b) The functions of the Special Sub-Committee shall be:
    - (i) analyzing relevant matters on the relevant goods and its sector, including trade in such goods;
    - (ii) reporting the findings of the Special Sub-Committees, through the Sub-Committee, to the Joint Committee;
    - (iii) with regard to the Special Sub-Committee on Iron and Steel Products, reviewing the issues related to implementation of tariff elimination commitment on Iron and Steel Products; and
    - (iv) with regard to the Special Sub-Committee on Automobile and their Parts, reviewing the issues related to implementation of tariff elimination commitment on Automobile and their Parts.
4. The Sub-Committee and the Special Sub-Committee shall be composed of representatives of the Governments of the Parties. The Sub-Committee and the Special Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties, including those from private sectors, with the necessary expertise relevant to the issues to be discussed.

## **Article 27. Cooperation In Relation to Export**

The Parties shall cooperate with each other on the utilization of appropriate mechanism on the conformance with the importing Party's safety and environmental standards, such as roadworthiness and vehicle emission standards, of used four-wheeled motor vehicles as may be agreed by the Parties, exported from the exporting Party.

## **Chapter 3. Rules of Origin**

### **Article 28. Definitions**

For the purposes of this Chapter:

- (a) the term "competent governmental authority" means the authority that, according to the legislation of each Party, is responsible for the issuing of the certificate of origin or for the designation of the certification entities or bodies. In the case of Japan, the Ministry of Economy, Trade and Industry, and in the case of the Philippines, the Bureau of Customs;
- (b) the term "customs authority" means the authority that, according to the legislation of each Party or non-Parties, is responsible for the administration and enforcement of its customs laws and regulations. In the case of Japan, the Ministry of Finance, and in the case of the Philippines, the Bureau of Customs;
- (c) the term "exporter" means a person located in an exporting Party who exports a good from the exporting Party;
- (d) the term "factory ships of the Party" and "vessels of the Party" respectively means factory ships and vessels:
  - (i) which are registered in the Party;
  - (ii) which sail under the flag of the Party;
  - (iii) which are owned to an extent of at least sixty (60) percent by nationals of the Party, or by a juridical person with its head office in the Party, of which their representatives, chairman of the board of directors, and the majority of the members of such boards are nationals of the Party, and of which at least sixty (60) percent of the equity interest is owned by nationals or juridical persons of the Party;
  - (iv) of which the master and officers are all nationals of the Party; and
  - (v) of which at least seventy five (75) percent of the crew are nationals of the Party;
- (e) the term "fungible originating goods of a Party" or "fungible originating materials of a Party" respectively means originating goods or materials of a Party that are interchangeable for commercial purposes, whose properties are essentially identical;
- (f) the term "Generally Accepted Accounting Principles" means the recognized consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;



- (g) the term "importer" means a person who imports a good into the importing Party;
- (h) the term "indirect material" means a good used in the production, testing or inspection of another good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:
  - (i) fuel and energy;
  - (ii) tools, dies and molds;
  - (iii) spare parts and goods used in the maintenance of equipment and buildings;
  - (iv) lubricants, greases, compounding materials and other goods used in production or used to operate equipment and buildings;
  - (v) gloves, glasses, footwear, clothing, safety equipment and supplies;
  - (vi) equipment, devices and supplies used for testing or inspecting the good;
  - (vii) catalysts and solvents; and
  - (viii) 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;
- (i) the term "material" means a good that is used in the production of another good;
- (j) the term "originating material of a Party" means an originating good of a Party which is used in the production of another good in the Party, including that which is considered as an originating material of the Party pursuant to paragraph 1 of Article 30;
- (k) the term "packing materials and containers for shipment" means goods that are used to protect a good during transportation, other than packaging materials and containers for retail sale referred to in Article 38;
- (l) the term "preferential tariff treatment" means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 18; and
- (m) the term "production" means methods of obtaining goods including manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

## Article 29. Originating Goods

1. Except as otherwise provided for in this Chapter, a good shall qualify as an originating good of a Party where:
  - (a) the good is wholly obtained or produced entirely in the Party, as defined in paragraph 2 below;
  - (b) the good is produced entirely in the Party exclusively from originating materials of the Party; or
  - (c) the good satisfies the product specific rules set out in Annex 2, as well as all other applicable requirements of this Chapter, when the good is produced entirely in the Party using non-originating materials.
2. For the purposes of subparagraph 1(a) above, the following goods shall be considered as being wholly obtained or produced entirely in a Party:
  - (a) live animals born and raised in the Party;
  - (b) animals obtained by hunting, trapping, fishing, gathering or capturing in the Party;
  - (c) goods obtained from live animals in the Party;
  - (d) plants and plant products harvested, picked or gathered in the Party;
  - (e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d) above, extracted or taken in the Party;
  - (f) goods of sea-fishing and other goods taken by vessels of the Party from the sea outside the territorial sea of a Party;
  - (g) goods produced on board factory ships of the Party from the goods referred to in subparagraph (f) above;
  - (h) goods taken from the seabed or subsoil beneath the seabed outside the territorial sea of the Party, provided that the Party has rights over such seabed or subsoil in accordance with its laws and regulations and international law; Note: Nothing in this subparagraph shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea.
  - (i) articles collected in the Party which can no longer perform their original purpose in the Party nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;
  - (j) scrap and waste derived from manufacturing or processing operations or from consumption in the Party and fit only for disposal or for the recovery of raw materials;
  - (k) parts or raw materials recovered in the Party from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and
  - (l) goods obtained or produced in the Party exclusively from the goods referred to in subparagraphs (a) through (k) above.
3. For the purposes of subparagraph 1(c) above, the product specific rules set out in Annex 2 requiring that the materials used undergo a change in tariff classification or a specific manufacturing or processing operation shall apply only to non-originating materials.
4. (a) For the purposes of subparagraph 1(c) above, the product specific rules set out in Annex 2 using the value-added method require that the qualifying value content of a good, calculated in accordance with subparagraph (b) below, is not

less than the percentage specified by the rule for the good.

(b) For the purposes of calculating the qualifying value content of a good, the following formula shall be applied: 
$$\frac{Q.V.C.}{V.N.M.} \times 100$$
 F.O.B. Where: Q.V.C. is the qualifying value content of a good, expressed as a percentage; F.O.B. is, except as provided for in paragraph 5 below, the free-on-board value of a good payable by the buyer of the good to the seller of the good, regardless of the mode of shipment, not including any internal excise taxes reduced, exempted, or repaid when the good is exported; and V.N.M. is the value of non-originating materials used in the production of a good.

5. F.O.B. referred to in subparagraph 4(b) above shall be the value:

(a) adjusted to the first ascertainable price paid for the good from the buyer to the producer of the good, if there is free-on-board value of a good, but it is unknown and cannot be ascertained; or

(b) determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of the good.

6. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) above, the value of a non-originating material used in the production of the good in a Party:

(a) shall be determined in accordance with the Agreement on Customs Valuation, and shall include freight, insurance where appropriate, packing and all the other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located; or

(b) if such value is unknown and cannot be ascertained, shall be the first ascertainable price paid for the material in the Party, but may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.

7. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) above in determining whether the good qualifies as an originating good of a Party, V.N.M. of the good shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

8. For the purposes of subparagraph 5(b) or 6(a) above, in applying the Agreement on Customs Valuation to determine the value of a good or non-originating material, the Agreement on Customs Valuation shall apply *mutatis mutandis* to domestic transactions or to the cases where there is no transaction of the good or non-originating material.

## **Article 30. Accumulation**

1. For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered as an originating material of the former Party.

2. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) of Article 29 in determining whether the good qualifies as an originating good of a Party, the value of a non-originating material produced in either Party and to be used in the production of the good may be limited to the value of non-originating materials used in the production of such non-originating material, provided that the good qualifies as an originating good of that Party under subparagraph 1(c) of Article 29.

## **Article 31. De Minimis**

For the application of the product specific rules set out in Annex 2, non-originating materials used in the production of a good that do not satisfy an applicable rule for the good shall be disregarded, provided that the totality of such materials does not exceed specific percentages in value, weight or volume of the good and such percentages are set out in the product specific rule for the good.

## **Article 32. Non-qualifying Operations**

A good shall not be considered to satisfy the requirement of change in tariff classification or specific manufacturing or processing operation set out in Annex 2 merely by reason of:

(a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;

(b) changes of packaging and breaking up and assembly of packages;

(c) disassembly;

(d) placing in bottles, cases, boxes and other simple packaging operations;

(e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;

(f) mere making-up of sets of articles; or

(g) any combination of operations referred to in subparagraphs (a) through (f) above.

## **Article 33. Consignment Criteria**

1. An originating good of the other Party shall be deemed to meet the consignment criteria when it is:
  - (a) transported directly from the other Party; or
  - (b) transported through one or more non-Parties for the purpose of transit or temporary storage in warehouses in such non-Parties, provided that it does not undergo operations other than unloading, reloading or any other operation necessary to preserve it in good condition.
2. If the originating good of the other Party does not meet the consignment criteria referred to in paragraph 1 above, that good shall not be considered as the originating good of the other Party.

## **Article 34. Unassembled or Disassembled Goods**

1. Where a good satisfies the requirements of the relevant provisions of Articles 29 through 32 and is imported into a Party from the other Party in a disassembled form but is classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered as an originating good of the other Party.
2. A good assembled in a Party from unassembled or disassembled materials, which were imported into the Party and classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, shall be considered as the originating good of the Party, provided that the good would have satisfied the applicable requirements of the relevant provisions of Articles 29 through 32 had each of the non-originating materials among the unassembled or disassembled materials been imported into the Party separately and not as an unassembled or disassembled form.

## **Article 35. Fungible Goods and Materials**

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible originating materials of the Party and fungible non-originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method set out in the Operational Procedures on Trade in Goods and Rules of Origin referred to in Article 25.
2. Where fungible originating goods of a Party and fungible non-originating goods are commingled in an inventory and, prior to exportation do not undergo any production process or any operation in the Party where they were commingled other than unloading, reloading or any other operation necessary to preserve them in good condition, the origin of the good may be determined pursuant to an inventory management method set out in the Operational Procedures on Trade in Goods and Rules of Origin referred to in Article 25.
3. Once an inventory management method set out in paragraphs 1 and 2 above has been chosen, it shall be used through all the fiscal year or period.

## **Article 36. Indirect Materials**

Indirect materials shall be, without regard to where they are produced, considered to be originating materials of a Party where a good is produced.

## **Article 37. Accessories, Spare Parts and Tools**

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2, accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts or tools, shall be disregarded, provided that:
  - (a) the accessories, spare parts or tools are not invoiced separately from the good, without regard of whether they are separately described in the invoice; and
  - (b) the quantities and value of the accessories, spare parts or tools are customary for the good.
2. If the good is subject to a qualifying value content requirement, the value of the accessories, spare parts or tools shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

## **Article 38. Packaging Materials and Containers for Retail Sale**

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change

in tariff classification or a specific manufacturing or processing operation set out in Annex 2, packaging materials and containers for retail sale, which are classified with the good pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System, shall be disregarded.

2. If the good is subject to a qualifying value content requirement, the value of such packaging materials and containers for retail sale shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

## **Article 39. Packing Materials and Containers for Shipment**

Packing materials and containers for shipment shall be:

- (a) disregarded in determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2; and
- (b) without regard to where they are produced, considered to be originating materials of a Party where the good is produced, in calculating the qualifying value content of the good.

## **Article 40. Claim for Preferential Tariff Treatment**

1. The importing Party shall require a certificate of origin for an originating good of the exporting Party from importers who claim the preferential tariff treatment for the good.

2. Notwithstanding paragraph 1 above, the importing Party shall not require a certificate of origin from importers for:

- (a) an importation of a consignment of originating goods of the exporting Party whose aggregate customs value does not exceed two hundred (200) United States dollars or its equivalent amount in the Party's currency, or such higher amount as it may establish; or
- (b) an importation of an originating good of the exporting Party, for which the importing Party has waived the requirement for a certificate of origin.

3. Where an originating good of the exporting Party is imported through one or more non-Parties, the importing Party may require importers, who claim the preferential tariff treatment for the good, to submit:

- (a) a copy of through bill of lading; or
- (b) a certificate or any other information given by the customs authorities of such non-Parties or other relevant entities, which evidences that it has not undergone operations other than unloading, reloading or any other operation necessary to preserve it in good condition in those non-Parties.

## **Article 41. Certificate of Origin**

1. The certificate of origin referred to in paragraph 1 of Article 40 shall be issued by the competent governmental authority of the exporting Party on request having been made in writing by the exporter or its authorized agent. Such certificate of origin shall include minimum data specified in Annex 3.

2. For the purposes of this Article, the competent governmental authority of the exporting Party may designate other entities or bodies to be responsible for the issuance of the certificate of origin, under the authorization given in accordance with the applicable laws and regulations of the exporting Party.

3. Where the competent governmental authority of the exporting Party designates other entities or bodies to carry out the issuance of the certificate of origin, the exporting Party shall notify in writing the other Party of its designees.

4. For the purposes of this Chapter, upon the entry into force of this Agreement, the Parties shall establish a format of the certificate of origin in English in the Operational Procedures on Trade in Goods and Rules of Origin referred to in Article 25.

5. The certificate of origin shall be completed in English.

6. The issued certificate of origin shall be applicable to a single importation of an originating good of the exporting Party into the importing Party and be valid for 6 months from the date of issuance or such longer period in accordance with that Party's laws and regulations.

7. Where the exporter is not the producer of a good, the exporter may request a certificate of origin on the basis of: (a) a declaration provided by the exporter to the competent governmental authority or its designees based on the information provided by the producer of the good to that exporter; or (b) a declaration voluntarily provided by the producer of the good directly to the competent governmental authority or its designees by the request of the exporter.

8. The certificate of origin shall be issued only after the exporter who requests a certificate of origin, or the producer of a good in the exporting Party referred to in subparagraph 7(b) above, proves to the competent governmental authority or its designees that the good to be exported qualifies as an originating good of the exporting Party.

9. The competent governmental authority of the exporting Party shall provide the other Party with specimen signatures and impressions of stamps used in the offices of the competent governmental authority or its designees.

10. Each Party shall ensure that the competent governmental authority or its designees shall keep a record of the certificates of origin issued for a period of five (5) years after the date on which the certificate was issued. Such record will

include all antecedents, which were presented to prove the qualification as an originating good of the exporting Party.

## **Article 42. Obligations Regarding Exportations**

1. Each Party shall, in accordance with its laws and regulations, ensure that the exporter to whom a certificate of origin has been issued, or the producer of a good in the exporting Party referred to in subparagraph 7(b) of Article 41, shall notify in writing the competent governmental authority of the exporting Party or its designees without delay when he knows that such good does not qualify as an originating good of the exporting Party.
2. Each Party shall encourage that the exporter to whom a certificate of origin has been issued, or the producer of a good in the exporting Party referred to in subparagraph 7(b) of Article 41, keep the records relating to the origin of a good for five (5) years after the date on which the certificate of origin was issued.

## **Article 43. Request for Checking of Certificate of Origin**

1. For the purposes of determining whether a good imported from the other Party under preferential tariff treatment qualifies as an originating good of the other Party, the customs authority of the importing Party may request information relating to the origin of the good from the competent governmental authority of the exporting Party on the basis of a certificate of origin.
2. For the purposes of paragraph 1 above, the competent governmental authority of the exporting Party shall, in accordance with its laws and regulations, provide the information requested in a period not exceeding three (3) months after the date of the receipt of the request. If the customs authority of the importing Party considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the customs authority of the importing Party, the competent governmental authority of the exporting Party shall, in accordance with its laws and regulations, provide the information requested in a period not exceeding two (2) months after the date of the receipt of the request.
3. For the purposes of paragraph 2 above, the competent governmental authority of the exporting Party may request the exporter to whom a certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 7(b) of Article 41, to provide the former with the information requested.

## **Article 44. Verification Visit**

1. If the customs authority of the importing Party is not satisfied with the outcome of the request for checking pursuant to Article 43, it may request the exporting Party to:
  - (a) collect and provide the information relating to the origin of the good and check, for that purpose, the facilities used in the production of the good, through a visit by its competent governmental authority along with the customs authority of the importing Party to the premises of the exporter to whom a certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 7(b) of Article 41; and
  - (b) provide information relating to the origin of the good in the possession of the competent governmental authority or its designee.
2. (a) In cases where the customs authority of the importing Party considers as exceptional, that customs authority may, before or during the request for checking referred to in Article 43, put forward the exporting Party a request referred to in paragraph 1 above. (b) Where the request referred to in subparagraph (a) above is made, Article 43 shall not be applied.
3. When requesting the exporting Party to conduct a visit pursuant to paragraph 1 or 2 above, the importing Party shall deliver a written communication with such request to the exporting Party at least forty (40) days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the latter Party. The competent governmental authority of the exporting Party shall request the written consent of the exporter, or the producer of the good in the exporting Party whose premises are to be visited.
4. The communication referred to in paragraph 3 above shall include:
  - (a) the identity of the customs authority issuing the communication;
  - (b) the name of the exporter, or the producer of the good in the exporting Party whose premises are requested to be visited;
  - (c) the proposed date and place of the visit;
  - (d) the object and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the certificate of origin; and
  - (e) the names and titles of the officials of the customs authority of the importing Party to be present during the visit.
5. The exporting Party shall respond in writing to the importing Party, within thirty (30) days of the receipt of the communication referred to in paragraph 3 above, if it accepts or refuses to conduct a visit requested pursuant to paragraph 1 or 2 above.
6. The competent governmental authority of the exporting Party shall, in accordance with its laws and regulations, provide within forty five (45) days or any other mutually agreed period from the last day of the visit, to the customs authority of the importing Party the information obtained pursuant to paragraph 1 or 2 above.

## **Article 45. Determination of Origin and Preferential Tariff Treatment**

1. The customs authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Chapter.
2. The competent governmental authority of the exporting Party shall, when it cancels the decision to issue the certificate of origin, promptly notify the cancellation to the exporter to whom the certificate of origin has been issued, and to the customs authority of the importing Party except where the certificate has been returned to the competent governmental authority. The customs authority of the importing Party may determine that the good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment where it receives the notification.
3. The customs authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment, and a written determination thereof shall be sent to the competent governmental authority of the exporting Party:
  - (a) where the competent governmental authority of the exporting Party fails to respond to the request within the period referred to in paragraph 2 of Article 43 or paragraph 6 of Article 44;
  - (b) where the exporting Party refuses to conduct a visit, or that Party fails to respond to the communication referred to in paragraph 3 of Article 44 within the period referred to in paragraph 5 of Article 44; or
  - (c) where the information provided to the customs authority of the importing Party pursuant to Article 43 or 44, is not sufficient to prove that the good qualifies as an originating good of the exporting Party.
4. After carrying out the procedures outlined in Article 43 or 44 as the case may be, the customs authority of the importing Party shall provide the competent governmental authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination. The competent governmental authority of the exporting Party shall inform such determination by the customs authority of the importing Party to the exporter, or the producer of the good in the exporting Party, whose premises were subject to the visit referred to in Article 44.

## **Article 46. Confidentiality**

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it as confidential pursuant to this Chapter, and shall protect, in accordance with its laws and regulations, that information from disclosure that could prejudice the competitive position of the persons providing the information.
2. Information obtained by the customs authority of the importing Party pursuant to this Chapter:
  - (a) may only be used by such authority for the purposes of this Chapter; and
  - (b) shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless the information is requested to the other Party and provided to the former Party, through the diplomatic channels or other channels established in accordance with the applicable laws of the requested Party.

## **Article 47. Penalties, Sanctions or other Measures**

- Each Party shall ensure, in accordance with its laws and regulations, that appropriate penalties, sanctions or other measures are maintained or established against its exporters to whom a certificate of origin has been issued and its producers of the goods in the exporting Party referred to in subparagraph 7(b) of Article 41:
- (a) for providing false declaration or documents to its competent governmental authority or its designees prior to the issuance of certificate of origin; and
  - (b) for failing to notify in writing to the competent governmental authority of the exporting Party or its designees without delay after having known that such good does not qualify as an originating good of the exporting Party.

## **Article 48. Miscellaneous**

1. Communications, including in the form of documents, between the importing Party and the exporting Party shall be made in English.
2. For the application of the relevant product specific rules set out in Annex 2 and the determination of origin, the Generally Accepted Accounting Principles in the exporting Party shall be applied.

## **Article 49. Sub-committee on Rules of Origin**

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13.

2. The functions of the Sub-Committee shall be:

(a) reviewing and making appropriate recommendations, as needed, to the Joint Committee on:

(i) the implementation and operation of this Chapter;

(ii) any amendments to Annexes 2 and 3, proposed by either Party; and

(iii) the Operational Procedures on Trade in Goods and Rules of Origin referred to in Article 25;

(b) considering any other matter as the Parties may agree related to this Chapter;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.

## **Chapter 4. Customs Procedures**

### **Article 50. Scope and Coverage**

1. This Chapter shall apply to customs procedures required for the clearance of goods traded between the Parties.

2. This Chapter shall be implemented by the Parties in accordance with the laws and regulations in force in each Party and within the available resources of their respective customs authorities.

### **Article 51. Definitions**

For the purposes of this Chapter:

(a) the term "customs authority" means the customs authority as defined in subparagraph (b) of Article 28; and

(b) the term "customs laws" means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party.

### **Article 52. Transparency**

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws is readily available to any interested person.

2. When information that has been made available must be amended due to changes in its customs laws, each Party shall, wherever possible, continue to make the revised information publicly available prior to the entry into force of the changes.

3. At the request of the interested person, each Party shall provide, as quickly and as accurately as possible, information relating to the specific matters raised by the interested person and pertaining to its customs laws. Each Party shall supply not only the information specifically requested but also any other pertinent information which it considers the interested person should be made aware of. Each Party shall endeavor to provide such information in language mutually understandable within its available resources.

### **Article 53. Customs Clearance**

1. Both Parties shall make cooperative efforts for simplification and harmonization of their customs procedures by observing the following principles:

(a) the application of customs procedures in a predictable, consistent and transparent manner;

(b) cooperation wherever appropriate with other national authorities, customs authorities of non-Parties and the trading communities; and

(c) the provision to affected parties of easily accessible processes of administrative and judicial review.

2. For the accomplishment of the purpose of paragraph 1 above, each Party shall:

(a) make use of information and communications technology;

(b) reduce and simplify import and export documentation requirements; and

(c) harmonize its customs procedures, as far as possible, with relevant international standards and recommended practices such as those made under the auspices of the World Customs Organization.

### **Article 54. Goods In Transit**

Each Party shall continue to facilitate customs clearance of goods in transit from or to the other Party in accordance with paragraph 3 of Article V of the GATT 1994.

### **Article 55. Cooperation and Exchange of Information**

1. The Parties shall cooperate and exchange information with each other, in the fields of customs procedures, including their enforcement against trafficking of prohibited goods and importation and exportation of goods suspected of infringing intellectual property rights.
2. For the effective implementation of paragraph 1 above, the Parties shall cooperate and exchange information, as provided for in the Implementing Agreement.
3. Article 9 shall not apply to the exchange of information under this Article.

## **Article 56. Sub-committee on Customs Procedures**

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Customs Procedures (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13.
2. The functions of the Sub-Committee shall be:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) reporting the findings of the Sub-Committee to the Joint Committee;
  - (c) identifying areas to be improved for facilitating trade between the Parties; and
  - (d) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.
3. The composition of the Sub-Committee shall be specified in the Implementing Agreement.
4. The Sub-Committee shall meet at such venue and times as may be agreed by the Parties.

## **Chapter 5. Paperless Trading**

### **Article 57. Cooperation on Paperless Trading between the Parties**

The Parties, recognizing that trading using electronic filing and transfer of trade-related information and electronic versions of documents such as bills of lading, invoices, letters of credit and insurance certificates, as an alternative to paper-based methods (hereinafter referred to in this Chapter as "paperless trading"), will significantly enhance the efficiency of trade through reduction of cost and time, shall cooperate through the exchange of views and information on realizing and promoting paperless trading between them.

### **Article 58. Cooperation on Paperless Trading between Private Entities**

The Parties shall encourage cooperation between the irrelevant private entities engaging in activities related to paperless trading. Such cooperation may include the setting up and operation by such private entities of facilities (hereinafter referred to in this Chapter as "the facilities") that provide efficient and secured flow of electronic trade-related information and electronic versions of documents between juridical persons of the Parties.

### **Article 59. Review of Realization of Paperless Trading**

The Parties shall review, at such frequency as the Parties may agree on, the progress made in realizing paperless trading in which electronic trade-related information and electronic versions of relevant documents exchanged between enterprises of the Parties through the facilities may be used as supporting documents by the trade regulatory bodies of the respective Parties.

## **Chapter 6. Mutual Recognition**

### **Article 60. General Obligations**

1. Each Party shall, in accordance with the provisions of this Chapter, permit participation of conformity assessment bodies of the other Party, in the system of the former Party providing for conformity assessment procedures and shall accept the results of conformity assessment procedures required by its applicable laws, regulations and administrative provisions specified in the relevant Sectoral Annex, including certificates of conformity, that are conducted by the conformity assessment bodies of the other Party registered by the Registering Authority of the former Party.
2. Where a license is required by a Party in addition to certificates of conformity referred to in paragraph 1 above, for using marks of conformity, such license shall be issued immediately and unconditionally upon submission of application for a license so as not to be used as a means of avoiding obligations referred to in paragraph 1 above.

### **Article 61. Scope and Coverage**



1. This Chapter applies to registration of conformity assessment bodies and conformity assessment procedures for products or processes covered by the Sectoral Annex. The Sectoral Annex shall be attached to this Agreement as Annex4 and may consist of Part 1 and Part 2.
2. Part 1 of the Sectoral Annex shall include, inter alia, provisions on scope and coverage.
3. Part 2 of the Sectoral Annex shall set out the following matters:
  - (a) the applicable laws, regulations and administrative provisions of each Party stipulating the products covered by this Chapter;
  - (b) the applicable laws, regulations and administrative provisions of each Party stipulating the technical requirements covered by this Chapter and the conformity assessment procedures covered by this Chapter to satisfy such requirements;
  - (c) the applicable laws, regulations and administrative provisions of each Party stipulating the criteria for registration of conformity assessment bodies; and
  - (d) the list of Registering Authorities.

## **Article 62. Definitions**

1. For the purposes of this Chapter:
  - (a) the term "certificates of conformity" means documents issued by registered or accredited conformity assessment bodies as a result of conformity assessment procedures, stating that products or processes fulfill relevant technical requirements set out in the applicable laws, regulations and administrative provisions of a Party specified in the relevant Sectoral Annex;
  - (b) the term "conformity assessment bodies" means bodies which conduct conformity assessment procedures;
  - (c) the term "conformity assessment bodies of the other Party" means conformity assessment bodies located in the other Party;
  - (d) the term "conformity assessment procedures" means procedures to determine, directly or indirectly, whether products or processes fulfill relevant technical requirements set out in the applicable laws, regulations and administrative provisions of a Party specified in the relevant Sectoral Annex;
  - (e) the term "criteria for registration" means the criteria which conformity assessment bodies of a Party are required to fulfill in order to be registered or accredited by the Registering Authority of the other Party, and other relevant conditions which conformity assessment bodies registered or accredited by the Registering Authority of the other Party are required to continuously fulfill after the registration or accreditation, as set out in the applicable laws, regulations and administrative provisions of that other Party specified in the relevant Sectoral Annex;
  - (f) the term "entities of the other Party" means entities located in the other Party;
  - (g) the term "Registering Authority" means an authority of a Party which is authorized to register or accredit the conformity assessment bodies of the other Party and withdraw such registration or accreditation in accordance with the applicable laws, regulations and administrative provisions of the former Party specified in the relevant Sectoral Annex; and
  - (h) the term "registration" means the registration or accreditation of conformity assessment bodies of a Party by the Registering Authority of the other Party pursuant to the applicable laws, regulations and administrative provisions of that other Party specified in the relevant Sectoral Annex.
2. Any term used in this Chapter, unless otherwise defined herein, has the meaning assigned to it in the ISO/IEC Guide 2: 1996 Edition, "Standardization and related activities – General vocabulary".

## **Article 63. Registration and Withdrawal of Registration of Conformity Assessment Bodies**

1. (a) The Registering Authority of a Party shall register the conformity assessment bodies of the other Party in accordance with the applicable laws, regulations and administrative provisions of the former Party specified in the relevant Sectoral Annex, where the conformity assessment bodies which apply for registration fulfill the criteria for registration of the former Party set out in its applicable laws, regulations and administrative provisions specified in the relevant Sectoral Annex.  
(b) The Registering Authority of a Party may withdraw the registration of the conformity assessment bodies of the other Party, where the conformity assessment bodies no longer fulfill the criteria for registration of the former Party set out in its applicable laws, regulations and administrative provisions specified in the relevant Sectoral Annex.
2. (a) For the purposes of confirming the fulfillment of the criteria for registration by conformity assessment bodies of the other Party, the Registering Authority of a Party may:
  - (i) make inquiries by means of written questionnaires to the conformity assessment bodies of the other Party or during the visit referred to in subparagraph (ii) below;
  - (ii) conduct visit on the premises of the conformity assessment bodies of the other Party on the condition that such other Party do not object to such visit and the conformity assessment bodies concerned give consent to such visit and, if such other Party so requests, officials of the Registering Authority of such other Party join the visit; and
  - (iii) have its officials to accompany conformity assessment bodies of the other Party applying for registration as an observer where those bodies carry out, as part of the conformity assessment procedures, conformity assessment activities at the

premises of entities of the other Party subject to such activities on the condition that such other Party do not object to such accompaniment and the entities and conformity assessment bodies concerned give consent to such accompaniment and, if such other Party so requests, officials of the Registering Authority of such other Party join the accompaniment. Note: If no objection is communicated to the Registering Authority concerned within ten (10) days or a period specified by such Registering Authority, whichever is longer, from the receipt of the request for the visit or the accompaniment, as the case may be, it shall be understood that no objection was made.

(b) The Registering Authority of a Party shall immediately communicate to the other Party whenever it sends questionnaires referred to in subparagraph (a)(i) above.

(c) The visit and accompaniment referred to in subparagraphs (a)(ii) and (a)(iii) above respectively shall be carried out in a manner not inconsistent with the laws and regulations of the Party where the visit and accompaniment take place. (d) The Party shall use the information obtained by its Registering Authority in connection with such inquiries, visit or accompaniment as an observer only for the purposes referred to in subparagraph (a) above.

3. The Registering Authority of a Party may withdraw the registration of the conformity assessment bodies of the other Party, where the inquiries specified in subparagraph 2(a)(i) above are not responded to without valid reasons or are responded to falsely, or the other Party object to the visit or the conformity assessment bodies concerned do not give consent referred to in subparagraph 2(a)(ii) above, or the visit specified in subparagraph 2(a)(ii) above is refused, obstructed or evaded.

## **Article 64. Sub-committee on Mutual Recognition**

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Mutual Recognition (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13.

2. The functions of the Sub-Committee shall be:

(a) exchanging information on standards and conformity assessment procedures;

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

(c) examining the possibility of negotiating on additional products or processes for mutual recognition;

(d) discussing any issues related to this Chapter, including ways to promote cooperation on standards and conformity assessment procedures between the Parties in view of the effective implementation and operation of this Chapter;

(e) reporting the findings of the Sub-Committee to the Joint Committee; and

(f) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.

## **Article 65. Operational Procedures on Mutual Recognition**

Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures on Mutual Recognition that provide detailed regulations pursuant to which the Registering Authorities shall implement their functions under this Chapter.

## **Article 66. General Exceptions**

Nothing in this Chapter shall be construed to limit the authority of a Party to take measures it considers appropriate, for protecting health, safety or the environment or prevention of deceptive practices.

## **Article 67. Miscellaneous Provisions**

1. Nothing in this Chapter shall be construed to authorize a Party to take compulsory measures against the conformity assessment bodies of the other Party or entities of the other Party subject to conformity assessment procedures, or against their representatives, employees and other personnel. It is confirmed that each Party shall not impose any criminal, civil or administrative penalty on the conformity assessment bodies of the other Party or entities of the other Party subject to conformity assessment procedures, or on their representatives, employees and other personnel in connection with this Chapter.

2. Nothing in this Chapter shall be construed so as to oblige a Party to accept the standards of the other Party.

3. Nothing in this Chapter shall be construed so as to affect the rights and obligations that either Party has as a party to the Agreement on Technical Barriers to Trade in Annex 1 A to the WTO Agreement.

## **Article 68. Confidentiality**

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it as confidential pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive

position of the persons providing the information.

2. Information obtained pursuant to this Chapter shall not be used by a Party in any criminal proceedings carried out by a court or a judge, unless the information is requested to the other Party and provided to the former Party, through the diplomatic channels or other channels established in accordance with the applicable laws of the requested Party.

## **Article 69. Sectoral Annex**

If a Party introduces new or additional conformity assessment procedures within the same product coverage to satisfy the technical requirements set out in the applicable laws, regulations and administrative provisions specified in the relevant Sectoral Annex, Part 2 of the Sectoral Annex shall be amended to set out the applicable laws, regulations and administrative provisions stipulating such new or additional conformity assessment procedures, in accordance with the procedures set out in paragraph 2 of Article 163.

## **Chapter 7. Trade In Services**

### **Article 70. Scope and Coverage**

1. This Chapter shall apply to measures by a Party affecting trade in services.
2. This Chapter shall not apply to:
  - (a) in respect of air transport services, measures affecting traffic rights, however granted; or to measures affecting services directly related to the exercise of 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;
  - (b) cabotage in maritime transport services;
  - (c) subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance;
  - (d) measures pursuant to immigration laws and regulations; and
  - (e) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis.
3. Articles 72, 73 and 76 shall not apply to any measure by a Party with respect to government procurement.
4. Annex 5 provides supplementary provisions to this Chapter with respect to measures affecting the supply of financial services.

### **Article 71. Definitions**

For the purposes of this Chapter:

- (a) the term "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;
- (b) the term "commercial presence" means any type of business or professional establishment, including through:
  - (i) the constitution, acquisition or maintenance of a juridical person; or
  - (ii) the creation or maintenance of a branch or a representative office; within the Area of a Party for the purposes of supplying a service;
- (c) the term "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;
- (d) the term "juridical person of the other Party" means a juridical person which is either:
  - (i) constituted or otherwise organized under the law of the other Party; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (aa) natural persons of the other Party; or
    - (bb) juridical persons of the other Party identified under subparagraph (i) above;
- (e) a juridical person is:
  - (i) "owned" by persons if more than fifty (50) percent of the equity interest in it is owned by such persons;
  - (ii) "controlled" by persons if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
  - (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (f) the term "measures by a Party" means measures taken by:
  - (i) central or local governments; and

- (ii) non-governmental bodies in the exercise of powers delegated by central or local governments;
- (g) the term "measures by a Party affecting trade in services" includes measures in respect of:
  - (i) the purchase, payment or use of a service;
  - (ii) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally;
  - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the Area of the other Party;
- (h) the term "monopoly supplier of a service" means any person, public or private, which in the relevant market of the Area of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;
- (i) the term "natural person of the other Party" means a natural person who resides in the other Party or elsewhere and who under the law of the other Party is a national of the other Party;
- (j) the term "sector" of a service means:
  - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule of Specific Commitments in Part 1 of Annex 6; or
  - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (k) the term "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;
- (l) the term "service consumer" means any person that receives or uses a service;
- (m) the term "service of the other Party" means a service which is supplied:
  - (i) from or in the Area of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel or its use in whole or in part; or
  - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Party;
- (n) the term "services" includes any service in any sector except services supplied in the exercise of governmental authority;
- (o) the term "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;
- (p) the term "service supplier" means any person that supplies a service; Note: Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the Area where the service is supplied.
- (q) the term "service supplier of the other Party" means any natural person of the other Party or juridical person of the other Party, that supplies a service;
- (r) the term "state enterprise" means an enterprise owned or controlled by a Party;
- (s) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (t) the term "trade in services" means the supply of a service:
  - (i) from the Area of one Party into the Area of the other Party ("cross-border mode");
  - (ii) in the Area of one Party to the service consumer of the other Party ("consumption abroad mode");
  - (iii) by a service supplier of one Party, through commercial presence in the Area of the other Party ("commercial presence mode");
  - (iv) by a service supplier of one Party, through presence of natural persons of that Party in the Area of the other Party ("presence of natural persons mode"); and
- (u) the term "traffic rights" means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

## **Article 72. Market Access**

1. With respect to market access through the modes of supply defined in subparagraph (t) of Article 71, each Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Part 1 of Annex 6.

Note: If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (t)(i) of Article 71 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (t)(iii) of Article 71, it is thereby committed to allow related transfers of capital into its Area.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire Area, unless otherwise specified in its Schedule of Specific Commitments in Part 1 of Annex 6, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; Note: This subparagraph does not cover measures of a Party which limit inputs for the supply of services.
- (d) limitations on 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;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

## **Article 73. National Treatment**

1. In the sectors inscribed in its Schedule of Specific Commitments in Part 1 of Annex 6, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers.

Note: Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

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

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

## **Article 74. Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 72 and 73, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Part 1 of Annex 6.

## **Article 75. Schedule of Specific Commitments**

1. Each Party shall set out in a schedule the Specific Commitments it undertakes under Articles 72, 73 and 74.

2. With respect to sectors where the specific commitments are undertaken, each Schedule of Specific Commitments in Part 1 of Annex 6 shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments; and
- (d) where appropriate, the time-frame for implementation of such commitments.

3. With respect to sectors or sub sectors where the specific commitments are undertaken and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 2(a) and (b) above, shall be limited to existing non-conforming measures.

4. Measures inconsistent with both Articles 72 and 73 shall be inscribed in the column relating to Article 72. This inscription will be considered to provide a condition or qualification to Article 73 as well. 5. Schedules of Specific Commitments shall be annexed to this Agreement as Part 1 of Annex 6.

## **Article 76. Most-favored-nation Treatment**

1. Each Party shall accord to services and services suppliers of the other Party treatment no less favorable than that it

accords, in like circumstances, to services and service suppliers of any non-Party.

2. The provision of paragraph 1 above shall not apply to any measure by a Party with respect to sectors, subsectors or activities, as set out in its Schedule to Part 2 of Annex 6.

## **Article 77. Authorization, Licensing or Qualification**

With a view to ensuring that any measure by a Party relating to the authorization, licensing or qualification of service suppliers of the other Party does not constitute an unnecessary barrier to trade in services, each Party shall endeavor to ensure that such measure:

- (a) is based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) is not more burdensome than necessary to ensure the quality of the service; and
- (c) does not constitute a disguised restriction on the supply of the services.

## **Article 78. Mutual Recognition**

1. A Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other Party for the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of service suppliers of the other Party.

2. Recognition referred to in paragraph 1 above, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognizes, by agreement or arrangement between the Party and a non-Party or unilaterally, the education or experience obtained, requirements met or licenses or certifications granted in the non-Party;

- (a) nothing in Article 76 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met or licenses or certifications granted in the other Party; and
- (b) the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licenses or certifications granted in the other Party should also be recognized.

## **Article 79. Transparency**

1. The competent authorities referred to in paragraph 2 of Article 3 shall, upon request by service suppliers of the other Party, promptly respond to specific questions from, and provide information to, the service suppliers with respect to matters referred to in paragraph 1 of Article 3, including requirements and procedures for licensing and qualification, through enquiry points. The enquiry points shall be notified to the other Party by diplomatic note on the date of entry into force of this Agreement.

2. Each Party shall prepare, forward to the other Party and make public a list providing all existing measures, within the scope of this Chapter, at the central governmental level and, in the case of Japan, prefectural governmental level, and in the case of the Philippines, provincial governmental level, which are inconsistent with Articles 72 and/or 73, whether or not these measures are included in its specific commitments in Part 1 of Annex 6. The list shall include the following elements and shall be reviewed annually and revised as necessary:

- (a) sector and subsector or matter;
- (b) type of inconsistency (i.e. Market Access and/or National Treatment);
- (c) legal source or authority of the measure; and
- (d) succinct description of the measure. Note: The list under this paragraph will be made solely for the purposes of transparency, and shall not be construed to affect any rights and obligations of a Party under this Chapter.

## **Article 80. Monopolies and Exclusive Service Suppliers**

1. Each Party shall ensure that any monopoly supplier of a service in its Area does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with the Party's specific commitments.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its Area in a manner inconsistent with such commitments.

3. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

- (a) authorizes or establishes a small number of service suppliers; and
- (b) substantially prevents competition among those suppliers in its Area.

## **Article 81. Payments and Transfers**

1. Except under the circumstances envisaged in Article 82, a Party shall not apply restrictions on international transfers and payments for current transactions relating to trade in services.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its commitments under this Chapter regarding such transactions, except under Article 82, or at the request of the International Monetary Fund.

## **Article 82. Restrictions to Safeguard the Balance of Payments**

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services, including on payments or transfers for transactions.
2. The restrictions referred to in paragraph 1 above:
  - (a) shall ensure that the other Party is treated as favorably as any non-Party;
  - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
  - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
  - (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1 above; and
  - (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 above improves.
3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to their economic or development programs. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular service sector.
4. Any restrictions adopted or maintained under paragraph 1 above, or any changes therein, shall be promptly notified to the other Party.

## **Article 83. General Exceptions**

- Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services between the Parties, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:
- (a) necessary to protect public morals or to maintain public order; Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.
  - (b) necessary to protect human, animal or plant life or health;
  - (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
    - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
    - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
    - (iii) safety.

## **Article 84. Security Exceptions**

1. Nothing in this Chapter shall be construed:
  - (a) to require a Party to furnish any information, the disclosure of which it considers 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 the supply of services as carried out directly or indirectly for the purposes of provisioning a military establishment;
    - (ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons, or relating to fissionable and fusionable materials or the materials from which they are derived;
    - (iii) 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 the maintenance of international peace and security.
2. Each Party shall be informed to the fullest extent possible of measures taken by the other Party under subparagraphs 1(b) and (c) and of their termination.

## **Article 85. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party, and that denying Party:
  - (a) does not maintain diplomatic relations with the non-Party; or
  - (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.
2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party and that has no substantial business activities in the Area of that other Party. This paragraph shall not apply to maritime transport services supplied by a vessel registered under the laws of the other Party.

## **Article 86. Sub-committee on Trade In Services**

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13.
2. The functions of the Sub-Committee shall be:
  - (a) reviewing commitments, including the scope of commitments to be indicated with "SS" pursuant to paragraph 3 of Article 75, with respect to measures affecting trade in services in this Chapter, with a view to achieving further liberalization on a mutually advantageous basis and securing an overall balance of rights and obligations;
  - (b) reviewing the implementation and operation of this Chapter;
  - (c) exchanging information on domestic laws and regulations;
  - (d) discussing any issues related to this Chapter, including deadlines for preparing, forwarding to the other Party and making public the list referred to in Article 79;
  - (e) reporting the findings of the Sub-Committee to the Joint Committee; and
  - (f) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.

## **Chapter 8. Investment**

### **Article 87. Scope and Coverage**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of the other Party; and
  - (b) investments of investors of the other Party in the Area of the former Party.
2. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.
3. Nothing in this Chapter shall be construed to expand the scope of the specific commitments undertaken by either Party pursuant to Chapter 7.
4. Articles 89, 90 and 93 shall not apply to any measure that the Philippines adopts or maintains relating to investors of Japan and their investments in service sectors with respect to the establishment, acquisition or expansion of investments.

### **Article 88. Definitions**

For the purposes of this Chapter:

- (a) the term "financial services" shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of the GATS;
- (b) the term "investments" means every kind of asset owned or controlled, directly or indirectly, by an investor of a Party, including:
  - (i) a juridical person;
  - (ii) shares, stocks or other forms of equity participation in a juridical person, including rights derived therefrom;
  - (iii) bonds, debentures, and loans and other forms of debt, including rights derived therefrom;
  - (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
  - (v) claims to money and claims to any performance under contract having a financial value;
  - (vi) intellectual property rights, including copyrights, patent rights, rights relating to trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;
  - (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations, and permits; and
  - (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges; investments also include profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments. A change in the form in which assets are invested does not affect their



character as investments;

(c) the term "investor of a Party" means:

(i) a natural person who is a national of a Party and who is not a national of the other Party; or

(ii) juridical person of a Party, that seeks to make, is making, or has made investments in the Area of the other Party. A branch of a juridical person of a non-Party, which is located in the Area of a Party, shall not be deemed as an investor of that Party;

(d) a juridical person is:

(i) "owned" by persons if more than fifty (50) percent of the equity interest in it is owned by such persons; or

(ii) "controlled" by persons if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(e) the term "a juridical person of a Party" means a juridical person duly constituted or otherwise organized under the law of a Party, with its seat of control or substantial business activities in the Area of that Party; and

(f) the term "transfers" means transfers and international payments.

## **Article 89. National Treatment**

Each Party shall accord to investors of the other Party and to their investments treatment no less favorable than that it accords, in like circumstances, to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments (hereinafter referred to in this Chapter as "investment activities").

## **Article 90. Most-favored-nation Treatment**

Each Party shall accord to investors of the other Party and to their investments treatment no less favorable than that it accords, in like circumstances, to investors of a non-Party and to their investments with respect to investment activities.

## **Article 91. General Treatment**

Each Party shall accord to investments of investors of the other Party treatment in accordance with international law, including fair and equitable treatment and full protection and security. Note: This Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. 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 the customary international law minimum standard of treatment of aliens. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not *ipso facto* establish that there has been a breach of this Article.

## **Article 92. Access to the Courts of Justice**

Each Party shall in its Area accord to investors of the other Party treatment no less favorable than the treatment which it accords, in like circumstances, to its own investors or investors of a non-Party with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investors' rights.

## **Article 93. Prohibition of Performance Requirements**

1. Neither Party shall impose or enforce, as a condition for investment activities in its Area of an investor of the other Party, any of the following requirements:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from persons in its Area;

(d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments related to such investment activities;

(e) to restrict sales of goods or services in its Area that investments related to such investment activities produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings;

(f) to appoint, as executives, managers or members of boards of directors, individuals of any particular nationality;

(g) to hire a given level of its nationals;

(h) to transfer technology, a production process or other proprietary knowledge to a person in its Area, except when the

requirement:

(i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or

(ii) concerns the transfer of intellectual property rights which is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to in this Chapter as "the TRIPS Agreement");

(i) to locate the headquarters of that investor for a specific region or the world market in its Area;

(j) to achieve a given level or value of research and development in its Area; or

(k) to supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or world market, exclusively from its Area.

2. The provision of paragraph 1 above does not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Party, on compliance with any of the requirements set forth in subparagraphs (g) through (k) of paragraph 1 above.

## **Article 94. Reservations and Exceptions**

1. Articles 89, 90 and 93 shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at the central government level, as set out in its Schedule to Part I of Annex 7;

(b) any existing non-conforming measure that is maintained by:

(i) a prefecture in the case of Japan or a province in the case of the Philippines, for one (1) year after the date of entry into force of this Agreement, and thereafter as to be set out by a Party in its Schedule to Part I of Annex 7 in accordance with paragraph 2 below; or

(ii) a local government other than prefectures and provinces referred to in subparagraph (i) above;

(c) the continuation or prompt renewal of any nonconforming measure referred to in sub paragraphs (a) and (b) above; or

(d) an amendment to any non-conforming measure referred to in sub paragraphs (a) and (b) above, provided that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 89, 90 and 93.

2. Each Party shall set out in its Schedule to Part I of Annex 7, within one (1) year of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a prefecture or a province referred to in subparagraph 1(b)(i) above and shall notify thereof to the other Party by a diplomatic note.

3. Articles 89, 90 and 93 shall 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 Part 2 of Annex 7, subject to the conditions set out therein.

4. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by Part 2 of Annex 7, 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.

5. In cases where a Party makes an amendment referred to in subparagraph 1(d) above, or where a Party adopts any new or more restrictive measure with respect to sectors, subsectors or activities as set out in its Schedule to Part 2 of Annex 7 after the date of the entry into force of this Agreement, that Party shall, prior to the implementation of the amendment or the new or more restrictive measure, or in exceptional circumstances, as soon as possible thereafter: (a) notify the other Party of the following elements:

(i) sector and subsector or activity;

(ii) type of reservation;

(iii) level of Government;

(iv) measures; and

(v) description; and

(b) hold, upon request by the other Party, consultations in good faith with that other Party with a view to achieving mutual satisfaction.

6. Each Party shall endeavor, where appropriate, to reduce or eliminate the reservation set out in its Schedules to Parts 1 and 2 of Annex 7 respectively.

7. Articles 89, 90 and 93 shall not apply to any measure that a Party adopts or maintains with respect to government procurement.

8. Articles 89 and 90 shall not apply to any measure covered by an exception to the obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

9. Nothing in this Article shall be construed so as to derogate from the obligations of the Parties under the Agreement on Trade Related Investment Measures in Annex 1A to the WTO Agreement.

## **Article 95. Expropriation and Compensation**

1. Neither Party shall expropriate or nationalize investments in its Area of investors of the other Party or take any measure equivalent to expropriation or nationalization (hereinafter referred to in this Chapter as "expropriation") except:
  - (a) for a public purpose;
  - (b) on a non-discriminatory basis;
  - (c) in accordance with due process of law; and
  - (d) upon payment of prompt, adequate and effective compensation.
2. Compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred without public announcement, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.
3. The compensation shall be paid without delay and shall carry an appropriate interest, taking into account the length of time from the time of expropriation until the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of the expropriation, into the currency of the Party of the investors concerned and freely usable currencies defined in the Articles of Agreement of the International Monetary Fund.
4. The investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investor's case and the amount of compensation in accordance with the principles set out in this Article.

## **Article 96. Protection from Strife**

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favorable than the most favorable treatment which it accords to any investors.
2. Any payments made pursuant to paragraph 1 above shall be effectively realizable, freely convertible and freely transferable.

## **Article 97. Transfers**

1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely into and out of its Area without delay. Such transfers shall include:
  - (a) the initial capital and additional amounts to maintain or increase investments;
  - (b) profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments;
  - (c) proceeds from the total or partial sale or liquidation of investments;
  - (d) payments made under a contract including loan payments in connection with investments;
  - (e) earnings and remuneration of personnel from the other Party who work in connection with investments in the Area of the former Party; and
  - (f) payments made in accordance with Articles 95 and 96.
2. Neither Party shall prevent transfers into and out of its Area from being made without delay in freely usable currencies at the market rate of exchange prevailing on the date of the transfer.
3. Notwithstanding paragraphs 1 and 2 above, a Party may delay or prevent a transfer into and out of its Area through the equitable, non-discriminatory and good-faith application of its laws relating to:
  - (a) bankruptcy, insolvency or the protection of the rights of creditors;
  - (b) issuing, trading or dealing in securities, futures, options or derivatives;
  - (c) criminal or penal offences;
  - (d) registration, reportorial and prior approval requirement concerning transfers of currency or other monetary instruments; or Note: Prior approval requirement applies only to short-term foreign currency loans with the original maturity of up to one (1) year.
  - (e) ensuring compliance with orders or judgments in adjudicatory proceedings.

## **Article 98. Subrogation**

1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, arising from or pertaining to an investment of that investor within the Area of the other Party, that other Party shall:
  - (a) recognize the assignment, to the former Party or its designated agency, of any right or claim of such investor that formed the basis of such payment; and
  - (b) recognize the right of the former Party or its designated agency to exercise by virtue of subrogation any such right or

claim to the same extent as the original right or claim of the investor.

2. Articles 95, 96 and 97 shall apply *mutatis mutandis* as regards payment to be made to the Party or its designated agency first mentioned in paragraph 1 above by virtue of such assignment of right or claim, and the transfer of such payment.

## **Article 99. General and Security Exceptions**

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on investments of investors of the other Party in the Area of a Party, nothing in this Chapter other than Article 96 shall be construed to prevent a Party from adopting or enforcing measures:

(a) necessary to protect human, animal or plant life or health;

(b) necessary to protect public morals or to maintain public order; Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(c) which it considers necessary for protection of its essential security interests;

(i) taken in time of war, or armed conflict, or other emergency in that Party or in international relations; or

(ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons; or

(d) in pursuance of its obligations under United Nations Charter for the maintenance of international peace and security.

2. In cases where a Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Chapter other than Article 96, that Party shall, prior to the entry into force of the measure or as soon thereafter as possible, notify the other Party of the following elements:

(a) sector and subsector or activity;

(b) obligation or article in respect of the measure;

(c) legal source of the measure;

(d) succinct description of the measure; and

(e) purpose of the measure.

3. Notwithstanding the provisions of Article 89, each Party may prescribe special formalities in connection with the establishment of investments by investors of the other Party in its Area such as the compliance with registration requirements, provided that such special formalities do not impair the substance of the rights under this Chapter.

## **Article 100. Temporary Safeguard Measures**

1. A Party may adopt or maintain measures in consistent with its obligations provided for in Article 89 relating to cross-border capital transactions and Article 97:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1 above:

(a) shall be consistent with the Articles of Agreement of the International Monetary Fund so long as the Party taking the measures is a party to the said Articles of Agreement;

(b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1 above;

(c) shall be temporary and shall be eliminated as soon as conditions permit; and

(d) shall promptly be notified to the other Party.

3. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.

## **Article 101. Prudential Measures**

Notwithstanding any other provisions of this Chapter, a Party may adopt or maintain measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a person supplying financial services, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

## **Article 102. Environmental Measures**

Each Party recognizes that it is inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion in its Area of investments by investors of the

other Party.

## **Article 103. Investment and Labor**

1. The Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in paragraph 2 below as an encouragement for the establishment, acquisition, expansion or retention of an investment in its Area. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the Parties shall consult with a view to avoiding any such encouragement.
2. For purposes of this Article, "labor laws" means each Party's laws or regulations that are directly related to the following internationally recognized labor rights:
  - (a) the right of association;
  - (b) the right to organize and bargain collectively;
  - (c) a prohibition on the use of any form of forced or compulsory labor;
  - (d) labor protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
  - (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

## **Article 104. Taxation Measures as Expropriation**

1. Article 95 shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 1 of Article 95.
2. Where paragraph 1 above applies, Articles 92 and 106 shall also apply in respect of taxation measures.

Note: A taxation measure which is applied in a nondiscriminatory manner shall not be considered to constitute expropriation.

## **Article 105. Denial of Benefits**

A Party may deny the benefits of this Chapter to an investor of the other Party that is a juridical person of such Party and to an investment of such investor if the juridical person is owned or controlled by investors of a non-Party and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person or to its investments.

## **Article 106. Sub-committee on Investment**

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13.
2. The functions of the Sub-Committee shall be:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) reviewing the reservations set out in the Schedules to Parts 1 and 2 of Annex 7 for the purposes of contributing to the reduction or elimination, where appropriate, of such reservation, and encouraging favorable conditions for investors of both Parties;
  - (c) discussing any issues related to this Chapter, including issues related to taxation measures as expropriation;
  - (d) reporting the findings of the Sub-Committee to the Joint Committee; and
  - (e) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.

## **Article 107. Further Negotiation**

1. The Parties shall enter into negotiations after the date of entry into force of this Agreement to establish a mechanism for the settlement of an investment dispute between a Party and an investor of the other Party.
2. In the absence of the mechanism for the settlement of an investment dispute between a Party and an investor of the other Party, the resort to international conciliation or arbitration tribunal is subject to mutual consent of the parties to the dispute. This means that the disputing Party may, at its option or discretion, grant or deny its consent in respect of each particular investment dispute and that, in the absence of the express written consent of the disputing Party, an international conciliation or arbitration tribunal shall have no jurisdiction over the investment dispute involved.

## **Chapter 9. Movement of Natural Persons**

### **Article 108. Scope and Coverage**

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party who enter into the other Party and who fall under one of the categories in paragraph 1 of Article 110.
2. This Chapter shall not apply to measures regarding nationality or citizenship, or residence or employment on a permanent basis.
3. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, including the requiring of visas from nationals of the other Party or such measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific commitment.

### **Article 109. Definition**

For the purposes of this Chapter, the term "natural person of the other Party" means a natural person whose sides in the other Party or elsewhere and who under the law of the other Party is a national of the other Party.

### **Article 110. Specific Commitments**

1. Each Party shall set out in Annex 8 the specific commitments it undertakes for:
  - (a) short-term business visitors of the other Party;
  - (b) intra-corporate transferees of the other Party;
  - (c) investors of the other Party;
  - (d) natural persons of the other Party who engage in professional services;
  - (e) natural persons of the other Party who engage in supplying services, which require technology or knowledge at an advanced level or which require specialized skills belonging to particular fields of industry, on the basis of a contract with public or private organizations in the former Party; and
  - (f) natural persons of the other Party who engage in supplying services as nurses or certified care workers or related activities, on the basis of a contract with public or private organizations in the former Party or on the basis of admission to public or private training facilities in the former Party.
2. Natural persons covered by a specific commitment referred to in paragraph 1 above shall be granted entry and temporary stay in accordance with the terms and conditions of the specific commitment set out in Annex 8, provided that the natural persons comply with immigration laws and regulations applicable to entry and temporary stay which are not inconsistent with the provisions of this Chapter.
3. Neither Party shall impose or maintain any quantitative restriction on the number of natural persons to be granted entry and temporary stay under paragraph 1 above, without prejudice to any right of either Party to regulate the entry and temporary stay of natural persons of the other Party for the orderly implementation of the specific commitments under this Article.

### **Article 111. Requirements and Procedures Relating to the Movement of Natural Persons**

1. Each Party shall establish and make publicly available requirements and procedures for application for a renewal of the period of temporary stay, a change of status of temporary stay or an issuance of a work permit for a natural person of the other Party who has been granted entry and temporary stay under paragraph 2 of Article 110.
2. Each Party shall endeavor to provide, upon request by a natural person of the other Party, information on requirements and procedures for applications referred to in paragraph 1 above.
3. Each Party shall ensure that fees charged by its competent authorities on application referred to in paragraph 1 above do not in themselves represent an unjustifiable impediment to movement of natural persons under this Chapter.
4. Each Party shall endeavor, to the maximum extent possible, to undertake measures to simplify the requirements and facilitate the procedures relating to the movement of natural persons of the other Party. Specific commitments on such measures shall be set out in Annex 8.

### **Article 112. Mutual Recognition**

1. For the purposes of smooth movement of natural persons under this Chapter, a Party may recognize the education or

experience obtained, requirements met, or licenses or certifications granted in the other Party for the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of natural persons of the other Party.

2. Recognition referred to in paragraph 1 above, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognizes, by agreement or arrangement between the Party and a non-Party or unilaterally, the education or experience obtained, requirements met, or licenses or certifications granted in the non-Party, the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licenses or certifications granted in the other Party should also be recognized.

## **Article 113. Sub-committee on Movement of Natural Persons**

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Movement of Natural Persons (hereinafter referred to in this Chapter as "the Sub-Committee") shall be established pursuant to Article 13.

2. The functions of the Sub-Committee shall be:

(a) reviewing scope of commitments under this Chapter including examining possibilities of making other commitments on supplying service, that are not included in the specific commitments under paragraph 1 of Article 110 and of mutual interest to both Parties;

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

(c) discussing any issues related to this Chapter;

(d) reporting the findings of the Sub-Committee to the Joint Committee; and

(e) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.

3. The Sub-Committee shall be composed of representatives of the Governments of the Parties.

4. The Sub-Committee shall meet at least once a year.

5. (a) For purposes of the effective implementation and operation of Section 6 in Annex 8, the Sub-Committee shall establish a Special Sub-Committee on Nurses and Certified Careworkers.

(b) The functions of the Special Sub-Committee shall be:

(i) reviewing the implementation and operation of the said Section;

(ii) discussing any issues related to the said Section; and

(iii) reporting the findings of the Special Sub-Committee, through the Sub-Committee, to the Joint Committee.

(c) The Special Sub-Committee shall be composed of representatives of the Governments of the Parties.

6. (a) For purposes of the effective implementation and operation of Article 112, the Sub-Committee shall establish a Special Sub-Committee on Mutual Recognition.

(b) The functions of the Special Sub-Committee shall be:

(i) reviewing the implementation and operation of the said Article;

(ii) discussing any issue related to the said Article; and

(iii) reporting the findings of the Special Sub-Committee, through the Sub-Committee, to the Joint Committee.

(c) The Special Sub-Committee shall be composed of representatives of the Governments of the Parties.

## **Article 114. General Exceptions**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on movement of natural persons between the Parties, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public morals or to maintain public order; Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(b) necessary to protect human, animal or plant life or health; or

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety.

## **Article 115. Security Exceptions**

Nothing in this Chapter shall be construed:

(a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests;

- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
- (i) relating to the supply of services as carried out directly or indirectly for the purposes of provisioning a military establishment;
  - (ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons, or relating to fissionable and fusionable materials or the materials from which they are derived; or
  - (iii) 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 the maintenance of international peace and security.

## **Article 116. Review**

The Parties shall undertake a review of the implementation and operation of, scope of commitments under, and any issues related to, this Chapter, taking into account the report of the Sub-Committee, every five (5) years after the entry into force of this Agreement and further whenever agreed by the Parties.

# **Chapter 10. Intellectual Property**

## **Article 117. General Provisions**

1. The Parties shall ensure adequate and nondiscriminatory protection of intellectual property, efficient and transparent administration of intellectual property protection system, and adequate and effective enforcement of intellectual property rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.
2. The Parties, recognizing the growing importance of intellectual property for promoting economic competitiveness in the knowledge-based economy, and of intellectual property protection in this new environment, shall develop and strengthen their cooperation in the field of intellectual property.
3. Intellectual property referred to in this Chapter shall cover all categories of intellectual property:
  - (a) that are subject of Articles 123 through 128; and/or
  - (b) that are under the TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement.

## **Article 118. Definitions**

For the purposes of this Chapter:

- (a) the term "Paris Convention" means the Stockholm Act of 1967 of the Paris Convention for the Protection of Industrial Property;
- (b) the term "rights management information" means information which identifies a work, performance or phonogram; the author of the work, the performer of the performance or the producer of the phonogram; the owner of any right in the work, performance or phonogram; or information about the terms and conditions of the use of the work, performance or phonogram; and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance or a phonogram or appears in connection with the communication or making available of a work, a fixed performance or a phonogram to the public; and
- (c) the term "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement.

## **Article 119. Cooperation**

1. The areas and forms of cooperation referred to in paragraph 2 of Article 117 may include, but not be limited to:
  - (a) exchange of information and experts in the field of intellectual property;
  - (b) strengthening the intellectual property protection system;
  - (c) promotion of mutual understanding of intellectual property protection system of each Party;
  - (d) promotion of public awareness on intellectual property;
  - (e) organizing international symposiums, workshops and fairs; and
  - (f) technical assistance to be agreed upon between the Parties in the development of information and communications technology-related projects for efficient administration of intellectual property protection system.
2. The implementation of such cooperation shall be subject to the availability of appropriated funds and the applicable laws and regulations of each Party.
3. Costs of such cooperation shall be borne in as an equitable manner as possible between the Parties through efficient and effective utilization of resources.
4. The dispute settlement procedures provided for in Chapter 15 shall not apply to this Article. Any differences between the Parties as to the implementation of this Article may be, upon agreement between the



Parties, referred to the Sub-Committee on Intellectual Property for appropriate action.

## **Article 120. Streamlining and Harmonization of Procedural Matters**

1. For the purposes of providing efficient administration of intellectual property protection system, each Party shall endeavor to streamline its administrative procedures concerning intellectual property.
2. No Party may require the authentication of signatures or other means of self-identification on documents to be submitted to the competent authority of the Party, including applications, translations into a language accepted by such authority of any earlier application whose priority is claimed, powers of attorney and certifications of assignment, in the course of application procedure or other administrative procedures on patents, utility models, industrial designs, or trademarks except as provided in paragraph 3 below.
3. A Party may require as exceptions to paragraph 2 above:
  - (a) the authentication of signatures or other means of self-identification, if the law of the Party so provides, where the signatures or other means of self-identification concern the surrender of a patent or a registration of utility models, industrial designs or trademarks; and
  - (b) the submission of evidence if there is reasonable doubt as to the authenticity of signatures or other means of self-identification on documents submitted to the competent authority of the Party. Where the competent authority notifies the person that evidence is required, the notification shall state the substantial reason for requiring the submission.
4. Where the certification of a translation of an earlier application whose priority is claimed is required by a Party under its laws and regulations, such a requirement shall be deemed to be satisfied by the submission of a written statement by the translator that, to the best of his knowledge, the translation of the earlier application is faithful and accurate.
5. Applications for and registrations of relevant intellectual property rights and publications thereof shall be classified in accordance with the laws and regulations of each Party and, to the extent possible, in conformity with the international patent classification system and international classification system of goods and services for the purposes of the registration of marks under existing international intellectual property agreements administered under the auspices of the World Intellectual Property Organization.

## **Article 121. Transparency**

- For the purposes of further promoting transparency in the administration of its intellectual property protection system, each Party shall, in accordance with its laws and regulations, take appropriate measures to:
- (a) publish information on applications for and grants of patents, and applications for registrations of and registrations of utility models, industrial designs, trademarks, layout-designs of integrated circuits and new varieties of plants, and make easily available to the public information contained in the files thereof held by the competent authority; and
  - (b) make easily available to the public information on intellectual property protection system including information on its efforts to provide effective enforcement of intellectual property rights.

## **Article 122. Promotion of Public Awareness Concerning Protection of Intellectual Property**

The Parties shall take necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

## **Article 123. Patents**

Each Party shall, in accordance with its laws and regulations, ensure that any applicant for a patent may file a request to the competent authority that his application be examined promptly.

Note: For the purpose of this Article, the term "competent authority" means, for the Philippines, the Director of the Bureau of Patents of the Intellectual Property Office.

## **Article 124. Industrial Designs**

Each Party shall provide for the protection of industrial designs in accordance with the TRIPS Agreement.

## **Article 125. Trademarks for Goods and Services**

Each Party shall provide for the protection of trademarks in accordance with the Paris Convention and the TRIPS Agreement.

## **Article 126. Copyright and Related Rights**

1. Each Party shall provide to authors, performers and producers of phonograms the exclusive right of authorizing the making available to the public of their works, performances fixed in phonograms and phonograms, respectively, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.
2. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonograms in connection with the exercise of their rights under the laws and regulations of the Party and that restrict acts, in respect of their works, performances or phonograms, which are not authorized by the authors, performers or producers of phonograms concerned or permitted by the laws and regulations of the Party.
3. Each Party shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of copyrights and related rights:
  - (a) to remove or alter any electronic rights management information without authority;
  - (b) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, works, copies of works, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.

## **Article 127. New Varieties of Plants**

Each Party recognizes the importance of providing a system of protection of new varieties of plants and shall, within its capabilities, endeavor to increase the number of plant genera and species that can be protected under its laws and regulations. In this regard, each Party shall consider the concerns of the other Party.

## **Article 128. Unfair Competition**

1. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.
2. Each Party shall, in accordance with its laws and regulations, ensure that any acts of unfair competition, which shall include, but not be limited to, the following acts, are prohibited:
  - (a) acts of selling goods which imitate the appearance of another person's goods; and
  - (b) acts of such a nature as to create confusion by any means whatever with the services of a competitor.
3. Each Party shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with the TRIPS Agreement.

## **Article 129. Enforcement**

1. Each Party shall, in accordance with its laws and regulations consistent with the TRIPS Agreement, provide for procedures concerning the suspension by the customs authority of the release of infringing goods in cases of infringement of patents, utility models, industrial designs, trademarks or copyrights and related rights.
2. Each Party shall ensure that the right holder of intellectual property has the right to claim against the infringer damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.
3. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful trademark counterfeiting, copyright piracy, infringement of right relating to new varieties of plants or infringement or repetition of infringement, as the case may be, of patents, utility models, industrial designs or layout-designs of integrated circuits on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity as may be provided for in the laws and regulations of each Party.

## **Article 130. Sub-committee on Intellectual Property**

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13.
2. The functions of the Sub-Committee shall be:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) discussing the following issues, as appropriate, related to intellectual property with a view to enhancing protection of

intellectual property and enforcement of intellectual property rights:

- (i) scope of patentable inventions and of prior art;
  - (ii) translation requirements of priority documents;
  - (iii) scope of registrable industrial designs;
  - (iv) protection of well-known trademarks;
  - (v) international system for trade mark registration;
  - (vi) liability of internet service providers;
  - (vii) collective management organizations for copyright and related rights;
  - (viii) protection of new varieties of plants;
  - (ix) adequate and effective enforcement; and
  - (x) fair and equitable enforcement procedures, including procedures for border measures;
- (c) reporting the findings of the Sub-Committee to the Joint Committee;
- (d) making appropriate recommendations, as needed, to the Joint Committee; and
- (e) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.
3. The Sub-Committee shall meet at such venue and times as may be agreed by the Parties.

## **Chapter 11. Government Procurement**

### **Article 131. Procurement Principles**

The Parties recognize that it is important for a Party to accord national treatment and most-favored-nation treatment to goods, services and suppliers of the other Party with respect to the measures regarding government procurement, and that it is desirable to provide transparency of the measures regarding government procurement, with a view to achieving greater liberalization and expansion of trade between the Parties. The Parties also recognize the need to take into account the development, financial and trade needs of the Parties. Each Party shall ensure a fair and effective implementation of the measures regarding government procurement.

### **Article 132. Negotiations on Non-discrimination**

In the event that a Party offers a non-Party any advantages of access to its government procurement market or any advantageous treatment concerning the measures regarding government procurement, the former Party shall consent to enter into negotiations with the other Party with a view to extending these advantages or advantageous treatment to the other Party.

### **Article 133. Sub-committee on Government Procurement**

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Government Procurement (hereinafter referred to in this Article as "the Sub-Committee" ) shall be established pursuant to Article 13.
2. The functions of the Sub-Committee shall be:
  - (a) exchanging information on the measures regarding government procurement of each Party;
  - (b) analyzing available information on each Party's government procurement market;
  - (c) discussing any issues relating to government procurement, including:
    - (i) possibility of according national treatment and most-favored-nation treatment to goods, services and suppliers of the other Party;
    - (ii) enhancement of transparency;
    - (iii) fair and effective implementation of the measures regarding government procurement including challenge procedures; and
  - (d) consistency of each Party's measures regarding government procurement with international principles on government procurement, such as, but not limited to, the Agreement on Government Procurement in Annex 4 to the WTO Agreement (hereinafter referred to in this Chapter as "the GPA");
  - (e) reporting the findings of the Sub-Committee to the Joint Committee; and
  - (f) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.
3. The Sub-Committee shall meet at such venue as may be agreed by the Parties and shall make efforts to meet once a year.

### **Article 134. Further Negotiations**

The Parties shall enter into negotiations at the earliest possible time, not later than five (5) years after the date of the entry into force of this Agreement, with a view to liberalizing their respective government procurement markets. In such negotiations, the Parties shall review all aspects of their measures regarding government procurement and shall consider

the following factors:

- (a) according to national treatment and most-favored nation treatment to goods, services and suppliers of the other Party;
- (b) enhancement of transparency;
- (c) consistency of each Party's measures regarding government procurement with international principles on government procurement, such as, but not limited to, the GPA; and
- (d) other matters necessary for a fair and effective implementation of the measures regarding government procurement including challenge procedures.

## **Chapter 12. Competition**

### **Article 135. Promotion of Competition by Addressing Anti-competitive Activities**

1. Each Party shall, in accordance with its applicable laws and regulations, take measures which it considers appropriate to promote competition by addressing anti-competitive activities, in order to facilitate trade and investment flows between the Parties and the efficient functioning of its market. Any such measures shall be taken in conformity with the principles of transparency, non-discrimination and procedural fairness.
2. Each Party shall, when necessary, review and improve or adopt laws and regulations to effectively promote competition by addressing anti-competitive activities.

### **Article 136. Cooperation on Promoting Competition by Addressing Anti-competitive Activities**

1. The Parties shall, in accordance with their respective laws and regulations, cooperate in the field of promoting competition by addressing anti-competitive activities, subject to their respective available resources.
2. The details and procedures of cooperation under this Article shall be specified in the Implementing Agreement.

### **Article 137. Non-application of Chapter 15**

The dispute settlement procedures provided for in Chapter 15 shall not apply to this Chapter.

## **Chapter 13. Improvement of the Business Environment**

### **Article 138. Principles and Cooperation**

1. Each Party shall, in accordance with its laws and regulations, take appropriate measures to further improve the business environment for the persons of the other Party conducting their business activities in the Area of the former Party.
2. The Parties shall, in accordance with their respective laws and regulations, promote cooperation to further improve the business environment in the Area of the Parties and take necessary measures including establishing such institutions as provided for in Articles 139, 140 and 141.

### **Article 139. Sub-committee on Improvement of the Business Environment**

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Improvement of the Business Environment (hereinafter referred to in this Chapter as "the Sub-Committee") shall be established pursuant to Article 13.
2. The functions of the Sub-Committee shall be:
  - (a) supervising the activities of each Consultative Group on Improvement of the Business Environment (hereinafter referred to in this Chapter as "Consultative Group") to be established under Article 140;
  - (b) addressing and resolving issues that the Sub-Committee considers appropriate taking into account, as necessary, the findings reported by each Consultative Group and each Liaison Office on Improvement of the Business Environment (hereinafter referred to in this Chapter as "Liaison Office") to be designated under Article 141;
  - (c) reporting the findings and making recommendations to the Parties including the measures to be taken by the Parties, regarding such functions as referred to in subparagraphs (a) and (b) above and relevant issues. Such recommendations shall be taken into consideration by the Parties;
  - (d) where appropriate, reviewing the measures taken by the Parties in relation to the recommendations referred to in subparagraph (c) above;
  - (e) making available to those concerned, in an appropriate manner, the recommendations referred to in subparagraph (c) above and the results of the review referred to in subparagraph (d) above, to the extent allowed by the respective laws and

regulations of the Parties;

(f) reporting the findings and recommendations referred to in subparagraph (c) above and other findings in relation to the implementation and operation of this Chapter to the Joint Committee as fully and expeditiously as possible;

(g) establishing its rules and procedures; and

(h) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.

3. The Sub-Committee shall cooperate with other Sub-Committees in an appropriate manner with a view to avoiding unnecessary duplication of works with those of other Sub-Committees established under this Agreement.

4. The composition, frequency of meetings and other details of the Sub-Committee shall be set forth in the Implementing Agreement.

## **Article 140. Consultative Group on Improvement of the Business Environment**

1. The Sub-Committee shall establish a Consultative Group in the Area of each Party.

2. The composition, functions, and frequency of meetings of the Consultative Group shall be set forth in the Implementing Agreement.

## **Article 141. Liaison Office on Improvement of the Business Environment**

1. Each Party shall designate and maintain a Liaison Office in the Area of the Party.

2. The functions and other details of the Liaison Office shall be set forth in the Implementing Agreement.

## **Article 142. Resolution of Issues Through Diplomatic Channels**

1. A Party may, through diplomatic channels, request the other Party to take measures for resolving issues which the requesting Party considers adversely affecting the business activities of its persons in the Area of the requested Party.

2. The requested Party shall promptly respond to such request, and shall, where warranted, endeavor to take measures to resolve such issues in accordance with its applicable laws and regulations. The requested Party shall inform the requesting Party of the measures it has taken.

## **Article 143. Non-application of Chapter 15**

The dispute settlement procedures provided for in Chapter 15 shall not apply to this Chapter.

# **Chapter 14. Cooperation**

## **Article 144. Basic Principles**

The Parties shall promote cooperation under this Agreement for their mutual benefits in order to facilitate and liberalize trade and investment between the Parties in order to assist development goals and to promote the wellbeing of the peoples of the Parties. For this purpose, the Parties shall cooperate between the Governments of the Parties and, where necessary and appropriate, encourage and facilitate cooperation between parties, one or both of whom are entities other than the Governments of the Parties, in the following fields: (a) Human Resource Development

(b) Financial Services

(c) Information and Communications Technology

(d) Energy and Environment

(e) Science and Technology

(f) Trade and Investment Promotion

(g) Small and Medium Enterprises

(h) Tourism

(i) Transportation

(j) Road Development

## **Article 145. Areas and Forms**

The areas, forms, and other details of each field of cooperation under this Chapter may be set forth in the Implementing Agreement.

## **Article 146. Implementation**

1. The implementation of cooperation under this Chapter shall be subject to the availability of appropriated funds and the applicable laws and regulations of each Party.
2. Costs of cooperation under this Chapter shall be borne in as an equitable manner as possible between the Parties through efficient and effective utilization of resources.

## **Article 147. Sub-committee on Cooperation**

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Cooperation (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13.
2. The functions of the Sub-Committee shall be:
  - (a) exchanging views and information on cooperation in each field and identifying ways of further cooperation between the Parties;
  - (b) monitoring, reviewing and discussing issues concerning the effective implementation of this Chapter;
  - (c) reporting the findings and actions taken by the Sub-Committee to the Joint Committee regarding issues relating to the implementation of this Chapter;
  - (d) supervising the functions and activities of the working groups to be established pursuant to the paragraph 6 below;
  - (e) establishing its own rules and procedures;
  - (f) discussing any issues related to this Chapter; and
  - (g) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.
3. The Sub-Committee shall respect existing consultation mechanisms between the Parties for Official Development Assistance and other existing cooperation schemes and, as appropriate, share information with such mechanisms to ensure effective and efficient implementation of cooperative activities.
4. The Sub-Committee shall be composed of representatives of the Governments of the Parties. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties as resource persons with necessary expertise relevant to the issues to be addressed.
5. The Sub-Committee shall hold its inaugural meeting within one (1) year after this Agreement enters into force. Subsequent meetings of the Sub-Committee shall be held at such frequency as the Parties may agree on.
6. The Sub-Committee may establish a working group for each field of cooperation under the Sub-Committee. The functions, composition and other details of the working groups may be set forth in the Implementing Agreement.

## **Article 148. Non-application of Chapter 15**

The dispute settlement procedures provided for in Chapter 15 shall not apply to this Chapter.

# **Chapter 15. Dispute Avoidance and Settlement**

## **Article 149. Scope and Coverage**

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the avoidance and settlement of disputes between the Parties concerning the interpretation or application of this Agreement.
2. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are parties.
3. Notwithstanding paragraph 2 above, once a dispute settlement procedure has been initiated under this Chapter or under any other international agreement to which both Parties are parties with respect to a particular dispute, that procedure shall be used to the exclusion of any other procedure for that particular dispute. However, this shall not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.
4. Paragraph 3 above shall not apply where the Parties expressly agree to the use of more than one (1) dispute settlement procedure in respect of a particular dispute.
5. Where an infringement of the obligations assumed under this Agreement constitutes an infringement of the obligations assumed under the WTO Agreement, the Parties shall give priority consideration to having recourse to the dispute settlement procedures under the WTO Agreement.

## **Article 150. General Consultations for the Avoidance and Settlement of Disputes**

1. For the purposes of avoiding disputes, a Party may request in writing consultations with the other Party with regard to any matter on the interpretation or application of this Agreement.
2. When a Party requests consultations pursuant to paragraph 1 above, the other Party shall afford adequate opportunity for consultations and shall reply promptly to the request and enter into consultations in good faith.
3. The Parties shall make every effort to avoid possible disputes through consultations.

## **Article 151. Good Offices, Conciliation or Mediation**

1. Good offices, conciliation or mediation may be requested in writing at any time by either Party. They may begin at any time if the Parties agree. The use of good offices, conciliation or mediation may be terminated at anytime at the request of either Party. While good offices, conciliation or mediation are in progress, the requesting Party of the consultations referred to in paragraph 1 of Article 152 shall not request the establishment of an arbitral tribunal pursuant to paragraph 1 of Article 153.
2. If the Parties agree, good offices, conciliation or mediation may continue while proceedings of the arbitral tribunal provided for in this Chapter are in progress.

## **Article 152. Special Consultations for Dispute Settlement**

1. For the purposes of settling disputes, either Party may make a request in writing for consultations to the other Party if the requesting Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, as a result of failure of the requested Party to carry out its obligations, or as a result of the application by the requested Party of measures which conflict with its obligations, under this Agreement.
2. Unless the Parties agree otherwise, the requested Party shall:
  - (a) enter into consultations within thirty (30) days after the date of receipt of the request for consultations made pursuant to paragraph 1 above; or
  - (b) enter into consultations within ten (10) days after the date of receipt of the request for consultations made pursuant to paragraph 1 above if the procedure provided for in Article 150 was utilized in respect of the same dispute and sixty (60) days or more have elapsed from the date of the initiation of consultations under that Article.
3. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations.

## **Article 153. Establishment of Arbitral Tribunals**

1. Unless otherwise agreed by the Parties, if the Parties fail to resolve a dispute through consultations provided for in Article 152, either Party may request the establishment of an arbitral tribunal in respect of that dispute:
  - (a) after ninety (90) days, which may be extended up to one hundred eighty (180) days upon the request of the requested Party, from the date on which the requested Party receives the request for consultations made pursuant to subparagraph 2(a) of Article 152; or
  - (b) after sixty (60) days, which may be extended up to one hundred fifty (150) days upon the request of the requested Party, from the date on which the requested Party receives the request for consultations made pursuant to subparagraph 2 (b) of Article 152.
2. Any request to establish an arbitral tribunal pursuant to this Article shall identify:
  - (a) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and
  - (b) the factual basis for the complaint.
3. Each Party shall, within thirty (30) days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one (1) arbitrator who may be its national and propose up to three (3) candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal (hereinafter referred to in this Chapter as "the chair"). The chair shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party.
4. The Parties shall, in consultation with their appointed arbitrators, if necessary, agree on and appoint the chair within sixty (60) days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 3 above.
5. If the Parties fail to agree on and appoint the chair pursuant to paragraph 4 above, the chair shall be chosen by lot from the candidates proposed pursuant to paragraph 3 above within seven (7) days after the expiry of the period provided for in paragraph 4 above. 6. The arbitral tribunal should be composed of arbitrators with international legal expertise or relevant technical knowledge.

## **Article 154. Functions of Arbitral Tribunals**

1. The arbitral tribunal established pursuant to Article 153:
  - (a) should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution;
  - (b) shall make its award in accordance with this Agreement and applicable rules of international law, including customary international law;

(c) shall set out, in its award, its findings of law and fact, together with the reasons therefore; and

(d) may, apart from giving its findings, include in its award suggested implementation options for the Parties to consider in conjunction with Article 157.

2. The award of the arbitral tribunal shall be final and binding on the Parties.

3. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

4. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral tribunal may request advisory reports in writing from an expert or experts. The arbitral tribunal may, at the request of a Party or on its own initiative, select, in consultation with the Parties, no fewer than two (2) scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.

5. The award of the arbitral tribunal shall be drafted without the presence of the Parties, and in the light of the information provided and the statements made.

6. The arbitral tribunal shall, within ninety (90) days after the date of its establishment, submit to the Parties its draft award, including both descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review precise aspects of the draft award, unless the dispute is settled otherwise or the proceeding of the arbitral tribunal is terminated in accordance with Article 156. When the arbitral tribunal considers that it cannot submit to the Parties its draft award within the aforementioned ninety (90) day period, it may extend that period with the consent of the Parties. A Party may submit comments in writing to the arbitral tribunal on the draft award within fifteen (15) days after the date of receipt of the draft award.

7. The arbitral tribunal shall issue its award within thirty (30) days after the date of receipt of the draft award by the Parties.

8. The arbitral tribunal shall endeavor to make its decisions, including its award, by consensus but may also make such decisions, including its award, by majority vote should a consensus not be reached.

## **Article 155. Proceedings of Arbitral Tribunals**

1. The arbitral tribunal shall meet in closed session.

2. The deliberations of the arbitral tribunal, the documents submitted to it and the draft award referred to in paragraph 6 of Article 154 shall be kept confidential.

3. Notwithstanding paragraph 2 above, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, the other Party may request a non-confidential summary of the information or written submissions which may be disclosed publicly. The Party to whom such a request is made may agree to such a request and submit such a summary, or refuse the request without needing to ascribe any reasons or justification.

4. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceeding and to submit any relevant information, including rulings of the Dispute Settlement Body of the World Trade Organization. Any information or written submissions submitted by a Party to the arbitral tribunal, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other Party. 5. Unless otherwise agreed by the Parties, English shall be the language used in the proceedings of, and submissions to, the arbitral tribunal.

## **Article 156. Suspension and Termination of Proceedings**

Even if the arbitral tribunal has been established and the proceedings are in progress, the Parties may agree to terminate, or suspend, the proceedings at any time by jointly so notifying the chair.

## **Article 157. Implementation of Award**

1. The award of the arbitral tribunal issued pursuant to Article 154 (hereinafter referred to in this Article as "the original award") shall be complied with promptly. A Party which is required by the arbitral tribunal to comply with its award (hereinafter referred to in this Article as "the implementing Party") shall, within forty five (45) days after the date of issuance of the original award, notify in writing the other Party (hereinafter referred to in this Article as "the other Party") as to the period which it assesses to be reasonable and necessary in order to implement the original award. The other Party may request consultations if it considers the period notified to be unacceptable, in which case the Parties shall enter into consultations within thirty (30) days after the date of receipt of the request.

2. If the implementing Party considers it impracticable to comply with the original award within the implementation period



as determined pursuant to paragraph 1 above, the implementing Party shall no later than the expiry of that implementation period enter into consultations with the other Party, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within forty five (45) days after the date of expiry of that implementation period, the other Party may notify the implementing Party that it intends to suspend the application to the implementing Party of the obligations of the other Party under this Agreement.

3. If the other Party considers that the measures taken by the implementing Party to comply with the original award do not comply with the original award, it may request consultations, in which case the Parties shall promptly enter into consultations.

4. Either Party may refer matters arising from the implementation of the original award to an arbitral tribunal if:

(a) consultations were initiated under paragraph 1 above, and the Parties fail to reach agreement on the period for implementation within thirty (30) days after the date of receipt of the request; or

(b) consultations were initiated under paragraph 3 above, and the Parties fail to resolve the matter, and at least forty five (45) days have elapsed since the date of the expiration of the period for implementation provided for in paragraph 1 above.

5. If the arbitral tribunal to which the matter is referred pursuant to subparagraph 4(b) above confirms that the implementing Party has failed to comply with the original award within the implementation period as determined pursuant to paragraph 1 or subparagraph 4(a) above, the other Party may, within thirty (30) days after the date of such confirmation by the arbitral tribunal, notify the implementing Party that it intends to suspend the application to the implementing Party of the obligations of the other Party under this Agreement.

6. Suspension of the application of obligations pursuant to paragraph 2 or 5 above may only be implemented at least thirty (30) days after the date of the notification in accordance with that paragraph. Such suspension:

(a) shall not be effected if, in respect of the dispute to which the suspension relates, consultations, or proceedings before an arbitral tribunal are in progress;

(b) shall be temporary, and shall be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the original award is effected;

(c) shall be restricted to the level of nullification or impairment that is attributable to the failure to comply with the original award; and

(d) shall be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend obligations in such sector or sectors.

7. If the implementing Party considers that the requirements in paragraph 2, 5 or 6 above have not been met, it may request consultations with the other Party. The other Party shall enter into consultations within ten (10) days after the date of receipt of the request. If the Parties fail to resolve matters within thirty (30) days after the date of receipt of the request for consultations pursuant to this paragraph, either Party may refer the matter to an arbitral tribunal.

8. The arbitral tribunal that is established for the purposes of this Article shall, wherever possible, have as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article shall be appointed pursuant to paragraphs 3 through 6 of Article 153. Unless the Parties agree to a different period, such arbitral tribunal shall issue its award within sixty (60) days after the date when the matter is referred to it. The award of the arbitral tribunal established under this Article shall be final and binding on the Parties.

## **Article 158. Expenses**

Unless the Parties agree otherwise, the expenses of the arbitral tribunal, including the remuneration of its arbitrators, shall be borne by the Parties in equal shares.

## **Article 159. Rules of Procedure**

Unless the Parties agree otherwise, the details and procedures for the arbitral tribunal provided for in this Chapter shall be in accordance with the Rules of Procedure to be adopted within the first year of the date of entry into force of this Agreement and to be modified, if necessary, by the Joint Committee.

# **Chapter 16. Final Provisions**

## **Article 160. Table of Contents and Headings**

The table of contents and headings of the Chapters and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

## **Article 161. General Review**

The Parties shall undertake a general review of the Agreement and its implementation and operation in 2011 and every five (5) years thereafter, unless otherwise agreed by both Parties.

## **Article 162. Annexes and Notes**

The Annexes and Notes to this Agreement shall form an integral part of this Agreement.

## **Article 163. Amendment**

1. This Agreement may be amended by agreement between the Parties. Such amendment shall be approved by the Parties in accordance with their respective legal procedures. The amendment shall enter into force on the date to be agreed on by the Parties and by means of diplomatic notes exchanged between the Governments of the Parties in forming each other that their respective legal procedures necessary for its entry into force have been completed.

2. If the amendments relate only to the following areas, the amendments may be made by diplomatic notes exchanged between the Governments of the Parties:

(a) Annex 2 referred to in Chapter 3 Product Specific Rules;

(b) Annex 3 referred to in Chapter 3 Minimum Data Requirement for Certificate of Origin; or (c) Part 2 of Annex 4 referred to in Chapter 6 Sectoral Annex in relation to Article 61.

## **Article 164. Entry Into Force**

This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the Parties exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 165.

## **Article 165. Termination**

Either Party may terminate this Agreement by giving, through diplomatic channels, one-year advance notice in writing to the other Party.

## **Article Article**

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Helsinki on this ninth day of September, 2006 in duplicate in the English language.

For Japan:

For the Republic of the Philippines:

Gloria M. Arroyo