AGREEMENT ESTABLISHING THE ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA

PREAMBLE

The Governments of Brunei Darussalam, the Kingdom of Cambodia (Cambodia), the Republic of Indonesia (Indonesia), the Lao People's Democratic Republic (Lao PDR), Malaysia, the Union of Myanmar (Myanmar), the Republic of the Philippines (Philippines), the Republic of Singapore (Singapore), the Kingdom of Thailand (Thailand) and the Socialist Republic of Viet Nam (Viet Nam), collectively, the Member States of the Association of Southeast Asian Nations, and Australia and New Zealand;

REINFORCING the longstanding ties of friendship and co- operation among them;

RECALLING the Framework for the AFTA-CER Closer Economic Partnership endorsed by Ministers in Ha Noi, Viet Nam on 16 September 2001;

DESIRING to minimise barriers and deepen and widen economic linkages among the Parties; lower business costs; increase trade and investment; enhance economic efficiency; create a larger market with more opportunities and greater economies of scale for business;

CONFIDENT that this Agreement establishing an ASEAN- Australia-New Zealand Free Trade Area will strengthen economic partnerships, serve as an important building block towards regional economic integration and _ support sustainable economic development;

RECOGNISING the important role and contribution of business in enhancing trade and investment among the Parties and the need to further promote and facilitate co- operation and utilisation of the greater business opportunities provided by this Agreement;

CONSIDERING the different levels of development among ASEAN Member States and between ASEAN Member States, Australia and New Zealand and the need for flexibility, including special and differential treatment, especially for the newer ASEAN Member States; as well as the need to facilitate the increasing participation of newer ASEAN Member States in this Agreement and the expansion of their exports, including, inter alia, through strengthening of their domestic capacity, efficiency and competitiveness;

REAFFIRMING the respective rights and obligations and undertakings of the Parties under the World Trade Organization Agreement and other existing international agreements and arrangements;

RECOGNISING the positive momentum that regional trade agreements and arrangements can have in accelerating regional and global trade liberalisation, and their role as building blocks for the multilateral trading system;

HAVE AGREED AS FOLLOWS:

Chapter 1. Establishment of Free Trade Area, Objectives and General Definitions

Article 1. Objectives

The objectives of this Agreement are to:

(a) progressively liberalise and facilitate trade in goods among the Parties through, inter alia, progressive elimination of tariff and non-tariff barriers in substantially all trade in goods among the Parties;

(b) progressively liberalise trade in services among the Parties, with substantial sectoral coverage;

(c) facilitate, promote and enhance investment opportunities among the Parties through further development of favourable investment environments;

(d) establish a co-operative framework for strengthening, diversifying and enhancing trade, investment and economic links among the Parties; and

(e) provide special and differential treatment to ASEAN Member States, especially to the newer ASEAN Member States, to facilitate their more effective economic integration.

Article 2. Establishment of the Asean-australia-new Zealand Free Trade Area

The Parties hereby establish, consistent with Article XXIV of GATT 1994 and Article V of GATS, an ASEAN, Ausiralia and New Zealand Free Trade Area.

Article 3. General Definitions

For the purposes of this Agreement, unless the context otherwise requires:

(a) **AANZFTA** means the ASEAN-Australia-New Zealand Free Trade Area;

(b) **Agreement** means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area;

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

(d) **ASEAN** means the Association of Southeast Asian Nations which comprises of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam and whose members are referred to in_ this Agreement collectively as the ASEAN Member States and individually as an ASEAN Member State;

(e) **customs duties** means any customs or import duty and a charge of any kind, including any tax or surcharge, imposed in connection with the importation of a good, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article Ill of 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;

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

(iii) fee or any charge commensurate with the cost of services rendered;

(f) **days** means calendar days, including weekends and holidays;

(g) **FTA Joint Committee** means the ASEAN, Australia and New Zealand FTA Joint Committee established pursuant to Article 1 (FTA Joint Committee) of Chapter 16 (Institutional Provisions);

(h) **GATS** means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;

(i) **GATT 1994** means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(j) **HS Code** means the Harmonized Commodity Description and Coding System established by the International Convention on the Harmonized Description and Coding System signed at Brussels on 14 June 1983, as amended;

(k) **IMF Articles of Agreement** means the Articles of Agreement of the International Monetary Fund;

(l) **newer ASEAN Member States** means the Kingdom of Cambodia, the Lao People's Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;

(m) **originating good** means a good that qualifies as originating under Chapter 3 (Rules of Origin);

(n) **Parties** means the ASEAN Member States, Australia and New Zealand collectively;

(o) **Party** means an ASEAN Member State or Australia or New Zealand;

(p) **TRIPS Agreement** means the Agreement on Trade-Related Aspects of Intellectual Property Rights, in Annex 1C to the WTO Agreement;

(q) **WTO** means the World Trade Organization; and

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

Chapter 2. Trade In Goods

Article 1. Reduction and/or Elimination of Customs Duties

Except as otherwise provided in this Agreement, each Party shall progressively reduce and/or eliminate customs duties on originating goods of the other Parties in accordance with its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

Article 2. Acceleration of Tariff Commitments

1. Nothing in this Agreement shall preclude all Parties from negotiating and entering into arrangements to accelerate and/or improve tariff commitments made under this Agreement. An agreement among all Parties to accelerate and/or improve tariff commitments shall be incorporated into this Agreement, in accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions). Such acceleration and/or improvement of tariff commitments shall be implemented by all the Parties.

2. Two or more Parties may also consult to consider accelerating and/or improving tariff commitments set out in their schedules of tariff commitments in Annex 1 (Schedules of Tariff Commitments). An agreement between these Parties to accelerate and/or improve their respective tariff commitments under this Agreement shall be incorporated into this Agreement, in accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions). Tariff concessions arising from such acceleration and/or improvement of tariff commitments shall be extended

to all Parties.

3. A Party may, at any time, unilaterally accelerate the reduction and/or elimination of customs duties on originating goods of the other Parties set out in its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments). A Party intending to do so shall inform the other Parties before the new rate of customs duties takes effect, or in any event, as early as practicable.

Article 3. Elimination of Agricultural Export Subsidies

Consistent with their rights and obligations under the WTO Agreement, each Party agrees to eliminate and not reintroduce all forms of export subsidies for agricultural goods destined for the other Parties.

Article 4. National Treatment on Internal Taxation and Regulation

Each Party shall accord national treatment to the goods of the other Parties in accordance with Article Ill of GATT 1994. To this end, Article Ill of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

Article 5. Fees and Charges Connected with Importation and Exportation

1. Each Party shall ensure that fees and charges connected with importation and exportation shall be consistent with its rights and obligations under GATT 1994.

2. Each Party shall make available details of the fees and charges that it imposes in connection with importation and exportation and, to the extent possible and in accordance with its domestic laws and regulations, make such information available on the internet.

3. A Party may not require consular transactions, including related fees and charges, in connection with the importation of any good of any other Party.

Article 6. Publication and Administration of Trade Regulations

1. Article X of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. In accordance with its domestic laws and regulations and to the extent possible, each Party shall make laws, regulations, decisions and rulings of the kind referred to in Paragraph 1 available on the internet.

Article 7. Quantitative Restrictions and Non-tariff Measures

1. No Party shall adopt or maintain any prohibition or quantitative restriction on the importation of any good of any other Party or on the exportation of any good destined for the territory of any other Party, except in accordance with its WTO rights and obligations or this Agreement. To this end, Article XI of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. Except as otherwise provided in this Agreement, a Party shall not adopt or maintain any non-tariff measure on the importation of any good of any other Party or on the exportation of any good destined for the territory of any other Party, except in accordance with its WTO rights and obligations or in accordance with this Agreement.

3. Each Party shall ensure the transparency of its non- tariff measures permitted under Paragraph 2 and shall ensure that any such measures are not prepared, adopted or applied with the view to or with the effect of creating unnecessary obstacles to trade among the Parties.

4. The Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) shall review non-tariff measures covered by this Chapter with a view to considering the scope for additional means to enhance the facilitation of trade in goods between the Parties. The Goods Committee shall submit to the FTA Joint Committee an initial report on progress in its work, including any recommendations, within two years of entry into force of this Agreement. Any Party may nominate measures for consideration by the Goods Committee.

Article 8. Import Licensing

1. Each Party shall ensure that all automatic and non- automatic import licensing measures are implemented in a transparent and predictable manner, and applied in accordance with the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement.

2. Each Party shall promptly notify the other Parties of existing import licensing procedures. Thereafter, each Party shall notify the other Parties of any new import licensing procedures and any modification to its existing import licensing procedures, to the extent possible 60 days before it takes effect, but in any case no later than within 60 days of publication. The information in any notification under this Article shall be in accordance with Article 5.2 and 5.3 of the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement.

3. Upon request of another Party, a Party shall, promptly and to the extent possible, respond to the request of that Party for information on import licensing requirements of general application.

Article 9. Modification of Concessions

In exceptional circumstances where a Party faces unforeseen difficulties in implementing its tariff commitments, that Party may, with the agreement of all other interested Parties, modify or withdraw a concession contained in its schedule of tariff commitments in Annex 1

(Schedules of Tariff Commitments). In order to seek to reach such agreement, the relevant Party shall engage in negotiations with any interested Parties. In such negotiations, the Party proposing to modify or withdraw its concessions shall maintain a level of reciprocal and mutually advantageous concessions no less favourable to the trade of all other interested Parties than that provided for in this Agreement prior to such negotiations, which may include compensatory adjustments with respect to other goods. The mutually agreed outcome of the negotiations, including any compensatory adjustments, shall apply to all the Parties and shall be incorporated into this Agreement in accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions).

Article 10. Contact Points and Consultations

1. Each Party shall designate a contact point to facilitate communication among the Parties on any matter relating to this Chapter.

2. Where a Party considers that any proposed or actual measure of another Party or Parties may materially affect trade in goods between the Parties, that Party may, through the contact point, request detailed information relating to that measure and, if necessary, request consultations with a view to resolving any concerns about the measure. The other Party or Parties shall respond promptly to such requests for information and consultations.

Article 11. Committee on Trade In Goods

1. The Parties hereby establish a Committee on Trade in Goods (Goods Committee) consisting of representatives of the Parties. The Goods Committee may meet at the request of any Party or the FTA Joint Committee to consider any matter arising under this Chapter, or under:

(a) Chapter 3 (Rules of Origin);

(b) Chapter 4 (Customs Procedures);

(c) Chapter 5 (Sanitary and Phytosanitary Measures);

(d) Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures); and

(e) Chapter 7 (Safeguard Measures).

2. The functions of the Goods Committee shall include:

(a) reviewing implementation of, and measures taken pursuant to, the Chapters referred to in Paragraph 1;

(b) receiving reports from, and reviewing the work of:

(i) the ROO Sub-Committee established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin);

(ii) the SPS Sub-Committee established pursuant to Article 10 (Meetings Among the Parties on Sanitary and Phytosanitary Matters) of Chapter 5 (Sanitary and Phytosanitary Measures); and

(iii) the STRACAP Sub-Committee established pursuant to Article 13 (Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures) of Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures);

(c) implementing the work programme provided for in Article 7.4 (Quantitative Restrictions and Non- Tariff Measures);

(d) identifying and recommending measures to promote and facilitate improved market access, including any acceleration of tariff commitments under Article 2.1 (Acceleration of Tariff Commitments); and

(e) reporting, as required, to the FTA Joint Committee.

3. The Goods Committee may agree to establish subsidiary working groups or refer issues for consideration to the ROO Sub-Committee established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin).

4. The meetings of the Goods Committee may occur in person, or by any other means as mutually determined by the Parties.

Article 12. Application

Each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by the regional and local governments and authorities within its territories.

Chapter 3. Rules of Origin

Article 1. Definitions

For the purposes of this Chapter:

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

(b) **back-to-back Certificate of Origin** means a Certificate of Origin issued by an intermediate exporting Party's Issuing Authority/Body based

on the Certificate of Origin issued by the first exporting Party;

(c) **CIF** means the value of the good imported and includes the cost of freight and insurance up to the port or place of entry into the country of importation. The valuation shall be made in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation;

(d) **FOB** means the free-on-board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation;

(e) **generally accepted accounting principles** means the recognised consensus or substantial authoritative support in a Party, with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

(f) **good** means any merchandise, product, article or material;

(g) **identical and interchangeable materials** means materials that are fungible as a result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the finished product cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;

(h) **indirect material** means a good used in the production, testing, or inspection of a 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 a good, including:

(i) fuel and energy;

(ii) tools, dies and moulds;

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

(iv) lubricants, greases, compounding materials and other materials 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 goods;

(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) **material** means any matter or substance used or consumed in the production of goods or physically incorporated into a good or subjected to a process in the production of another good;

(j) **non-originating good** or **non-originating material** means a good or material that does not qualify as originating under this Chapter;

(k) **originating material** means a material that qualifies as originating under this Chapter;

(l) **producer** means a person who grows, mines, raises, harvests, fishes, traps, hunts, farms, captures, gathers, collects, breeds, extracts, manufactures, processes or assembles a good;

(m) **production** means methods of obtaining goods including growing, mining, harvesting, farming, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing' or assembling a good;

(n) **Product Specific Rules** are rules in Annex 2 (Product Specific Rules) that specify that the materials used to produce a good have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a regional value content criterion or a combination of any of these criteria; and

(o) **packing materials and containers for transportation** means goods used to protect a good during its transportation, different from those containers or materials used for its retail sale.

Article 2. Originating Goods

1. For the purposes of this Chapter, a good shall be treated as an originating good if it is either:

(a) wholly produced or obtained in a Party as provided in Article 3 (Goods Wholly Produced or Obtained);

(b) not wholly produced or obtained in a Party provided that the good has satisfied the requirements of Article 4 (Goods Not Wholly Produced or Obtained); or

(c) produced in a Party exclusively from originating materials from one or more of the Parties, and meets all other applicable requirements of this Chapter.

2. A good which complies with the origin requirements of Paragraph 1 will retain its eligibility for preferential tariff treatment if exported to a Party and subsequently re- exported to another Party.

Article 3. Goods Wholly Produced or Obtained

For the purposes of Article 2.1(a) (Originating Goods), the following goods shall be considered as wholly produced or obtained:

(a) plants and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked, or gathered in a Party (1);

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

(c) goods obtained from live animals in a Party;

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

(e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;

(f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law (2), by any vessel registered or recorded with a Party and entitled to fly the flag of that Party;

(g) goods produced on board any factory ship registered or recorded with a Party and entitled to fly the flag of that Party from the goods referred to in Subparagraph (f);

(h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction under exploitation rights granted in accordance with international law (3);

(i) goods which are:

(i) waste and scrap derived from production and consumption in a Party provided that such goods are fit only for the recovery of raw materials; or

(ii) used goods collected in a Party provided that such goods are fit only for the recovery of raw materials; and

(j) goods produced or obtained in a Party solely from products referred to in Subparagraphs (a) to (i) or from their derivatives.

(1) For the purposes of this Article, "in a Party" means the land, territorial sea, Exclusive Economic Zone, Continental Shelf over which a Party exercises sovereignty, sovereign rights or jurisdiction, as the case may be, in accordance with international law. For the avoidance of doubt, nothing contained in the above definition shall be construed as conferring recognition or acceptance by one Party of the outstanding maritime and territorial claims made by any other Party, nor shall be taken as pre- judging the determination of such claims.

(2) "International law" refers to generally accepted international law such as the United Nations Convention on the Law of the Sea.

(3) "International law" refers to generally accepted international law such as the United Nations Convention on the Law of the Sea.

Article 4. Goods Not Wholly Produced or Obtained

1. For the purposes of Article 2.1(b) (Originating Goods), except for those goods covered under Paragraph 2, a good shall be treated as an originating good if:

(a) the good has a regional value content of not less than 40 per cent of FOB calculated using the formulae as described in Article 5 (Calculation of Regional Value Content), and the final process of production is performed within a Party; or

(b) all non-originating materials used in the production of the good have undergone a change in tariff classification at the four-digit level (i.e. a change in tariff heading) of the HS Code in a Party.

2. In accordance with Paragraph 1, a good subject to Product Specific Rules shall be treated as an originating good if it meets those Product Specific Rules.

3. For a good not specified in Annex 2 (Product Specific Rules), a Party shall permit the producer or exporter of the good to decide whether to use Paragraph 1(a) or (b) when determining if the good is originating.

4. If a good is specified in Annex 2 (Product Specific Rules) and the relevant provisions of that Annex provide a choice of rule between a regional value content based rule of origin, a change in tariff classification based rule of origin, a specific process of production, or a combination of any of these, a Party shall permit the producer or exporter of the good to decide which rule to use in determining if the good is originating.

Article 5. Calculation of Regional Value Content

1. For the purposes of Article 4 (Goods Not Wholly Produced or Obtained), the formula for calculating the regional value content will be either:

(a) Direct Formula

AANZFTA Material Cost + Labour Cost + Overhead Cost + Profit + Other Costs x 100%

_____

FOB

or

(b) Indirect/Build-Down Formula

FOB - Value of Non- Originating Materials x 100%

_____

FOB

where:

(a) **AANZFTA Material Cost** is the value of originating materials, parts or produce that are acquired or self-produced by the producer in the production of the good;

(b) **Labour Cost** includes wages, remuneration and other employee benefits;

(c) **Overhead Cost** is the total overhead expense;

(d) **Other Costs** are the costs incurred in placing the good in the ship or other means of transport for export including, but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges;

(e) **FOB** is the free-on-board value of the goods as defined in Article 1 (Definitions); and

(f) **Value of Non-Originating Materials** is the CIF value at the time of importation or the earliest ascertained price paid for all non-originating materials, parts or produce that are acquired by the producer in the production of the good. Non- originating materials include materials of undetermined origin but do not include a material that is self-produced.

2. The value of goods under this Chapter shall be determined in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation.

Article 6. Cumulative Rules of Origin

For the purposes of Article 2 (Originating Goods), a good which complies with the origin requirements provided therein and which is used in another Party as a material in the production of another good shall be considered to originate in the Party where working or processing of the finished good has taken place.

Article 7. Minimal Operations and Processes

Where a claim for origin is based solely on a regional value content, the operations or processes listed below, undertaken by themselves or in combination with each other, are considered to be minimal and shall not be taken into account in determining whether or not a good is originating:

(a) ensuring preservation of goods in good condition for the purposes of transport or storage;

(b) facilitating shipment or transportation;

(c) packaging (4) or presenting goods for transportation or sale;

(d) simple processes, consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations;

(e) affixing of marks, labels or other like distinguishing signs on _ products or their packaging; and

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

(4) This excludes encapsulation which is termed "packaging" by the electronics industry.

Article 8. De Minimis

1. A good that does not satisfy a change in tariff classification requirement pursuant to Article 4 (Goods Not Wholly Produced or Obtained) will nonetheless be an originating good if:

(a) (i) for a good, other than that provided for in Chapters 50 to 63 of the HS Code, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good;

(ii) for a good provided for in Chapters 50 to 63 of the HS Code, the weight of all non- originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good, or the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10

per cent of the FOB value of the good; and

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

2. The value of such materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement.

Article 9. Accessories, Spare Parts and Tools

1. For the purposes of determining the origin of a good, accessories, spare parts, tools and instructional or other information materials presented with the good shall be considered part of that good and shall be disregarded in determining whether all the non-originating materials used in the production of the originating good have undergone the applicable change in tariff classification, provided that:

(a) the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the originating good; and

(b) the quantities and value of the accessories, spare parts, tools and instructional or other information materials presented with the good are customary for that good.

2. Notwithstanding Paragraph 1, if the good is subject to a regional value content requirement, the value of the accessories, spare parts, tools and instructional or other information materials presented with the good shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

3. Paragraphs 1 and 2 do not apply where accessories, spare parts, tools and instructional or other information materials presented with the good have been added solely for the purpose of artificially raising the regional value content of that good, provided it is proven subsequently by the importing Party that they are not sold therewith.

Article 10. Identical and Interchangeable Materials

The determination of whether identical and interchangeable materials are originating materials shall be made either by physical segregation of each of the materials or by the use of generally accepted accounting principles of stock control applicable, or inventory management practice, in the exporting Party.

Article 11. Treatment of Packing Materials and Containers

1. Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.

2. Packing materials and containers in which a good is packaged for retail sale, when classified together with that good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in_ tariff classification requirements for the good.

3. If a good is subject to a regional value content requirement, the value of the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 12. Indirect Materials

An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

Article 13. Recording of Costs

For the purposes of this Chapter, all costs shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the Party in which the goods are produced.

Article 14. Direct Consignment

A good will retain its originating status as determined under Article 2 (Originating Goods) if the following conditions have been met:

(a) the good has been transported to the importing Party without passing through any non-Party; or

(b) the good has transited through a non-Party, provided that:

(i) the good has not undergone subsequent production or any other operation outside the territories of the Parties other than unloading, reloading, storing, or any other operations necessary to preserve them in good condition or to transport them to the importing Party;

(ii) the good has not entered the commerce of a non-Party; and

(iii) the transit entry is justified for geographical, economic or logistical reasons.

Article 15. Certificate of Origin

A claim that goods are eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by an Issuing Authority/Body notified to the other Parties as set out in this Chapters Annex on Operational Certification Procedures.

Article 16. Denial of Preferential Tariff Treatment

The Customs Authority of the importing Party may deny a claim for preferential tariff treatment when:

(a) the good does not qualify as an originating good; or

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

Article 17. Review and Appeal

The importing Party shall grant the right of appeal in matters relating to the eligibility for preferential tariff treatment to producers, exporters or importers of goods traded or to be traded between the Parties, in accordance with its domestic laws, regulations and administrative practices.

Article 18. Sub-committee on Rules of Origin

1. For the purpose of the effective and uniform implementation of this Chapter, the Parties hereby establish a Sub-Committee on Rules of Origin (ROO Sub-Committee). The functions of the ROO Sub-Committee shall include:

(a) monitoring of the implementation and administration of this Chapter;

(b) discussion of any issue that may have arisen in the course of implementation, including any matters that may have been referred to the ROO Sub-Committee by the Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) or the FTA Joint Committee;

(c) discussion of any proposed modifications of the rules of origin under this Chapter; and

(d) consultation on issues relating to rules of origin and administrative co-operation.

2. The ROO Sub-Committee shall consist of representatives of the Parties. It shall meet from time to time as mutually determined by the Parties.

3. The ROO Sub-Committee shall commence a review of Article 6 (Cumulative Rules of Origin) no earlier than 12 months, and no later than 18 months following entry into force of this Agreement. This review will consider the extension of the application of cumulation to all value added to a good within AANZFTA. The ROO Sub-Committee shall submit to the Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) a final report, including any recommendations, within three years of entry into force of this Agreement.

4. |The ROO Sub-Committee shall commence a review of the application of the chemical reaction rule and other chemical process rules to Chapters 28 to 40 of the HS Code and other Product Specific Rules identified by Parties, no earlier than 12 months and no later than 18 months, following entry into force of this Agreement. The ROO Sub- Committee shall submit to the Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) a final report, including any recommendations, within three years of entry into force of this Agreement.

Article 19. Consultations, Review and Modification

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently in order to achieve the spirit and objectives of this Agreement.

2. This Chapter may be reviewed and modified in accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions) as and when necessary, upon request of a Party, and subject to the agreement of the Parties, and may be open to such reviews and modifications as may be agreed upon by the FTA Joint Committee.

Annex on operational certification procedures

For the purpose of implementing Chapter 3 (Rules of Origin), the following operational procedures on the issuance and verification of Certificates of Origin and other related administrative matters shall be observed by each Party.

AUTHORITIES

Rule 1

The Certificate of Origin shall be issued by an Issuing Authority/Body of the exporting Party. Details of the Issuing Authorities/Bodies shall be notified by each Party, through the ASEAN Secretariat, prior to the entry into force of this Agreement. Any subsequent changes shall be promptly notified by each Party, through the ASEAN Secretariat.

Rule 2

1. The Issuing Authorities/Bodies shall provide the names, addresses, specimen signatures and specimens of the impressions of official seals of their respective Issuing Authorities/Bodies to the other Parties, through the ASEAN Secretariat. The Issuing Authorities/Bodies shall submit electronically to the ASEAN Secretariat the above information and specimens for dissemination to the other Parties. Any subsequent changes shall be promptly notified through the ASEAN Secretariat.

2. Any Certificate of Origin issued by a person not included in the list may not be honoured by the Customs Authority of the importing Party.

Rule 3

For the purpose of determining originating status, the Issuing Authorities/Bodies shall have the right to call for supporting documentary evidence and/or other relevant information to carry out any check considered appropriate in accordance with respective domestic laws, regulations and administrative practices.

APPLICATIONS

Rule 4

1. The manufacturer, producer, or exporter of the good or its authorised representative shall apply in writing or by electronic means to an Issuing Authority/Body, in accordance with the exporting Party's domestic laws, regulations and the Issuing Authority's/Body's procedures, requesting a pre- exportation examination of the origin of the good to be exported.

2. The result of the examination, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in issuing a Certificate of Origin for the good to be exported thereafter.

3. Pre-exportation examination need not apply to a good for which, by its nature, origin can be easily determined.

Rule 5

The manufacturer, producer, or exporter of the good or its authorised representative shall apply for the Certificate of Origin by providing appropriate supporting documents and other relevant information, proving that the good to be exported qualifies as originating.

PRE-EXPORTATION EXAMINATION

Rule 6

The Issuing Authority/Body shall, to the best of its competence and ability, carry out proper examination, in accordance with the domestic laws and regulations of the exporting Party or the procedures of the Issuing Authority/Body, upon each application for the Certificate of Origin to ensure that:

(i) the application and the Certificate of Origin are duly completed and signed by the authorised signatory;

(ii) the good is an originating good in accordance with Article 2 (Originating Goods) of Chapter 3 (Rules of Origin);

(iii) other statements in the Certificate of Origin correspond to appropriate supporting documents and other relevant information; and

(iv) information to meet the minimum data requirements listed in this Annex's Appendix 1 (Minimum Data Requirements — Application for a Certificate of Origin) is provided for the goods being exported.

ISSUANCE OF CERTIFICATE OF ORIGIN

Rule 7

1. The format of the Certificate of Origin is to be determined by the Parties and it must contain the minimum data requirements listed in this Annex's Appendix 2 (Minimum Data Requirements — Certificate of Origin).

2. The Certificate of Origin shall comprise one original and two copies.

3. The Certificate of Origin shall:

(i) be in hardcopy;

(ii) bear a unique reference number separately given by each place or office of issuance;

(iii) be in the English language; and

(iv) bear an authorised signature and official seal of the Issuing Authority/Body. The signature and official seal may be applied electronically.

4. The original Certificate of Origin shall be forwarded by the exporter to the importer for submission to the Customs Authority of the importing Party. Copies shall be retained by the Issuing Authority/Body and the exporter.

5. Multiple goods declared on the same Certificate of Origin shall be allowed, provided that each good is originating in its own right.

Rule 8

To implement Article 2 (Originating Goods) of Chapter 3 (Rules of Origin), the Certificate of Origin issued by the Issuing Authority/Body shall

specify the relevant origin conferring criteria.

Rule 9

Neither erasures nor superimpositions shall be allowed on the Certificate of Origin. Any alteration shall be made by striking out the erroneous material and making any addition required. Such alterations shall be approved by a person authorised to sign the Certificate of Origin and certified by the appropriate Issuing Authority/Body. Unused spaces shall be crossed out to prevent any subsequent addition.

Rule 10

1. The Certificate of Origin shall be issued as near as possible to, but no later than three working days after, the date of exportation.

2. Where a Certificate of Origin has not been issued as provided for in Paragraph 1 due to involuntary errors or omissions or other valid causes, the Certificate of Origin may be issued retroactively, but no longer than 12 months from the date of exportation, bearing the words "ISSUED RETROACTIVELY".

3. An Issuing Authority/Body of an intermediate Party shall issue a back-to-back Certificate of Origin, if an application is made by the exporter while the good is passing through that intermediate Party, provided that:

(i) a valid original Certificate of Origin or its certified true copy is presented;

(ii) the period of validity of the back-to-back Certificate of Origin does not exceed the period of validity of the original Certificate of Origin;

(iii) the consignment which is to be re-exported using the back-to-back Certificate of Origin does not undergo any further processing in the intermediate Party, except for repacking or logistics activities such as unloading, reloading, storing, or any other operations necessary to preserve them in good condition or to transport them to the importing Party;

(iv) the back-to-back Certificate of Origin contains relevant information from the original Certificate of Origin in accordance with the minimum data requirements in this Annex's Appendix 2 (Minimum Data Requirements — Certificate of Origin). The FOB value shall be the FOB value of the goods exported from the intermediate Party; and

(v) the verification procedures in Rule 17 and Rule 18 shall also apply to the back-to-back Certificate of Origin.

Rule 11

In the event of theft, loss or destruction of a Certificate of Origin, the manufacturer, producer, exporter or its authorised representative may apply to the Issuing Authority/Body for a certified true copy of the original Certificate of Origin. The copy shall be made on the basis of the export documents in their possession and bear the words "CERTIFIED TRUE COPY". This copy shall bear the date of issuance of the original Certificate of Origin. The certified true copy of a Certificate of Origin shall be issued no longer than 12 months from the date of issuance of the original Certificate of Origin.

PRESENTATION

Rule 12

1. For the purpose of claiming preferential tariff treatment, the importer shall submit to the Customs Authority at the time of import declaration the Certificate of Origin and other documents as required, in accordance with the procedures of the Customs Authority or domestic laws and regulations of the importing Party.

2. Notwithstanding Paragraph 1, a Party may elect not to require the submission of the Certificate of Origin.

Rule 13

The following time limits for the presentation of the Certificate of Origin shall be observed:

(i) the Certificate of Origin shall be valid for a period of 12 months from the date of issue and must be submitted to the Customs Authority of the importing Party within that period;

where the Certificate of Origin is submitted to the Customs Authority of the importing Party after the expiration of the time limit for its submission, such Certificate of Origin shall still be accepted, subject to the importing Party's domestic laws, regulations or administrative practices, when failure to observe the time limit results from force majeure or other valid causes beyond the control of the importer and/or exporter; and the Customs Authority of the importing Party may accept such Certificate of Origin, provided that the goods have been imported before the expiration of the time limit of that Certificate of Origin.

Rule 14

The Certificate of Origin shall not be required for:

(i) goods originating in the exporting Party and not exceeding US$200.00 FOB value or such higher amount specified in the importing Party's domestic laws, regulations or administrative practices; or

(ii) goods sent through the post not exceeding US$200.00 FOB value or such higher amount specified in the importing Party's domestic laws, regulations or administrative practices, provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the submission of the Certificate of Origin.

Rule 15

1. Where the origin of the good is not in doubt, the discovery of minor transcription errors or discrepancies in documentation shall not joso facto invalidate the Certificate of Origin, if it does in fact correspond to the goods submitted.

2. For multiple goods declared under the same Certificate of Origin, a problem encountered with one of the goods listed shall not affect or delay the granting of preferential tariff treatment and customs clearance of the remaining goods listed in the Certificate of Origin.

Rule 16

1. Each Party shall require that the Issuing Authority/Body, manufacturer, producer, exporter, importer, and their authorised representatives maintain for a period of not less than three years after the date of exportation or importation, as the case may be, all records relating to that exportation or importation which are necessary to demonstrate that the good for which a claim for preferential tariff treatment was made qualifies for preferential tariff treatment. Such records may be in electronic form.

2. Information relating to the validity of the Certificate of Origin shall be furnished upon request of the importing Party by an official authorised to sign the Certificate of Origin and certified by the appropriate Issuing Authority/Body.

3. Any information communicated between the Parties concerned shall be treated as confidential and shall be used for the validation of Certificates of Origin purposes only. (1)

(1) This Paragraph shall be read with reference to the confidentiality provisions of Article 5 (Confidentiality) of Chapter 18 (Final Provisions).

ORIGIN VERIFICATION

Rule 17

1. The Customs Authority of the importing Party may verify the eligibility of a good for preferential tariff treatment in accordance with its domestic laws, regulations or administrative practices.

2. If the Customs Authority of the importing Party has reasonable doubts as to the authenticity or accuracy of the information included in the Certificate of Origin or other documentary evidence, it may:

(i) institute retroactive checking measures to establish the validity of the Certificate of Origin or other documentary evidence of origin;

(ii) request information from the relevant importer of a good for which preferential tariff treatment was claimed; and

(iii) issue written requests to the Issuing Authority/Body of the exporting Party for information from the exporter or producer.

3. A request for information in accordance with Paragraph 2(iii) shall not preclude the use of the verification visit provided for in Rule 18.

4. The recipient of a request for information under Paragraph 2 shall provide the information requested within a period of 90 days from the date the written request is made.

5. The Customs Authority of the importing Party shall provide written advice as to whether the goods are eligible for preferential tariff treatment to all the relevant parties within 60 days from receipt of information necessary to make a decision.

VERIFICATION VISIT

Rule 18

1. If the Customs Authority of the importing Party wishes to undertake a verification visit, it shall issue a written request to the Issuing Authority/Body of the exporting Party at least 30 days in advance of the proposed verification visit.

2. If the Issuing Authority/Body of the exporting Party is not a government agency, the Customs Authority of the importing Party shall notify the Customs Authority of the exporting Party of the written request to undertake the verification visit.

3. The written request referred to in Paragraphs 1 and 2 shall at a minimum include:

(i) the identity of the Customs Authority issuing the request;

(ii) the name of the exporter or the producer of the exporting Party whose good is subject to the verification visit;

(iii) the date the written request is made;

(iv) the proposed date and place of the visit;

(v) the objective and scope of the proposed visit, including specific reference to the good subject to the verification; and

(vi) the names and titles of the officials of the Customs Authority or other relevant authorities of the importing Party who will participate in the visit.

4. The Issuing Authority/Body of the exporting Party shall notify the exporter or producer of the intended verification visit by the Customs Authority or other relevant authorities of the importing Party and request the exporter or producer to:

(i) permit the Customs Authority or other relevant authorities of the importing Party to visit their premises or factory; and

(ii) provide information relating to the origin of the good.

5. The Issuing Authority/Body shall advise the exporter or producer that, should they fail to respond by a specified date, preferential tariff treatment may be denied.

6. The Issuing Authority/Body of the exporting Party shall advise the Customs Authority of the importing Party within 30 days of the date of the written request from the Customs Authority of the importing Party whether the exporter or producer has agreed to the request for a verification visit.

7. The Customs Authority of the importing Party shall not visit the premises or factory of any exporter or producer in the territory of the exporting Party without written prior consent from the exporter or producer.

8. The Customs Authority of the importing Party shall complete any action to verify eligibility for preferential tariff treatment and make a decision within 150 days of the date of the request to the Issuing Authority/Body under Paragraph 1. The Customs Authority of the importing Party shall provide written advice as to whether goods are eligible for preferential tariff treatment to the relevant parties within ten days of the decision being made.

9. Parties shall maintain the confidentiality of information classified as confidential collected in the process of verification and shall protect that information from disclosure that could prejudice the competitive position of the person who provided the information. The information classified as confidential may only be disclosed to those authorities responsible for the administration and enforcement of origin determination. (2)

(2) This Paragraph shall be read with reference to the confidentiality provisions of Article 5 (Confidentiality) of Chapter 18 (Final Provisions).

SUSPENSION OF PREFERENTIAL TARIFF TREATMENT

Rule 19

1. The Customs Authority of the importing Party may suspend preferential tariff treatment to a good that is the subject of an origin verification action under this Annex for the duration of that action or any part thereof.

2. The importing Party may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud.

3. In the event that a determination is made by the Customs Authority of the importing Party that the good qualifies as an originating good of the exporting Party, any suspended preferential tariff treatment shall be reinstated.

Rule 20

When the destination of any goods exported to a specified Party is changed after their export from the exporting Party, but before clearance by the importing Party, the exporter, manufacturer, producer or its authorised representative shall apply in writing to the Issuing Authority/Body for a new Certificate of Origin for the goods changing destination. The application shall include the original Certificate of Origin relating to the goods.

Rule 21

For the purpose of implementing Article 14 (Direct Consignment) of Chapter 3 (Rules of Origin) where transportation is effected through the territory of any non- Party, the following shall be provided to the Customs Authority of the importing Party:

(i) a through Bill of Lading issued in the exporting Party;

(ii) a Certificate of Origin issued by the relevant Issuing Authority/Body of the exporting Party, unless not required pursuant to Rule 12.2 or Rule 14;

(iii) a copy of the original commercial invoice in respect of the good; and

(iv) supporting documents in evidence that the requirements of Article 14 (Direct Consignment) of Chapter 3 (Rules of Origin) have been complied with.

Rule 22

1. The Customs Authority of the importing Party may accept Certificates of Origin in cases where the sales invoice is issued either by a company located in a third country or by an exporter for the account of that company, provided that the goods meet the requirements of Chapter 3 (Rules of Origin).

2. The words "SUBJECT OF THIRD-PARTY INVOICE (name of company using the invoice)" shall appear on the Certificate of Origin.

ACTION AGAINST FRAUDULENT ACTS

Rule 23

When it is suspected that fraudulent acts in connection with the Certificate of Origin have been committed, the government authorities concerned shall co-operate in the action to be taken in the respective Party against the persons involved, in accordance with the Party's respective laws and regulations.

GOODS IN TRANSPORT OR STORAGE

Rule 24

Originating goods which are in the process of being transported from the exporting Party to the importing Party, or which are in temporary storage in a bonded area in the importing Party, should be accorded preferential tariff treatment if they are imported into the importing Party on or after the date of entry into force of this Agreement, subject to the submission of a Certificate of Origin issued retroactively to the Customs Authority of the importing Party and subject to domestic laws, regulations or administrative practices of the importing Party.

SETTLEMENT OF DISPUTES

Rule 25 (3)

1. In the case of a dispute concerning origin determination, classification of goods or other matters, the government authorities concerned in the importing and exporting Parties shall consult each other with a view to resolving the dispute, and the result shall be reported to the other Parties for information.

2. If no settlement can be reached bilaterally, the dispute may be referred to the ROO Sub-Committee established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin).

(3) This Rule is without prejudice to a Party's rights under Chapter 17 (Consultations and Dispute Settlement).

Appendix 1. Minimum data requirements — application for a certificate of origin

The minimum data to be included in an application for a Certificate of Origin are:

1. Exporter details	The name, address and contact details of the exporter
2. Shipment details (a separate application must be made for each shipment)	(i) Consignee name and address (ii) Sufficient details to identify the consignment, such as importer’s purchase order number, invoice number and date and Air Way Bill or Sea Way Bill or Bill of Lading (iii) Port of Discharge, if known
3. Full description of goods	(i) Detailed description of the goods, including HS Code (6-digit level), and if applicable, product number and brand name (ii) The relevant origin conferring criteria
4. Exporter’s Declaration	Declaration completed by the exporter or its declaration authorised representative, signed and dated, and annotated with the signatory’s name and designation. The declaration shall include a statement that the details provided in the application are true and correct

Appendix 2. Minimum data requirements — certificate of origin

The minimum data to be included in the Certificate of Origin are:

1. Exporter details	The name and address and contact details of the exporter
2. Shipment details (a Certificate of Origin can only apply to a single shipment of goods)	(i) Consignee name and address; (ii) Sufficient details to identify the consignment, such as importer’s purchase order number, invoice number and date and Air Way Bill or Sea Way Bill or Bill of Lading; (iii) Port of Discharge, if known
3. Full description of goods	(i) Detailed description of the goods, including HS Code (6-digit level), and if applicable, product number and brand name; (ii) The relevant origin conferring criteria; (iii)FOB Value (1)
4. Certification by Issuing Authority/Body	Certification by the Issuing Authority/Body that, based on the evidence provided, the goods specified in the Certificate of Origin meet all the relevant requirements of Chapter 3 (Rules of Origin)
5. Certificate of Origin number	A unique number assigned to the Certificate of Origin by the Issuing Authority/Body

(1) In the case of Australia and New Zealand, a Certificate of Origin or back-to-back Certificate of Origin which does not state the FOB value shall be accompanied by a declaration made by the exporter stating the FOB value of each good described in the Certificate of Origin.

Chapter 4. Customs Procedures

Article 1. Objectives

The objectives of this Chapter are to:

(a) ensure predictability, consistency and transparency in the application of customs laws and regulations of the Parties;

(b) promote efficient, economical administration of customs procedures, and the expeditious clearance of goods;

(c) simplify customs procedures; and

(d) promote co-operation among the customs administrations of the Parties.

Article 2. Scope

This Chapter applies, in accordance with the Parties' respective laws, regulations and policies, to customs procedures applied to goods traded among the Parties.

Article 3. Definitions

For the purposes of this Chapter:

(a) **customs law** means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit/transhipment 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; and

(b) **customs procedures** means the treatment applied by the customs administration of a Party to goods, which are subject to that Party's customs law.

Article 4. Customs Procedures and Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade, including through the expeditious clearance of goods.

2. Customs procedures of each Party shall, where possible and to the extent permitted by its customs law, conform with the standards and recommended practices of the World Customs Organization.

3. The customs administration of each Party shall review its customs procedures with a view to their simplification to facilitate trade.

Article 5. Customs Co-operation

1. To the extent permitted by its domestic law, the customs administration of each Party may, as deemed appropriate, assist the customs administration of each other Party, in relation to:

(a) the implementation and operation of this Chapter;

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

(c) providing, where possible, prior notice of changes to laws, regulations, and relevant procedures and guidelines that would affect the operation of this Agreement;

(d) simplifying and harmonising customs procedures;

(e) advancing technical skills and the use of technology; and

(f) application of the Agreement on Customs Valuation.

2. Subject to available resources, the customs administrations of the Parties may, as deemed appropriate, explore and undertake co-operation projects, including:

(a) capacity building programmes to enhance the capability of customs personnel of ASEAN Member States; and

(b) technical assistance programmes to facilitate the Parties' development and implementation of Single Windows.

Article 6. Use of Automated Systems

1. The customs administration of each Party, where applicable, shall endeavour to have its own system that supports electronic customs transactions.

2. In implementing initiatives, the customs administration of each Party shall take into account the relevant standards and best practices

recommended by the World Customs Organization, taking into consideration the available infrastructure and capabilities of each Party.

Article 7. Valuation

The Parties shall determine the customs value of goods traded among them in accordance with the provisions of the Agreement on Customs Valuation. (1)

(1) In the case of Cambodia, the Agreement on Customs Valuation, as implemented in accordance with the provisions of the Protocol on the Accession of the Kingdom of Cambodia to the WTO shall apply mutatis mutandis.

Article 8. Advance Rulings

1. Each Party, through its customs administration or other relevant authorities, to the extent permitted by its domestic laws, regulations and administrative determinations, on the application of a person described in Paragraph 2(a), shall provide in writing advance rulings in respect of the tariff classification, questions arising from the application of the principles of the Agreement on Customs Valuation and/or origin of goods.

2. Where available, each Party shall adopt or maintain procedures for advance rulings, which shall:

(a) provide that an importer in its territory or an exporter or producer in the territory of another Party may apply for an advance ruling before the importation of the goods in question;

(b) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to process an application for an advance ruling;

(c) provide that its customs administration may, at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information within a specified period;

(d) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker; and

(e) provide that an advance ruling be issued to the applicant expeditiously, within the period specified in each Party's domestic laws, regulations or administrative determinations.

3. A Party may reject requests for an advance ruling where the additional information requested by it in accordance with Paragraph 2(c) is not provided within the specified period.

4. Subject to Paragraphs 1 and 5 and where available, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its territory for three years from the date of that ruling, or such other period as specified in that Party's domestic laws, regulations or administrative determinations.

5. A Party may modify or revoke an advance ruling upon a determination that the ruling was based on an error of fact or law (including human error), the information provided is false or inaccurate, if there is a change in domestic law consistent with this Agreement, or there is a change in a material fact or circumstance on which the ruling is based.

6. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs administration may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which an advance ruling was based.

Article 9. Risk Management

1. The Parties shall administer customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods. To enhance the flow of goods across their borders the customs administration of each Party shall regularly review these procedures.

2. Where a customs administration of a Party deems that the inspection of goods is not necessary to authorise clearance of the goods from customs control, that Party shall endeavour to provide a single point for the documentary or electronic processing of those goods.

Article 10. Confidentiality

1. Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information pursuant to this Chapter, the disclosure of which it considers would:

(a) be contrary to the public interest as determined by its legislation;

(b) be contrary to any of its legislation including, but not limited to, legislation protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(c) impede law enforcement; or (d) prejudice legitimate commercial interests, which may include competitive position, of particular enterprises, public or private.

2. Where a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the

Party receiving the information shall maintain the confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without the specific written permission of the Party providing the information.

Article 11. Enquiry Points

1. Each Party shall designate one or more enquiry points to address enquiries from interested persons concerning customs matters, and shall make available on the internet and/or in print form, information concerning procedures for making such enquiries.

2. Each Party shall publish on the internet and/or in print form all statutory and regulatory provisions and any customs administrative procedures applied or enforced by its customs administration, not including law enforcement procedures and internal operational guidelines.

Article 12. Consultations

The customs administrations of the Parties will encourage consultation with each other regarding significant customs issues that affect goods traded among the Parties.

Article 13. Review and Appeal

1. Each Party shall ensure that the importers in its territory have access to administrative review within the customs administration that issued the decision subject to review or, where applicable, the higher authority supervising the administration and/or judicial review of the determination taken at the final level of administrative review, in accordance with the Party's domestic law.

2. The decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

3. The level of administrative review may include any authority supervising the customs administration of a Party.

Chapter 5. Sanitary and Phytosanitary Measures

Article 1. Objectives

The objectives of this Chapter are to:

(a) facilitate trade among the Parties while protecting human, animal or plant life or health in the territory of each Party;

(b) provide greater transparency in and understanding of the application of each Party's regulations and procedures relating to sanitary and phytosanitary measures;

(c) strengthen co-operation among the competent authorities of the Parties which are responsible for matters covered by this Chapter; and

(d) enhance practical implementation of the principles and disciplines contained within the SPS Agreement.

Article 2. Scope

This Chapter shall apply to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade among the Parties.

Article 3. Definitions

For the purposes of this Chapter:

(a) **competent authorities** means those authorities within each Party recognised by the national government as responsible for developing and administering the various sanitary and phytosanitary measures within that Party;

(b) **international standards**, guidelines and recommendations shall have the same meaning as set out in paragraph 3 of Annex A to the SPS Agreement;

(c) **sanitary or phytosanitary measure** shall have the same meaning as set out in paragraph 1 of Annex A to the SPS Agreement; and

(d) **SPS Agreement** means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement.

Article 4. General Provisions

1. Each Party affirms its rights and obligations with respect to each other Party under the SPS Agreement.

2. Each Party commits to apply the principles of the SPS Agreement in the development, application or recognition of any sanitary or phytosanitary measure with the intent to facilitate trade among the Parties while protecting human, animal or plant life or health in the territory of each Party.

Article 5. Equivalence

1. The Parties shall strengthen co-operation on equivalence in accordance with the SPS Agreement and relevant international standards,

guidelines and recommendations, in order to facilitate trade among the Parties.

2. To facilitate trade, the competent authorities of the relevant Parties may develop equivalence arrangements and make equivalence decisions, in particular in accordance with Article 4 of the SPS Agreement and with the guidance provided by the relevant international standard setting bodies and by the WTO Committee on Sanitary and Phytosanitary Measures established pursuant to Article 12 of the SPS Agreement.

3. A Party shall, upon request, enter into negotiations with the aim of achieving bilateral recognition arrangements of the equivalence of specified sanitary or phytosanitary measures.

Article 6. Competent Authorities and Contact Points

1. Each Party shall provide each other Party with a description of its competent authorities and their division of responsibilities.

2. Each Party shall provide each other Party with a contact point to facilitate distribution of requests or notifications made in accordance with this Chapter.

3. Each Party shall ensure the information provided under Paragraphs 1 and 2 is kept up to date.

Article 7. Notification

1. Each Party acknowledges the value of exchanging information on its sanitary or phytosanitary measures.

2. Each Party agrees to provide timely and appropriate information directly to the contact points of the relevant Parties where a:

(a) change in animal or plant health status may affect existing trade;

(b) significant sanitary or phytosanitary non- compliance associated with an export consignment is identified by the importing Party; and

(c) provisional sanitary or phytosanitary measure against or affecting the exports of another Party is considered necessary to protect human, animal or plant life or health within the importing Party.

3. The exporting Party should, to the extent possible, endeavour to provide information to the importing Party if the exporting Party identifies that an export consignment which may be associated with a significant SPS risk has been exported.

Article 8. Co-operation

1. Each Party shall explore opportunities for further co- operation, collaboration and information exchange with the other Parties on sanitary and phytosanitary matters of mutual interest consistent with the objectives of this Chapter.

2. In relation to Paragraph 1, each Party shall endeavour to co-ordinate with regional or multilateral work programmes with the objective of avoiding unnecessary duplication and to maximise the benefits from the application of resources.

3. Each Party agrees to further explore how it can strengthen co-operation on the provision of technical assistance especially in relation to trade facilitation.

4. Any two Parties may, by mutual agreement, co-operate on adaptation to regional conditions in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations, in order to facilitate trade between the Parties.

Article 9. Consultations

Where a Party considers that a sanitary or phytosanitary measure affecting trade between it and another Party warrants further discussion, it may, through the contact points, request a detailed explanation of the sanitary or phytosanitary measure and if necessary, request to hold consultations in an attempt to resolve any concerns on specific issues arising from the application of the sanitary or phytosanitary measure. The other Party shall respond promptly to any requests for such explanations, and if so requested, shall enter into consultations, within 30 days from the date of the request. The Parties to the consultations shall make every effort to reach a mutually satisfactory resolution through consultations within 60 days from the date of the request, or a timeline mutually agreed upon by the consulting Parties. Should the consultations fail to achieve resolution, the matter shall be forwarded to the FTA Joint Committee.

Article 10. Meetings Among the Parties on Sanitary and Phytosanitary Matters

1. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Matters (SPS Sub-Committee), consisting of representatives from the relevant government agencies of each Party. The SPS Sub-Committee shall meet within one year of the entry into force of this Agreement and thereafter as mutually determined by the Parties.

2. The SPS Sub-Committee shall review the progress made by the Parties in implementing their commitments under this Chapter and may set up subsidiary working groups, as agreed between or among the relevant Parties, to consider specified issues relating to this Chapter.

3. Competent authorities of any two Parties may meet to make decisions bilaterally implementing the commitments under this Chapter. Each Party shall provide to the SPS Sub- Committee updates on the status of their work.

4. Subject to Paragraph 1, meetings under this Article shall occur as and when mutually determined by the relevant Parties and all decisions and/or records made shall be by mutual agreement of the relevant Parties. Meetings may occur in person, by teleconference, by video conference, or through any other means as mutually determined by the Parties.

Article 11. Non-application of Chapter 17 (consultations and Dispute Settlement)

Chapter 17 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

Chapter 6. Standards, Technical Regulations and Conformity Assessment Procedures

Article 1. Objectives

The objectives of this Chapter are to facilitate trade in goods among the Parties by:

(a) ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade;

(b) promoting mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures;

(c) strengthening information exchange and co- operation among the Parties in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures;

(d) strengthening co-operation among the Parties in the work of international bodies related to standardisation and conformity assessments; and

(e) providing a framework to implement supporting mechanisms to realise these objectives.

Article 2. Scope

1. For the mutual benefit of the Parties, this Chapter applies to all standards, technical regulations and conformity assessment procedures of the Parties that may affect trade in goods between the Parties except:

(a) purchasing specifications prepared by governmental bodies for the production or consumption requirements of such bodies; and

(b) sanitary or phytosanitary measures as defined in Chapter 5 (Sanitary and Phytosanitary Measures).

2. Nothing in this Chapter shall limit the right of a Party to prepare, adopt and apply standards, technical regulations and conformity assessment procedures only to the extent necessary to fulfil a legitimate objective. Such legitimate objectives are, inter alia, national security requirements; the prevention of deceptive practices; protection of human health or safety; animal or plant life or health; or the environment.

Article 3. Definitions

For the purposes of this Chapter, the definitions set out in Annex 1 to the Agreement on Technical Barriers to Trade (TBT Agreement) in Annex 1A to the WTO Agreement shall apply.

Article 4. Affirmation of the Tbt Agreement

1. Each Party affirms its rights and obligations with respect to each other Party under the TBT Agreement.

2. Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter, by local government and non-governmental bodies within its territory which are responsible for the preparation, adoption and application of standards, technical regulations and conformity assessment procedures.

Article 5. Standards

1. With respect to the preparation, adoption and application of standards, each Party shall ensure that its standardising body or bodies accept and comply with Annex 3 to the TBT Agreement.

2. Each Party shall encourage the standardising body or bodies in its territory to co-operate with the standardising body or bodies of other Parties. Such co-operation shall include, but is not limited to:

(a) exchange of information on standards;

(b) exchange of information relating to standard setting procedures; and

(c) co-operation in the work of international standardising bodies in areas of mutual interest.

Article 6. Technical Regulations

1. Where relevant international standards exist or their completion is imminent, each Party shall use them, or relevant parts of them, as a

basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

2. Each Party shall give positive consideration to accepting as equivalent, technical regulations of another Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

3. Where a Party does not accept a technical regulation of another Party as equivalent to its own it shall, upon request of the other Party, explain the reasons for its decision.

Article 7. Conformity Assessment Procedures

1. Each Party shall give positive consideration to accepting the results of conformity assessment procedures of other Parties, even where those procedures differ from its own, provided it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

2. Each Party shall seek to enhance the acceptance of the results of conformity assessment procedures conducted in the territories of other Parties with a view to increasing efficiency, avoiding duplication and ensuring cost effectiveness of the conformity assessments. In this regard, each Party may choose, depending on the situation of the Party and the specific sectors involved, a broad range of approaches. These may include but are not limited to:

(a) recognition by a Party of the results of conformity assessments performed in the territory of another Party;

(b) recognition of co-operative arrangements between accreditation bodies in the territories of the Parties;

(c) mutual recognition of conformity assessment procedures conducted by bodies located in the territory of each Party;

(d) accreditation of conformity assessment bodies in the territory of another Party;

(e) use of existing regional and_ international multilateral recognition agreements and arrangements;

(f) designating conformity assessment bodies located in the territory of another Party to perform conformity assessment; and

(g) suppliers' declaration of conformity.

3. Each Party shall exchange information with other Parties on its experience in the development and application of the approaches in Paragraph 2(a) to (g) and other appropriate approaches with a view to facilitating the acceptance of the results of conformity assessment procedures.

4. A Party shall, upon request of another Party, explain its reasons for not accepting the results of any conformity assessment procedure performed in the territory of that other Party.

Article 8. Co-operation

1. The Parties shall intensify their joint efforts in the field of standards, technical regulations and conformity assessment procedures with a view to facilitating access to each other's markets.

2. Each Party shall, upon request of another Party, give positive consideration to proposals to supplement existing co-operation on standards, technical regulations and conformity assessment procedures. Such co-operation, which shall be on mutually determined terms and conditions, may include but is not limited to:

(a) advice or technical assistance relating to the development and application of standards, technical regulations and conformity assessment procedures;

(b) co-operation between conformity assessment bodies, both governmental and _ non- governmental, in the territories of each of the Parties such as:

(i) use of accreditation to qualify conformity assessment bodies; and

(ii) enhancing infrastructure in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;

(c) co-operation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity | assessment procedures such as enhancing participation in the existing frameworks for mutual recognition developed by relevant regional and international bodies; and

(d) enhancing co-operation in the development and improvement of technical regulations and conformity assessment procedures such as:

(i) co-operation in the development and promotion of good regulatory practice;

(i) transparency, including ways to promote improved access to information on standards, technical regulations and conformity assessment procedures; and

(ii) management of risks relating to health, safety, the environment and deceptive practices.

3. Upon request of another Party, a Party shall give positive consideration to a sector-specific proposal that the requesting Party makes for further co-operation under this Chapter.

Article 9. Consultations

2. Each Party shall give prompt and _ positive consideration to any request from another Party for consultations on issues relating to the implementation of this Chapter.

3. Where a matter covered under this Chapter cannot be clarified or resolved as a result of consultations, the Parties concerned may establish an ad hoc working group with a view to identifying a workable and practical solution to facilitate trade. The ad hoc working group shall comprise representatives of the Parties concerned.

4. Where a Party declines a request from another Party to establish an ad hoc working group, it shall, upon request of the other Party, explain the reasons for its decision.

Article 10. Agreements or Arrangements

1. Parties shall seek to identify trade-facilitating initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors.

2. Such trade-facilitating initiatives may include agreements or arrangements on regulatory issues, such as alignment of standards, convergence or equivalence of technical regulations conformity assessment procedures and compliance issues.

3. Parties to an existing agreement or arrangement shall give consideration to extending such an agreement or arrangement to another Party upon request of that Party. Such consideration may be subject to appropriate confidence building processes to ensure equivalency of relevant standards, technical regulations and/or conformity assessment procedures.

4. Where a Party declines a request of another Party to consider extending the application of an existing agreement or arrangement it shall, upon request of that Party, explain the reasons for its decision.

Article 11. Transparency

1. Each Party affirms its commitment to ensuring that information regarding proposed new or amended standards, technical regulations and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement.

2. Each Party shall ensure that the information relating to standards, technical regulations and conformity assessment procedures is published. Such information should be made available in printed form and, where possible, in electronic form.

Article 12. Contact Points

1. Each Party shall designate a contact point or contact points who shall, for that Party, have responsibility for co- ordinating the implementation of this Chapter.

2. Each Party shall provide each of the other Parties with the name of the designated contact point or contact points and the contact details of the relevant official in that organisation, including telephone, facsimile, email and any other relevant details.

3. Each Party shall notify each of the other Parties promptly of any change of their contact points or any amendments to the details of the relevant officials.

4. Each Party shall ensure that its contact point or contact points facilitate the exchange of information between the Parties on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from a Party.

Article 13. Sub-committee on Standards, Technical Regulations and Conformity Assessment Procedures

1. The Parties hereby establish a Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures (STRACAP Sub-Committee), consisting of representatives of the Parties, to promote and monitor the implementation and administration of this Chapter.

2. The STRACAP Sub-Committee shall meet as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

3. The STRACAP Sub-Committee shall determine its terms of reference in accordance with this Chapter.

4. The STRACAP Sub-Committee shall determine its work programme in response to priorities as identified by the Parties.

Chapter 7. Safeguard Measures

Article 1. Scope

This Chapter applies to safeguard measures adopted or maintained by a Party affecting trade in goods among the Parties during the

transitional safeguard period.

Article 2. Definitions

For the purposes of this Chapter:

(a) **domestic industry** means, with respect to an imported good, the producers as a whole of the like or directly competitive goods operating within 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;

(b) **global safeguard measure** means a measure applied under Article XIX of GATT 1994 and the Agreement on Safeguards in Annex 1A to the WTO Agreement (Safeguards Agreement) or Article 5 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (Agreement on Agriculture);

(c) **provisional measure** means a provisional safeguard measure described in Article 7 (Provisional Safeguard Measures);

(d) **safeguard measur**e means a transitional safeguard measure described in Article 6 (Scope and Duration of Transitional Safeguard Measures);

(e) **serious injury** means a significant overall impairment in the position of a domestic industry;

(f) **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; and

(g) **transitional safeguard period** means, in relation to a particular good, the period from the entry into force of this Agreement until three years after the customs duty on that good is to be eliminated, or reduced to its final commitment, in accordance with that Party's schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

Article 3. Imposition of a Safeguard Measure

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of another Party or Parties is being imported into the territory of a Party during the transitional safeguard period for that good in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry that produces like or directly competitive goods, that Party may:

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

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

(i) the most-favoured-nation applied rate of duty on the good in effect at the time the action is taken; or

(ii) the most-favoured-nation applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

Article 4. Investigation

1. A Party shall take a safeguard measure only following an investigation by that Party's competent authorities in accordance with the same procedures as those provided for in Article 3 and Article 4.2 of the Safeguards Agreement; and to this end, Article 3 and Article 4.2 of the Safeguards Agreement shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. Each Party shall ensure that its competent authorities complete any such investigation expeditiously and, in any event, within one year following the date of its initiation.

Article 5. Notification

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

(a) initiating an investigation under Article 4 (Investigation);

(b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of another Party or Parties resulting from the reduction or elimination of a customs duty on that originating good;

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

(d) taking a decision to progressively liberalise an existing safeguard measure; or

(e) applying a provisional measure.

2. A Party shall provide promptly to the other Parties a copy of the public version of the report of its competent authorities required under Article 4 (Investigation).

3. In making a notification pursuant to Paragraph 1(c), the Party applying or extending a safeguard measure shall provide the other Parties with evidence of serious injury or threat of serious injury caused by increased imports of an originating good of another Party or Parties as a

result of the reduction or elimination of a customs duty pursuant to this Agreement. Such notification shall include:

(a) a precise description of the originating good subject to the proposed safeguard measure including its heading or subheading under the HS Code, on which the schedules of tariff commitments in Annex 1 (Schedules of Tariff Commitments) are based;

(b) a precise description of the proposed safeguard measure; and

(c) the proposed date of the safeguard measure's introduction, its expected duration, and a timetable for progressive liberalisation of the measure, if applicable. In the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided.

Upon request, the Party applying or extending a safeguard measure shall provide additional information as another Party or Parties may consider necessary.

4. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Parties which would be affected by the safeguard measure with a view to reviewing the information provided under Paragraphs 2 and 3 arising from the investigation referred to in Article 4 (Investigation), exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 8 (Compensation).

5. Where a Party applies a provisional measure referred to in Article 7 (Provisional Safeguard Measures), on request of another Party or Parties, consultations shall be initiated immediately after such application.

6. The provisions on notification in this Chapter shall not require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 6. Scope and Duration of Transitional Safeguard Measures

1. A Party may not maintain a safeguard measure:

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

(b) for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of that Party determine, in conformity with the procedures referred to in Article 4 (Investigation), that the safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting; or(c) for a period exceeding three years, including any extension.

2. A safeguard measure shall not be applied against an originating good of a Party which is an ASEAN Member State, as long as its share of imports of the good concerned in the importing Party does not exceed three per cent of the total imports from the other Parties, provided that those Parties with less than three per cent import share collectively account for not more than nine per cent of total imports of the good concerned from the other Parties.

3. Where the expected duration of the safeguard measure is over one year, the importing Party shall ensure that the safeguard measure is progressively liberalised at regular intervals during the period of application.

4. When a Party terminates a safeguard measure on a good, the rate of customs duty for that good shall be no higher than the rate that, according to the Party's schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments), would have been in effect as if the safeguard measure had never been applied.

5. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a good shall terminate following the end of the transitional safeguard period for such good.

6. No safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a safeguard measure, for a period of time equal to the duration of the previous safeguard measure, or two years, whichever is longer.

7. A Party shall not apply a safeguard measure to an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

Article 7. Provisional Safeguard Measures

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

2. The duration of such a provisional measure shall not exceed 200 days, during which time the relevant requirements of Article 2 (Definitions), Article 3 (Imposition of a Safeguard Measure), Article 4 (Investigation), Article 5 (Notification) and Article 6 (Scope and Duration of Transitional Safeguard Measures) shall be met. The duration of any provisional measure shall be counted as part of the initial period and any extension as referred to in Article 6 (Scope and Duration of Transitional Safeguard Measures).

3. The customs duty imposed as a result of the provisional measure shall be refunded if the subsequent investigation referred to in Article 4 (Investigation) does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

Article 8. Compensation

1. The Party proposing to apply a safeguard measure shall, in consultation with the exporting Party or Parties who would be affected by such a measure, provide to that Party or Parties mutually agreed adequate means of trade compensation in the form of substantially equivalent level of concessions or other obligations to that existing under this Agreement between the Party applying the safeguard measure and the exporting Party or Parties who would be affected by such a measure.

2. In seeking compensation under Paragraph 1 for a safeguard measure, if the Parties mutually agree, they may hold consultations in the Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) to determine the substantially equivalent level of concessions to that existing under this Agreement between the Party taking the safeguard measure and the exporting Party or Parties who would be affected by such a measure prior to any suspension of equivalent concessions. Any proceedings arising from such consultations shall be completed within 30 days from the date on which the safeguard measure was applied.

3. If no agreement on the compensation is reached within the time frame specified in Paragraph 2, the Party or Parties against whose originating good the measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure. The Party or Parties may suspend the concessions only for the minimum period necessary to achieve the substantially equivalent effects and only while the safeguard measure is maintained. The right of suspension provided for in this Paragraph shall not be exercised for the first two years that a safeguard measure is in effect, provided that the safeguard measure has been applied as a result of an absolute increase in imports and that such a safeguard measure conforms to this Chapter.

4. A Party shall notify the other Parties in writing at least 30 days before suspending concessions under Paragraph 3.

5. The obligation to provide compensation under Paragraph 1 and the right to suspend substantially equivalent concessions under Paragraph 3 shall terminate on the termination of the safeguard measure.

Article 9. Relationship to the Wto Agreement

1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture. This Agreement does not confer any additional rights or obligations on the Parties with regard to global safeguard measures.

2. A Party shall not apply a safeguard measure or provisional measure, as provided in Article 6 (Scope and Duration of Transitional Safeguard Measures) or Article 7 (Provisional Safeguard Measures) on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, the Agreement on Agriculture or any other relevant provisions in the WTO Agreement, nor shall a Party continue to maintain a safeguard measure or provisional measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, the Agreement on Agriculture or any other relevant provisions in the WTO Agreement.

3. A Party considering the imposition of a global safeguard measure on an originating good of another Party or Parties shall initiate consultations with that Party or Parties as far in advance of taking such measure as practicable.

Chapter 8. Trade In Services

Article 1. Scope and Coverage

1. This Chapter applies to measures by a Party affecting trade in services.

2. For the purposes of this Chapter, measures by a Party means measures taken by:

(a) central, regional, or local governments and authorities; and

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

3. In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and _ authorities and non- governmental bodies within its territory.

4. This Chapter shall not apply to measures affecting:

(a) government procurement;

(b) subsidies or grants including government- supported loans, guarantees, and insurance, provided by a Party or to any conditions attached to the receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers;

(c) services supplied in the exercise of governmental authority within the territory of each respective Party, as defined in Article 2(q) (Definitions), or

(d) in respect of air transport services, measures affecting traffic rights however granted; or 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.

5. The Parties note the multilateral negotiations pursuant to the review of the GATS Annex on Air Transport Services. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

6. Nothing in this Chapter shall apply to measures affecting natural persons seeking access to the employment market of another Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Article 2. Definitions

For the purposes of this Chapter:

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

(b) **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 territory of a Party for the purpose of supplying a service;

(c) **computer reservation system services** means services provided by computerised 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) **juridical person** means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or government- owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(e) **juridical person of a Party** means a juridical person which is either:

(i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or

(ii) in the case of supply of a service through commercial presence, owned or controlled by:

(A) natural persons of that Party; or

(B) juridical persons of that Party identified under Subparagraph (e)(i);

(f) In the case of Thailand and Viet Nam, a **juridical person** is:

(i) **owned** by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;

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

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

(g) **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) **measures by a Party affecting trade in services** includes measures in respect of:

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

(ii) the access to and use of, in connection with the supply of a service, services which are required by those Parties to be offered to the public generally; and

(iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

(i) **monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

(j) **natural person of a Party** means a natural person who resides in the territory of that Party or elsewhere and who under the law of that Party:

(i) is a national of that Party; or

(ii) has the right of permanent residence (1) in that Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided that no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that Party to such permanent residents;

(k) **person** means a natural person or a juridical person;

(l) **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 schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments); and

(ii) otherwise, the whole of that service sector, including all of its subsectors;

(m) **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;

(n) **services** includes any service in any sector except services supplied in the exercise of governmental authority;

(o) **service of another Party** means a service which is supplied:

(i) from or in the territory of that other Party; 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 that other Party;

(p) **service supplier** means a person that supplies a service (2);

(q) **a service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

(r) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;

(s) **trade in services** means the supply of a service:

(i) from the territory of one Party into the territory of any other Party;

(ii) in the territory of one Party to the service consumer of any other Party;

(iii) by a service supplier of one Party, through commercial presence in the territory of any other Party;

(iv) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party; and

(t) **traffic rights** means the right for scheduled and non-scheduled services to operate and/or carry passengers, cargo and mail for remuneration or hire from, to within, or over the territory of 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.

(1) Where a Party has made a reservation with respect to permanent residents in its schedules under this Agreement, that reservation shall not prejudice the Parties' tights and obligations in GATS.

(2) 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. juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. 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 territory where the service is supplied.

Article 3. National Treatment

1. In sectors inscribed in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. (3)

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

1. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of any other Party.

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

Article 4. Market Access

1. With respect to market access through the modes of supply identified in Article 2(s) (Definitions), each Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed

and specified in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments). (4)

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 territory, unless otherwise specified in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), 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 services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test (5);

(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.

(4) If a Party undertakes a market-access commitment in relation to the supply of a services through the mode of supply referred to in Article 2(s)(i) (Definitions) 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 through the mode of supply referred to in Article 2(s)(iii) (Definitions), it is hereby committed to allow related transfers of capital into its territory.

(5) Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services.

Article 5. Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to Article 3 (National Treatment) or Article 4 (Market Access), including those regarding qualifications, standards or licensing matters. Such commitments shall be set out in a Party's schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) and Annex 4 (Schedules of Movement of Natural Persons Commitments).

Article 6. Review of Commitments

The Parties shall enter into successive rounds of negotiations, beginning not later than three years from the date of entry into force of this Agreement, and periodically thereafter as determined by the FTA Joint Committee, with a view to further improving specific commitments under this Chapter so as to progressively liberalise trade in services among the Parties.

Article 7. Consultations on Most-favoured-nation Treatment

1. Subject to Paragraph 2, if, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party in which it provides treatment to services or service suppliers of that non-Party more favourable than it accords to like services or service suppliers of other Parties under this Agreement, any other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no _ less favourable than that provided under the agreement with the non-Party. The requested Party shall enter into consultations with the requesting Party bearing in mind the overall balance of benefits. The requesting Party shall notify all the other Parties of their request for consultations under this Paragraph.

2. No Party shall be obliged to apply Paragraph 1 with respect to treatment provided under any bilateral or plurilateral agreement between an_ individual ASEAN Member State, or individual ASEAN Member States, and non-Parties or Australia or New Zealand.

3. The consulting Parties shall notify the results of the consultations to all other Parties as soon as practicable and by no later than the next meeting of the Services Committee established pursuant to Article 24 (Committee on Trade in Services) following the conclusion of consultations.

4. Notwithstanding Paragraph 1, a Party shall not be obliged to enter into consultations in relation to treatment provided under any international agreement that entered into force or was signed prior to the date of entry into force of this Agreement including, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements.

Article 8. Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Article 3 (National Treatment), Article 4 (Market Access) and Article 5 (Additional Commitments). With respect to sectors where such commitments are undertaken, each schedule shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

(d) where appropriate, the time-frame for implementation of such commitments; and

(e) the date of entry into force of such commitments. 2. Measures inconsistent with both Market Access and National Treatment shall be inscribed in the column relating to Market Access. In this case, the inscription will be considered to provide a condition or qualification to National Treatment as well.

3. Schedules of specific services commitments shall be set out in Annex 3 (Schedules of Specific Services Commitments) of this Agreement. The specific commitments in respect of the supply of a service by a service supplier of one Party through presence of natural persons of a Party in the territory of another Party shall be set out in Annex 4 (Schedules of Movement of Natural Persons Commitments) of this Agreement.

Article 9. Modification of Schedules

1. A Party may modify or withdraw any commitment in its schedule of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), at any time after three years have elapsed from the date on which this Agreement enters into force, in accordance with the procedures set out in Article XXI of GATS, mutatis mutandis, and the Procedures for the Implementation of Article XXI of GATS set out in WTO document S/L/80 of 29 October 1999 {the GATS Article XXI Procedures), mutatis mutandis, as amended from time to time.

2. For the avoidance of doubt, references in Article XXI of GATS and the GATS Article XXI Procedures to the "Secretariat" and the "Council for Trade in Services" shall each be read as references to the FTA Joint Committee.

Article 10. Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the WTO negotiations on disciplines on such measures, pursuant to Article VI.4 of GATS, and shall amend this Article, as appropriate, after consultations among the Parties, to bring the results of those negotiations into effect under this Agreement. The Parties note that the disciplines arising from such negotiations shall aim to ensure that qualification requirements and procedures, technical standards and licensing requirements and procedures are, inter alia:

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

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

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

3. In sectors in which a Party has undertaken specific commitments under Article 3 (National Treatment), Article 4 (Market Access) and Article 5 (Additional Commitments), pending the incorporation of the disciplines referred to in Paragraph 2, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments under this Agreement in a manner which:

(a) does not comply with the criteria outlined in Paragraph 2(a), (b) or (c); and

(b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

2. In determining whether a Party is in conformity with its obligations under Paragraph 3{a), account shall be taken of international standards of relevant international organisations applied by that Party.(6)

4. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of that Party shall:

(a) in the case of an incomplete application, at the request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;

(b) within a reasonable period of time after the submission of an_ application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application;

(c) at the request of the applicant, provide, without undue delay, information concerning the status of the application under consideration; and

(d) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing, and without delay, the reasons

for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

5. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competency of professionals of the other Parties.

6. Subject to its domestic laws and regulations, each Party shall permit service suppliers of the other Parties to use the business names under which they ordinarily trade in the territories of the other Parties and otherwise ensure that the use of business names is not unduly restricted.

(6) The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of all the Parties.

Article 11. Transparency

3. The Parties recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each others' markets. Each Party shall promote regulatory transparency in trade in services.

Publication

4. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force:

(a) all relevant measures of general application affecting trade in services; and

(b) all international agreements pertaining to, or affecting, trade in services to which a Party is a signatory.

5. To the extent possible, each Party shall make the measures and international agreements of the kind referred to in Paragraph 2 available on the internet.

5. Where publication referred to in Paragraphs 2 and 3 is not practicable, such information' shall be made otherwise publicly available.

6. To the extent provided for under its domestic legal framework, each Party shall endeavour to provide a reasonable opportunity for comments by interested persons of the Parties on measures referred to in Paragraph 2(a) before adoption.

Contact Points

7. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Chapter. Upon the request of another Party, the contact point shall:

(a) identify the office or official responsible for the relevant matter; and

(b) assist as necessary in facilitating communications with the requesting Party with respect to that matter.

8. Each Party shall respond promptly to all requests by any other Party for specific information on:

(a) any measures referred to in Paragraph 2(a) or international agreements referred to in Paragraph 2(b); and

(b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by the Party's specific commitments under this Chapter, whether or not the other Party has been previously notified of the new or changed law, regulation or administrative guideline.

(7) For greater certainty, the Parties agree that such information may be published in each Party's chosen language.

Article 12. Development and Application of Regulations

Administrative Processes

1. With a view to administering in a consistent, impartial and reasonable manner its laws, regulations, procedures and administrative rulings of general application affecting trade in services, each Party shall ensure that its administrative agencies, in applying such laws, regulations, procedures and administrative rulings to particular services or service suppliers of another Party in specific cases through administrative processes, including adjudication, rule-making, licensing, determination and approval processes:

(a) to the extent provided under its domestic legal framework, and where possible, provide service suppliers of the other Party that are directly affected by an administrative process with reasonable notice that the process is taking place;

(b) to the extent provided under its domestic legal framework, endeavour to afford such service suppliers with reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the process and the public interest permit; and

(c) follow procedures that are in accordance with its laws.

Review and Appeal

2. Each Party shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review (8), and, where

warranted, correction of final administrative actions resulting from the processes covered by Paragraph 1. Where such procedures or tribunals are not independent of the agency entrusted with the administrative action concerned, each Party shall ensure that the tribunals or procedures provide for an objective and impartial review.

3. Each Party shall ensure that, in any such tribunal or under any such procedures, the parties to any proceedings are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) adecision in accordance with the Party's laws.

4. Each Party shall ensure, subject to appeal or further review as provided in its law, that any decision referred to in Paragraph 3(b) shall be implemented in accordance with its laws.

(8) For avoidance of doubt, "review" includes merits review only where provided for under the Party's law.

Article 13. Disclosure of Confidential Information

Nothing in this Chapter shall be construed as requiring a Party to provide to the other Parties confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, public or private.

Article 14. Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 3 National Treatment) and Article 4 (Market Access).

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 territory in a manner inconsistent with such commitments.

3. If a Party has a reason to believe that a monopoly supplier of a service of any other Party is acting in a manner inconsistent with Paragraph 1 or 2, it may request the Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

(a) authorises or establishes a small number of service suppliers; and

(b) substantially prevents competition among those suppliers in its territory.

Article 15. Business Practices

1. Parties recognise that certain business practices of service suppliers, other than those falling under Article 14 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of any other Party, enter into consultations with a view to eliminating practices referred to in Paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall co-operate through the supply of publicly available non- confidential information available to the requesting Party. The requested Party may also provide other information available to the requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 16. Recognition

1. For the purpose of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of Paragraph 3, a Party may recognise the education or experience obtained, requirements met, licences or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

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

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

4. Where appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in co-operation with relevant inter-governmental and non-governmental organisations towards the establishment and adoption of common_ international

standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

3. Each Party shall encourage competent bodies in its territory to enter into negotiations for agreements or arrangements on recognition of professional qualification requirements, qualification procedures, licensing or registration requirements, and licensing or registration procedures with a view to the achievement of early outcomes.

Article 17. Payments and Transfers

1. Except under the circumstances envisaged in Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 15 (General Provisions and Exceptions), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of any of the Parties as members of the International Monetary Fund under the IMF Articles of Agreement, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistent with its specific commitments regarding such transactions, except under Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 15 (General Provisions and Exceptions) or at the request of the International Monetary Fund.

Article 18. Subsidies

1. Notwithstanding Article 1.4(b) (Scope and Coverage), the Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS.

2. Parties recognise that, in certain circumstances, subsidies may have distortive effects on trade in services. Any Party which considers that it is adversely affected by a subsidy of another Party may request consultations with that Party on such matters. Such request shall be accorded sympathetic consideration.

Article 19. Safeguard Measures

1. The Parties note the multilateral negotiations pursuant to Article X of GATS on the question of emergency safeguard measures based on the principle of non- discrimination. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

2. In the event that the implementation of the commitments made in this Agreement causes substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in Paragraph 1, the affected Party may request consultations with the other Party or Parties. The requested Party or Parties shall enter into consultations with the requesting Party on the commitments that the requested Party or Parties consider may have caused substantial adverse impact and on the possibility of the requesting Party adopting any measure to alleviate such impact. The requesting Party shall notify all the other Parties of their request for consultations under this Paragraph.

3. Any measures taken pursuant to Paragraph 2 shall be mutually agreed by the Parties concerned.

4. The consulting Parties shall notify the results of the consultations to all other Parties as soon as practicable and by no later than the next meeting of the Services Committee established pursuant to Article 24 (Committee on Trade in Services) following the conclusion of consultations.

Article 20. Increasing Participation for Newer Asean Member States

In order to increase the benefits of this Chapter for the newer ASEAN Member States, and in accordance with the objectives of and the Preamble to this Agreement and the objectives of Chapter 12 (Economic Co-operation), the Parties recognise the importance of according special and differential treatment to the newer ASEAN Member States and facilitating their participation in this Chapter through negotiated specific commitments relating to:

(a) strengthened domestic services capacity and its efficiency and competitiveness, inter alia, through access to technology on a commercial basis;

(b) improved access to distribution channels and information networks;

(c) commitments in sectors of export interest to newer ASEAN Member States; and

(d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

Article 21. Denial of Benefits

A Party may deny the benefits of this Chapter:

(a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party;

(b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

(i) by a vessel registered under the laws of a non-Party, and

(ii) by a person of a non-Party which operates and/or uses the vessel in whole or in part;

(c) to a service supplier, that is a juridical person, if it establishes that it is not a service supplier of another Party.

Article 22. Treatment and Protection of Commercial Presence

1. Chapter 11 (Investment) does not apply to measures adopted or maintained by a Party to the extent that they are covered by this Chapter.

2. Notwithstanding Paragraph 1, the following Articles and Section of Chapter 11 (Investment) apply, mutatis mutandis, to measures affecting the supply of services by a service supplier of a Party through commercial presence in the territory of another Party:

(a) Article 6 (Treatment of Investment);

(b) Article 7 (Compensation for Losses);

(c) Article 8 (Transfers);

(d) Article 9 (Expropriation and Compensation); (e) Article 10 (Subrogation); and

(f) Section B (Investment Disputes between a Party and an Investor).

Article 23. Miscellaneous Provisions

1. The GATS Annex on Telecommunications shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. Additional provisions on financial services and telecommunications are set out in this Chapter's Annexes.

Article 24. Committee on Trade In Services

1. The Parties hereby establish a Committee on Trade in Services (Services Committee), consisting of representatives of the Parties. 2. The Services Committee's functions shall be:

(a) to conduct reviews of commitments in accordance with Article 6 (Review of Commitments);

(b) if the multilateral negotiations referred to in Article 19.1 (Safeguard Measures) have not concluded within three years from entry into force of this Agreement, to enter into discussion on the question of emergency safeguard measures based on the principle of non-discrimination for the purpose of considering appropriate amendments to this Chapter;

(c) to enter into discussions on the application of most-favoured-nation treatment to trade in services for the purpose of considering appropriate amendments to this Chapter, in conjunction with the first review of commitments under Article 6 (Review of Commitments);

(d) to review the implementation of this Chapter;

(e) to consider any other matters identified by the Parties; and

(f) to report to the FTA Joint Committee as required.

3. The Services Committee shall conclude the discussions referred to in Paragraph 2((a) to (c) within five years of entry into force of this Agreement, unless the Parties agree otherwise.

4. The Services Committee shall meet as mutually determined by the Parties as required under this Article and Article 6 (Review of Commitments). Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

Annex on financial services

Article 1. Scope and Definitions

1. This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in Article 2(s) (Definitions) of Chapter 8 (Trade in Services).

2. For the purposes of Article 2(n) (Definitions) of Chapter 8 (Trade in Services), "services supplied in the exercise of governmental authority" means the following:

(a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(b) activities forming part of a statutory system of social security or public retirement plans; or

(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government.

3. For the purposes of Article 2(n) (Definitions) of Chapter 8 (Trade in Services), if a Party allows any of the activities referred to in Paragraph (2)(b) or {c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

4. Article 2(q) (Definitions) of Chapter 8 (Trade in Services) shall not apply to services covered by this Annex.

Article 2. Definitions

For the purposes of this Annex:

(a) a **financial service** is any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

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

(A) life; and

(B) non-life;

(ii) Reinsurance and retrocession;

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

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

Banking and other financial services (excluding insurance)

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

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

(vii) Financial leasing;

(viii) All payment and money transmission services, including credit, charge and debit cards, travellers' cheques and bankers drafts;

(ix) Guarantees and commitments;

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

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

(B) foreign exchange;

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

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

(E) transferable securities; and

(F) other negotiable instruments and financial assets, including bullion;

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

(xii) Money broking;

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

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

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

(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in Subparagraphs (v) to (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(b) **a financial service supplier** means any natural or juridical person of a Party wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity;

(c) **public entity** means:

(i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and

(d) **self-regulatory organisation**:

(i) in the case of Australia and New Zealand, means any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, or other organisation or association that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; and

(ii) in the case of ASEAN Member States, means any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, other organisation or association that is recognised by legislation as a_ self-regulatory organisation and exercises regulatory or supervisory authority over financial service suppliers or financial institutions pursuant to legislation or delegation from central, regional or local governments or authorities.

Article 3. Domestic Regulation

1. Notwithstanding any other provision of this Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system or to ensure the stability of the exchange rate (1) subject to the following:

(a) where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement;

(b) for measures to ensure the stability of the exchange rate such measures shall be no more than necessary and phased out when conditions no longer justify their institution or maintenance; and

(c) for measures to ensure the stability of the exchange rate such measures shall be applied on a most-favoured-nation basis.

2. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

(1) The measures to ensure the stability of the exchange rate shall not be adopted or maintained for the purpose of protecting a particular sector.

Article 4. Recognition

1. A Party may recognise prudential measures of any international standard setting body, another Party, or a non- Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international standard setting body, another Party, or a non- Party concerned or may be accorded autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in Paragraph 1, whether future or existing, shall afford adequate opportunity for other interested Parties to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement.

3. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that such circumstances as referred to in Paragraph 2 exist.

Article 5. Regulatory Transparency

1. The Parties recognise that transparent measures governing the activities of financial institutions and cross- border financial service suppliers are important in facilitating their ability to gain access to and operate in each other's market.

2. Each Party shall ensure that measures of general application adopted or maintained by a Party are promptly published or otherwise made publicly available. (2)

3. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations (3) of the Party are promptly published or otherwise made publicly available. (4)

4. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons of another Party regarding measures of general application to which this Annex applies. (5)

5. Each Party's regulatory authorities shall use its best endeavours to make available to interested persons of another Party their requirements, including any documentation required, for completing applications relating to the supply of financial services.

6. On the request of an applicant in writing, regulatory authorities of a Party shall inform the applicant of the status of its application in writing. If an authority requires additional information from the applicant, it shall notify the applicant without undue delay.

7. Each Party's regulatory authorities shall make administrative decisions on a completed application of a financial service supplier of another Party seeking to supply a financial service in that Party's territory within 180 days and shall notify the applicant of the decision in writing without undue delay:

(a) an application shall not be considered complete until all relevant proceedings are conducted and the regulatory authorities consider all necessary information is received;

(b) where it is not practicable for a decision to be made within 180 days, the regulatory authority shall notify the applicant without delay and

shall endeavour to make the decision within a reasonable time thereafter.

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

(2) For greater certainty, the Parties agree that such information may be published in each Party's chosen language.

(3) This Paragraph only applies to a Party when that Party has established self-regulatory organisations.

(4) For greater certainty, the Parties agree that such information may be published in each Party's chosen language.

(5) The Parties confirm their shared understanding that interested persons in this Article should only be persons whose direct financial interest could be potentially affected by the adoption of the regulations of general application.

Article 6. Financial Services Exceptions

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

Article 7. Transfers of Information and Processing of Information

1. A Party shall not take measures that:

(a) prevent transfers of information, including transfers of data by electronic means, necessary for the conduct of the ordinary business of a financial service supplier;

(b) prevent the processing of information necessary for the conduct of the ordinary business of a financial service supplier; or

(c) prevent transfers of equipment necessary for the conduct of the ordinary business of a financial service supplier, subject to importation rules consistent with international agreements.

2. Nothing in Paragraph 1:

(a) restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts including in accordance with its domestic laws and regulations so long as such right shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement;

(b) prevents a regulator of a Party for regulatory or prudential reasons from requiring a financial service supplier in its territory to comply with domestic regulation in relation to data management and storage and_ system maintenance, as well as to retain within its territory copies of records; or

(c) shall be construed to require a Party to allow the cross-border supply or the consumption abroad of services in relation to which it has not made specific commitments, including to allow non- resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, the provision and transfer of financial information and financial data processing as referred to in Article 2(a)(xv) (Definitions).

Article 8. Dispute Settlement

Members of arbitral tribunals established pursuant to Chapter 17 (Consultations and Dispute Settlement) for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

Annex on telecommunications

Article 1. Scope and Coverage

1. This Annex applies to measures by a Party affecting trade in public telecommunications transport networks and services.

2. Notwithstanding Paragraph 1, this Annex shall not apply to measures by a Party affecting the distribution of broadcasting and audio-visual services, as defined in each Party's domestic legal framework.

3. Nothing in this Annex shall be construed to require a Party to allow the supply of public telecommunications transport networks or services in relation to which it has not made specific commitments under this Chapter.

Article 2. Definitions

For the purposes of this Annex:

(a) **co-location (physical)** means access to space in order to install, maintain or repair equipment at premises owned or controlled and used by a major supplier to supply public telecommunications transport services;

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

(c) **essential facilities** means facilities of a public telecommunications transport network or service that:

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

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

(d) **facilities-based suppliers** means suppliers of public telecommunications transport networks or services that:

(i) are licensed carriers in Australia;

(ii) are classified as Access Seekers in accordance with the Telecommunications Act 2001 as amended from time to time in New Zealand;

(iii) are the Infrastructure Provider for the Telecommunication Industry (InTi) licensees in Brunei Darussalam;

(iv) are licensed as network facility provider and licensed network services provider under domestic law in Cambodia;

(v) are licensed as telecommunication network provider in Indonesia;

(vi) are authorised to establish an enterprise to provide telecommunications service under the Telecommunications Act of 2001 in Lao PDR;

(vii) are licensed as Network Facilities Provider and Network Services Provider in Malaysia;

(viii) are telecommunications operators licensed as network facility provider and/or network service provider; and operators authorised by the Ministry of Communications, Posts and Telegraphs to provide facility based services in Myanmar;

(ix) are licensed public telecommunications entities as defined in the Public Telecommunications Policy Act of the Philippines;

(x) are facilities-based operators in Singapore;

(xi) are duly licensed under domestic law as facilities-based supplier in Thailand; and

(xii) are facilities-based operators duly licensed in Viet Nam;

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

(f) **leased circuits** (1) means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular user;

(g) **major supplier** means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for the supply of public telecommunications transport networks — or services, or parts thereof, as a result of:

(i) control over essential facilities; or

(ii) use of its position in the market;

(h) **non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications — transport networks or services in like circumstances;

(i) **public telecommunications transport network** means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

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

(k) **telecommunications** means the transmission and reception of signals by any electromagnetic means;

(l) **telecommunications regulatory body** means any body or bodies in the territory of a Party which is or are responsible, under the Party's domestic legal framework, for the regulation of telecommunications; and

(m) **user** means service consumers and service suppliers.

(1) In the case of Thailand, "leased circuits" means telecommunications facilities between two designated points that are set aside for the dedicated use of, or availability to, a particular user.

Article 3. Transitional Arrangements

Noting each Party's different stage of development, and noting each Party's commitments under GATS, a Party may delay the application of Article 4 (Competitive Safeguards), Article 6 (Interconnection), Article 7 (Co-location), Article 8 (Leased Circuits Services) and Article 9.2 (Resolution of Disputes) in accordance with the timetable set out in this Annex's Appendix on Transitional Arrangements.

Article 4. Competitive Safeguards

1. Subject to Article 3 (Transitional Arrangements), each Party shall prevent suppliers of public telecommunications transport networks or services who, alone or together, are major suppliers in its territory, from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in this Article shall include:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to other suppliers of telecommunications transport networks or services, in a timely fashion, technical information about essential facilities or commercially relevant information, which is necessary for such suppliers to provide public telecommunications transport networks or services.

Article 5. Licensing

1. Each Party shall ensure that, where a licence is required, all measures relating to the licensing of suppliers of public telecommunications transport networks or services in its territory are published or, where publication is not practicable, otherwise made publicly available, including:

(a) circumstances in which a licence is required;

(b) licence application procedures;

(c) criteria used to assess licence applications;

(d) standard terms and conditions applicable to licences;

(e) the period of time normally required to reach a decision concerning a licence application;

(f) the cost of and/or fees for applying for and/or obtaining a licence; and

(g) the period of validity of a licence.

2. Each Party shall ensure that the reasons for the denial of a licence are made known to an applicant upon request.

Article 6. Interconnection (2)

1. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that major suppliers in its territory provide interconnection to suppliers of public telecommunications transport networks or services of other Parties at any technically feasible point in the major supplier's network. Such interconnection shall be:

(2) For the sake of clarity, nothing in this Article shall be construed to require Thailand or Viet Nam to allow cross-border supply of public telecommunications transport networks or services in relation to which it has not made specific commitments under this Chapter.

(a) provided in a timely fashion, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent;

(b) sufficiently unbundled, such that the supplier of public telecommunications transport networks or services seeking interconnection need not pay for network components or facilities that it does not require for the service to be provided;

(c) of a quality no less favourable than that provided for the major supplier's own like services, or for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates; and

(d) provided upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Each Party shall ensure that the terms, conditions and rates (including technical standards and specifications) for interconnection between major suppliers in its territory and suppliers of public telecommunications transport networks or services of other Parties are able to be established (at least):

(a) through commercial negotiation; or

(b) by reference to a set of standard terms, conditions and rates that the major supplier offers generally to other suppliers of public telecommunications transport networks or services, and that are approved or set out by a telecommunications regulatory body.

3. Each Party shall ensure that the procedures for interconnection with major suppliers in its territory are published or otherwise made publicly available.

Article 7. Co-location

1. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that major suppliers in its territory:

(a) provide to suppliers of public telecommunications transport networks or services of other Parties that are facilities-based suppliers in the territory of that Party, physical co-location of equipment necessary for interconnection; and

(b) in situations where physical co-location referred to in Subparagraph (a) is not practical for technical reasons or because of space limitations, co-operate with suppliers of public telecommunications transport networks — or services of other Parties that are facilities-based suppliers in the territory of that Party, to find and implement a practical and commercially viable alternative solution. (3)

2. Each Party shall ensure that major suppliers in its territory provide the physical co-location or practical and commercially viable alternative solution referred to in Paragraph 1 in a timely fashion and on terms and conditions {including technical standards and specifications), and at rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

3. Each Party may determine, in accordance with its domestic laws and regulations, the locations at which it requires major suppliers in its territory to provide the physical co-location or the practical and commercially viable alternative solutions referred to in Paragraph 1.

(3) Such solutions may include: (a) permitting facilities-based suppliers to locate equipment in a nearby building and to connect such equipment to the major supplier's network; (6) conditioning additional equipment space or virtual co-location; (c) optimising the use of existing space; and (d) finding adjacent space.

Article 8. Leased Circuits Services

Subject to Article 3 (Transitional Arrangements), each Party shall, unless it is not technically feasible, ensure that major suppliers in its territory make leased circuits services (that are public telecommunications transport services) available to suppliers of public telecommunications transport networks or services of other Parties in a timely fashion and on terms and conditions (including technical standards and specifications), and at rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

Article 9. Resolution of Disputes

1. Each Party shall ensure that a supplier of public telecommunications transport networks or services of another Party who requests interconnection with a major supplier that is authorised to supply public telecommunications transport networks or services in the Party's territory has recourse to a telecommunications regulatory body to resolve disputes in relation to such interconnection, including in relation to terms, conditions or rates:

(a) within a reasonable period of time, according to a procedure that has been published or otherwise made publicly available; and

(b) at the request of the affected supplier of public telecommunications transport networks or services of the other Party.

2. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that a _ supplier of public telecommunications transport networks or services of another Party who requests co-location with or leased circuits services from a major supplier that is authorised to supply public telecommunications transport networks or services in the Party's territory has recourse to a telecommunications regulatory body or a competition regulatory body to address issues in relation to such co-location or leased circuits services, including in relation to terms, conditions or rates:

(a) within a reasonable period of time, according to a procedure that has been published or otherwise made publicly available; and

(b) at the request of the affected supplier of public telecommunications transport networks or services of the other Party.

3. Each Party shall ensure that its telecommunications regulatory body or bodies provide, upon request by a supplier of public telecommunications transport networks or services of another Party, a written explanation of any decision by a telecommunications regulatory body that affects the supplier of public telecommunications transport networks or services of the other Party, unless such explanation is otherwise publicly available.

Article 10. Transparency

Each Party shall endeavour to make information that the Party is required to publish or make publicly available pursuant to this Annex available on the internet.

Article 11. Telecommunications Regulatory Body

1. Each Party shall establish or maintain, as part of its domestic legal framework, a telecommunications regulatory body.

2. Each Party shall ensure that every telecommunications regulatory body that it establishes or maintains is separate from, and not accountable to, any supplier of public telecommunications transport networks or services.

3. Each Party shall ensure that the functions and responsibilities of the telecommunications regulatory body or bodies, which shall include enforcement of the commitments set out in Article 6 (Interconnection), and all of its decision- making powers, shall be set out in the Party's domestic laws or regulations.

4. Each Party shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body or bodies are impartial with respect to all interested persons.

5. Each Party shall ensure that any supplier of public telecommunications transport networks or services of another Party that is aggrieved, or whose interests are adversely affected by a determination or decision of a telecommunications regulatory body of that Party, may obtain review of the determination or decision by an administrative, arbitral or judicial tribunal or authority or according to administrative, arbitral or judicial procedures. Where such procedures are not independent of the telecommunications regulatory body, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

Article 12. Universal Service

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations, including any cross subsidisation policy set out under each Party's domestic laws, shall not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

Article 13. Allocation and Use of Scarce Resources (4)

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

2. Each Party shall publish or otherwise make publicly available the current state of allocated frequency bands. (5)

3. Parties are not required to publish identification of frequencies allocated for specific government uses, or to otherwise make them publicly available.

(4) Decisions on the allocation and assignment of spectrum and frequency Management are not measures that are per se inconsistent with Article 4 (Market Access) of Chapter 8 (Trade in Services). Accordingly, each Party retains the ability to exercise its spectrum and frequency management policies, which may affect the number of service suppliers, provided that this is done in a manner that is consistent with this Chapter. Each Party also retains the right to allocate frequency bands taking into account existing and future needs.

(5) Parties are not required to publish information about the allocation of individual frequencies to specific licencees.

Appendix on transitional arrangements

Party	Article 4	Article 6	Article 7	Article 8	Article 9.2
Brunei	Obligation to apply from 1 January 2009	Obligation to apply from 1 January 2009	Obligation to apply from 1 January 2009	Obligation to apply from 1 January 2009	Obligation to apply from 1 January 2009
Cambodia			Obligation to apply from no later than 3 years after the date of entry into force of this Agreement	Obligation to apply from no later than 1 year after the date of entry into force of the law on Telecommunication. Cambodia shall respectively. endeavour to ensure that the Law on Telecommunication enters into force within 3 years of entry into force of this Agreement.	Obligation to apply from the date of application of Article 7 (for co-location) and 8 (for leased circuit services) respectively.
	Obligation to apply	Obligation to apply			

Laos	from: (i) Three years after the date of Laos' accession to the WTO; or (ii) three years after the date of entry into force of domestic legislation implementing this obligation; whichever is the earlier.	from: (i) Three years after the date of Laos' accession to the WTO; or (ii) three years after the date of entry into force of domestic legislation implementing this obligation; whichever is the earlier.	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of domestic legislation implementing this obligation; whichever is the earlier.	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of domestic legislation implementing this obligation; whichever is the earlier.	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of domestic legislation implementing this obligation; whichever is the earlier.
Myanmar	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date the new Telecommunications Law comes into force.
Singapore	Commits to apply this Article upon the entry into force of this Agreement.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.
Thailand (1)	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply from the date of entry into force of this Agreement.
Vietnam			To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.	To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.	To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.

(1) The last concession contract will be expired in the year 2018.

Chapter 9. Movement of Natural Persons

Article 1. Objectives

The objectives of this Chapter are to:

(a) provide for rights and obligations additional to those set out in Chapter 8 (Trade in Services) and Chapter 11 (Investment) in relation to the movement of natural persons between the Parties for business purposes;

(b) facilitate the movement of natural persons engaged in the conduct of trade and investment between the Parties;

(c) establish streamlined and transparent procedures for applications for immigration formalities for the temporary entry of natural persons to whom this Chapter applies; and

(d) protect the integrity of the Parties' borders and protect the domestic labour force and permanent employment in the territories of the Parties.

Article 2. Scope

1. This Chapter shall apply, as set out in each Party's schedule of specific commitments in Annex 4 (Schedules of Movement of Natural Persons Commitments), to measures affecting the temporary entry of natural persons of a Party into the territory of another Party. Such persons may include:

(a) business visitors;

(b) installers and servicers;

(c) executives of a business headquartered in a Party establishing a branch or subsidiary, or other commercial presence of that business in another Party;

(d) intra-corporate transferees; or

(e) contractual service suppliers.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of another Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Article 3. Definitions

For the purposes of this Chapter:

(a) **granting Party** means a Party who receives an application for temporary entry from a natural person of another Party who is covered by Article 2.1 (Scope);

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

(c) **natural person of a Party** means a natural person of a Party as defined in Article 2(j) (Definitions) of Chapter 8 (Trade in Services); and

(d) **temporary entry** means entry by a natural person covered by this Chapter, without the intent to establish permanent residence.

Article 4. Grant of Temporary Entry

1. Each Party shall, in accordance with that Party's schedule of specific commitments in Annex 4 (Schedules of Movement of Natural Persons Commitments), grant temporary entry or extension of temporary stay in accordance with this Chapter to natural persons of another Party provided those natural persons:

(a) follow prescribed application procedures for the immigration formality sought; and

(b) meet all relevant eligibility requirements for entry to the granting Party.

2. Any fees imposed in respect of the processing of an immigration formality shall be reasonable and in accordance with domestic law.

3. A Party may deny temporary entry or extension of temporary stay to natural persons of another Party that do not comply with Paragraph 1{a) and (b).

Article 5. Schedules of Commitments for the Entry and Temporary Stay of Natural Persons

Each Party shall set out in Annex 4 (Schedules of Movement of Natural Persons Commitments) a schedule containing its commitments for the temporary entry and stay in its territory of natural persons of another Party covered by Article 2.1 (Scope). These schedules shall specify the conditions and limitations governing those commitments, including the length of stay, for each category of natural persons included in each Party's schedule of commitments.

Article 6. Processing of Applications

1. Where an application for an immigration formality is required by a Party, that Party shall process promptly complete applications for immigration formalities or extensions thereof received from natural persons of another Party covered by Article 2.1 (Scope).

2. Each Party shall, upon request and within a reasonable period after receiving a complete application for an immigration formality from a natural person of another Party covered by Article 2.1 (Scope), notify the applicant of:

(a) the receipt of the application;

(b) the status of the application; and

(c) the decision concerning the application including, if approved, the period of stay and other conditions.

Article 7. Immigration Measures

1. Nothing in this Chapter, Chapter 8 (Trade in Services) or Chapter 11 (Investment) shall prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to another Party under this Chapter or to unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

2. The sole fact of requiring persons to meet eligibility requirements prior to entry to a Party shall not be regarded as nullifying or impairing benefits accruing to another Party under this Chapter, or of unduly impairing or delaying trade in goods or services or the conduct of investment activities under this Agreement.

Article 8. Transparency

Each Party shall:

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

(b) no later than six months after the date of entry into force of this Agreement publish, such as on its immigration website, or otherwise make publicly available in its own territory and to persons in the territory of the other Parties, the requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable natural persons of other Parties to become acquainted with those requirements; and

(c) upon modifying or amending any immigration measure that affects the temporary entry of natural persons, ensure that the information published or otherwise made available pursuant to Subparagraph (b) is updated as soon as possible within 90 days.

Article 9. Application of Chapter 17 (consultations and Dispute Settlement)

1. The Parties shall endeavour to settle any differences arising out of the implementation of this Chapter through consultations.

2. A Party shall not have recourse to Chapter 17 (Consultations and Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

(a) the matter involves a pattern of practice on the part of the granting Party; and

(b) the natural persons affected have exhausted all available domestic remedies regarding the particular matters.

Chapter 10. Electronic Commerce

Article 1. Objectives

The objectives of this Chapter are to:

(a) promote electronic commerce among the Parties;

(b) enhance co-operation among the Parties regarding development of electronic commerce; and

(c) promote the wider use of electronic commerce globally.

Article 2. Definitions

For the purposes of this Chapter:

(a) **digital certificates** are electronic documents or files that are issued or otherwise linked to a participant in an electronic communication or transaction for the purpose of establishing the participant's identity;

(b) **electronic authentication** means the process of testing an electronic statement or claim, in order to establish a level of confidence in the statement''s or claim's reliability;

(c) **electronic signature** has for each Party the meaning set out in its domestic laws and regulations;

(d) **electronic version** of a document means a document in electronic format prescribed by a Party, including a document sent by facsimile transmission;

(e) **trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods; and

(f) **UNCITRAL** refers to the United Nations Commission on International Trade Law.

Article 3. Transparency

1. Each Party shall publish as promptly as possible or, where that is not practicable, otherwise make publicly available all relevant measures of general application pertaining to or affecting the operation of this Chapter.

2. Each Party shall respond as promptly as possible to relevant requests by another Party for specific information on any of its measures of general application pertaining to or affecting the operation of this Chapter.

Article 4. Domestic Regulatory Frameworks

Each Party shall maintain, or adopt as soon as practicable, domestic laws and regulations governing electronic transactions taking into account the UNCITRAL Model Law on Electronic Commerce 1996.

Article 5. Electronic Authentication and Digital Certificates

1. Each Party shall maintain, or adopt as soon as practicable, measures based on international norms for electronic authentication that:

(a) permit participants in electronic transactions to determine the appropriate authentication technologies and implementation models for their electronic transactions;

(b) do not limit the recognition of authentication technologies and implementation models; and

(c) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with the Party's domestic laws and regulations.

2. The Parties shall, where possible, endeavour to work towards the mutual recognition of digital certificates and electronic signatures that are issued or recognised by governments based on internationally accepted standards.

3. The Parties shall encourage the interoperability of digital certificates used by business.

Article 6. Online Consumer Protection

1. Subject to Paragraph 2, each Party shall, where possible, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under its relevant laws, regulations and policies.

2. A Party shall not be obliged to apply Paragraph 1 before the date on which that Party enacts domestic laws or regulations or adopts policies on protection for consumers using electronic commerce.

Article 7. Online Data Protection

1. Subject to Paragraph 2, each Party shall, in a manner it considers appropriate, protect the personal data of the users of electronic commerce.

2. A Party shall not be obliged to apply Paragraph 1 before the date on which that Party enacts domestic laws or regulations to protect the personal data of electronic commerce users.

3. In the development of data protection standards, each Party shall consider the international standards and criteria of relevant international organisations.

Article 8. Paperless Trading

1. Each Party shall, where possible, work towards the implementation of initiatives which provide for the use of paperless trading.

2. The Parties shall co-operate in international fora to enhance acceptance of electronic versions of trade administration documents.

3. In working towards the implementation of initiatives which provide for the use of paperless trading, each Party shall take into account the methods agreed by international organisations including the World Customs Organization.

4. Each Party shall endeavour to make electronic versions of its trade administration documents publicly available.

Article 9. Co-operation on Electronic Commerce

1. Recognising the global nature of electronic commerce, the Parties shall encourage co-operation in research and training activities that would enhance the development of electronic commerce. These co-operative research and training activities may include, but are not limited to:

(a) promotion of the use of electronic versions of trade administration documents used by any other Party or Parties;

(b) assisting small and medium enterprises to overcome obstacles encountered in the use of electronic commerce;

(c) sharing information and experiences and identifying best practices in relation to domestic legal and policy frameworks in the sphere of electronic commerce, including those related to data protection, privacy, consumer confidence, cyber-security, unsolicited electronic mail, electronic signatures, intellectual property rights, and electronic government;

(d) encouraging co-operative activities to promote electronic commerce including those that would improve the effectiveness and efficiency of electronic commerce;

(e) exploring ways in which a developed Party or Parties could provide assistance to the developing Parties in implementing an electronic commerce legal framework;

(f) encouraging co-operation between the relevant authorities to facilitate prompt investigation and resolution of fraudulent incidents relating to electronic commerce transactions;

(g) encouraging development by the private sector of methods of self-regulation, including codes of conduct, model contracts, guidelines, and enforcement mechanisms, that foster electronic commerce; and

(h) actively participating in regional and multilateral fora to promote development of electronic commerce.

2. The Parties shall endeavour to undertake forms of co- operation that build on and do not duplicate existing co- operation initiatives pursued in international fora.

Article 10. Non-application of Chapter 17 (consultations and Dispute Settlement)

Chapter 17 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

Chapter 11. Investment

Section A.

Article 1. Scope

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

(a) investors of any other Party; and

(b) covered investments.

2. This Chapter shall not apply to:

(b) government procurement;

(c) subsidies or grants provided by a Party; and

(d) services supplied in the exercise of governmental authority by the relevant body or authority of a Party. For the purposes of this Chapter, a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

Article 2. Definitions

For the purposes of this Chapter:

(a) **covered investment** means with respect to a Party, an investment in its territory of an investor of another Party, in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and which, where applicable, has been admitted (1) by the host Party, subject to its relevant laws, regulations and policies;

(b) **freely usable currency** means a freely usable currency as determined by the International Monetary Fund in accordance with the IMF Articles of Agreement and any amendments thereto;

(c) **investment** (2) means every kind of asset owned or controlled by an investor, including but not limited to the following:

(i) movable and immovable property and other property rights such as mortgages, liens or pledges;

(i) shares, stocks, bonds and debentures and any other forms of participation in a juridical person and rights derived therefrom;

(iii) intellectual property rights which are recognised pursuant to the laws and regulations of each Party and goodwill;

(iv) claims to money or to any contractual performance related to a business and having financial value (3);

(v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts; and

(vi) business concessions required to conduct economic activity and having financial value conferred by law or under a contract, including any concession to search for, cultivate, extract or exploit natural resources.

For the purpose of the definition of investment in this Article, returns that are invested shall be treated as investments and any alteration of

the form in which assets are invested or reinvested shall not affect their character as investments;

(d) **investor of a Party** means a natural person of a Party or a juridical person of a Party that seeks to make (4), is making, or has made an investment in the territory of another Party;

(e) **juridical person** means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, association or similar organisation;

(f) **juridical person of a Party** means a juridical person constituted or organised under the law of that Party;

(g) **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) **measures by a Party** includes measures taken by:

(i) central, regional, or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

(i) **natural person of a Party** means any natural person possessing the nationality or citizenship of, or right of permanent residence in that Party in accordance with its laws and regulations; and

(i) **return** means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalties and all other lawful income.

(1) For greater certainty: (a) in the case of Thailand, protection under this Chapter shall be accorded to covered investments which have been specifically approved in writing for protection by the competent authorities; (b) in the case of Viet Nam, "has been admitted" means "has been specifically registered or approved in writing, as the case may be".

(2) The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(3) For greater certainty, investment does not mean claims to money that arise solely from: (a) commercial contracts for sale of goods or services; or (b) the extension of credit in connection with such commercial contracts.

(4) For greater certainty, the Parties understand that an investor that "seeks to make" an investment refers to an investor of another Party that has taken active steps to make an investment. Where a notification or approval process is required for making an investment, an investor that "seeks to make" an investment refers to an investor of another Party that has initiated such notification or approval process.

Article 3. Relation to other Chapters

1. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 8 (Trade in Services) or Chapter 9 (Movement of Natural Persons).

2. Notwithstanding Paragraph 1, Article 6 (Treatment of Investment), Article 7 (Compensation for Losses), Article 8 (Transfers), Article 9 (Expropriation and Compensation), Article 10 (Subrogation) and Section B (Investment Disputes between a Party and an Investor) shall apply, mutatis mutandis, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of any one of the other Parties pursuant to Chapter 8 (Trade in Services), but only to the extent that any such measures relate to a covered investment and an obligation under this Chapter, regardless of whether such a service sector is scheduled in a Party's schedule of specific services commitments in Annex 3 (Schedules of Specific Services Commitments).

Article 4. National Treatment (5)

Each Party shall accord to investors of another Party, and to covered investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer or other disposition of investments, treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments.

(5) The application of this Article is subject to Article 16 (Work Programme).

Article 5. Prohibition of Performance Requirements

No Party shall apply in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party in its territory any measure which is inconsistent with the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement.

Article 6. Treatment of Investment

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security.

2. For greater certainty (6):

(a) fair and equitable treatment requires each Party not to deny justice in any legal or administrative proceedings;

(b) full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the covered investment; and

(c) 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 under customary international law, and do not create additional substantive rights.

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

(6) In the case of Indonesia, only Paragraph 2(a) and (b) shall apply where Indonesia is the Party according treatment under this Article.

Article 7. Compensation for Losses

Each Party shall accord to investors of another Party, and to covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife or state of emergency, treatment no less favourable than that it accords, in like circumstances, to:

(a) its own investors and their investments; and

(b) investors of any other Party or non-Party and their investments.

Article 8. Transfers

1. Each Party shall allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital, including the initial contribution;

(b) profits, capital gains, dividends, royalties, licence fees, technical assistance and technical and management fees, interest and other current income accruing from any covered investment;

(c) proceeds from the total or partial sale or liquidation of any covered investment;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 7 (Compensation for Losses) and Article 9 (Expropriation and Compensation);

(f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the parties to the dispute; and

(g) earnings and other remuneration of personnel engaged from abroad in connection with that investment.

2. Each Party shall allow such transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding Paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non- discriminatory, and good faith application of its laws and regulations relating to:

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

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

(c) criminal or penal offences and the recovery of the proceeds of crime;

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

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

(f) taxation;

(g) social security, public retirement, or compulsory savings schemes; and

(h) severance entitlements of employees.

4. Nothing in this Chapter shall affect the rights and obligations of each Party as a member of the International Monetary Fund under the IMF

Articles of Agreement, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Chapter regarding such transactions, except under Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 15 (General Provisions and Exceptions) or at the request of the International Monetary Fund.

Article 9. Expropriation and Compensation (7)

1. A Party shall not expropriate or nationalise a covered investment either directly or through measures equivalent to expropriation or nationalisation (expropriation), except:

(a) for a public purpose (8);

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law.

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

(a) be paid without delay (9);

(b) be equivalent to the fair market value of the expropriated investment at the time when or immediately before the expropriation was publicly announced (10), or when the expropriation occurred, whichever is applicable;

(7) This Article shall be interpreted in accordance with this Chapters Annex on Expropriation and Compensation.

(8) For the avoidance of doubt, where Malaysia is the expropriating Party, any measure of expropriation relating to land shall be for the purposes as set out in the domestic laws and regulations relating to land acquisition.

(9) The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

(c) not reflect any change in value because the intended expropriation had become known earlier; and

(d) be effectively realisable and freely transferable between the territories of the Parties.

3. The compensation referred to in Paragraph 1(c) shall include appropriate interest. The compensation, including any accrued interest, shall be payable either in the currency of the expropriating Party, or if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely useable currency, the compensation referred to in Paragraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement.

6. Notwithstanding Paragraphs 1 to 4, in the case where Singapore or Viet Nam is the expropriating Party, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation made in accordance with the aforesaid legislation. Such compensation shall be subject to any subsequent amendments to the aforesaid legislation relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

(10) In the case of the Philippines, the time when or immediately before the expropriation was publicly announced refers to the date of filing of the Petition for Expropriation.

Article 10. Subrogation

1. If a Party or an agency of a Party makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity it has granted on non- commercial risk in respect of an investment, the other Party shall recognise the subrogation or transfer of any right or claim in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or an agency of a Party has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the agency making the payment, pursue those rights and claims against the other Party.

3. In any proceeding involving an investment dispute, a Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Article 11. Denial of Benefits

1. Following notification, a Party may deny the benefits of this Chapter:

(a) to an investor of another Party that is a juridical person of such other Party and to investments of that investor if an investor of a non-Party owns or controls the juridical person and the juridical person has no substantive business operations in the territory of the other Party;

(b) to an investor of another Party that is a juridical person of such other Party and to investments of that investor if an investor of the denying Party owns or controls the juridical person and the juridical person has no substantive business operations in the territory of any Party, other than the denying Party.

2. Notwithstanding Paragraph 1 and subject to prior notification to and consultation with the relevant Party, Thailand may, under its applicable laws and regulations, deny the benefits of this Chapter relating to the admission, establishment, acquisition and expansion of investments to an investor of another Party that is a juridical person of such Party and to investments of such an investor where Thailand establishes that the juridical person is owned or controlled by natural persons or juridical persons of a non-Party or the denying Party.

3. In the case of Thailand, a juridical person is:

(a) owned by natural persons or juridical persons of a Party or a non-Party if more than 50 per cent of the equity interest in it is beneficially owned by such persons;

(b) controlled by natural persons or juridical persons of a Party or non-Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

4. Following notification, and without prejudice to Paragraph 1, the Philippines may deny the benefits of this Chapter to an investor of another Party and to investments of that investor, where it establishes that such investor has made an investment in breach of the provisions of Commonwealth Act No. 108, entitled "An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges", as amended by Presidential Decree No. 715, otherwise known as "The Anti-Dummy Law" as may be amended.

Article 12. Reservations (11)

1. Article 4 (National Treatment), and in the case of Lao PDR Article 5 (Prohibition of Performance Requirements), do not apply to:

(a) any existing measure that does not conform to those Articles maintained by a Party at:

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

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

(iii) a local level of government;

(b) the continuation or prompt renewal of any measure referred to in Subparagraph (a); or

(c) an amendment to any measure referred to in Subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed at the date of entry into force of the Party's Schedule to List I, with Article 4 (National Treatment), and, in the case of Lao PDR Article 5 (Prohibition of Performance Requirements).

2. Article 4 (National Treatment), and in the case of Lao PDR Article 5 (Prohibition of Performance Requirements), do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to List II.

3. Other than pursuant to any procedures for the modification of schedules of reservations, a Party may not, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to List II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

(11) The application of this Article is subject to Article 16 (Work Programme).

Article 13. Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application covered by this Chapter. International agreements pertaining to or affecting investors or investment activities to which a Party is a signatory shall also be published.

2. To the extent possible, each Party shall make the measures and international agreements of the kind referred to in Paragraph 1 available on the internet.

3. Where publication referred to in Paragraphs 1 and 2 is not practicable, such information (12 shall be made otherwise publicly available.

4. To the extent provided for under its domestic legal framework, each Party shall endeavour to provide a reasonable opportunity for comments by interested persons on measures referred to in Paragraph 1 before adoption.

5. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Chapter. Upon the request of another Party, the contact point shall:

(a) identify the office or official responsible for the relevant matter; and

(b) assist as necessary in facilitating communications with the requesting Party with respect to that matter.

6. Each Party shall respond within a reasonable period of time to all requests by any other Party for specific information on:

(a) any measures or international agreements referred to in Paragraph 1;

(b) any new, or any changes to existing, measures or administrative guidelines which significantly affect investors or covered investments, whether or not the other Party has been previously notified of the new or changed measure or administrative guideline.

7. Any notification or communication under this Article shall be provided to the other Party through the relevant contact points in the English language.

8. Nothing in this Article shall be construed as requiring 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.

9. Each Party shall ensure that in its administrative proceedings relating to the application of measures referred to in Paragraph 1 to particular investors or investments of the other Party in specific cases that:

(a) to the extent provided under its domestic legal framework and where possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, when a proceeding is initiated;

(b) to the extent provided under its domestic legal framework, that it endeavours to afford such persons with reasonable opportunity to present their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with its laws.

10. Each Party shall maintain judicial or administrative tribunals or procedures for the purpose of the prompt review '? and, where warranted, correction of final administrative actions regarding matters covered by this Chapter. Where such procedures or tribunals are not independent of the agency entrusted with the administrative action concerned, each Party shall ensure that the tribunals or procedures provide for an objective and impartial review.

11. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceedings are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision in accordance with the Party's laws.

12. Each Party shall ensure, subject to appeal or further review as provided in its law, that any decision referred to in Paragraph 11(b) shall be implemented in accordance with its laws.

(12) For greater certainty, the Parties agree that such information may be published in each Party's chosen language.

(13) For avoidance of doubt, the form of "review" shall be as provided for under the Party's law.

Article 14. Special Formalities and Disclosure of Information

1. Nothing in Article 4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, including a requirement that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not substantially impair the protections afforded by a Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 4 (National Treatment), a Party may require an investor of another Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect to the extent possible any confidential information which has been provided from any disclosure that would prejudice legitimate commercial interests of the investor or the covered investment. Nothing in this Paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 15. Special and Differential Treatment for the Newer Asean Member States

In order to increase the benefits of this Chapter for the newer ASEAN Member States, and in accordance with the objectives of and the Preamble to this Agreement and objectives of Chapter 12 (Economic Co-operation), the Parties recognise the importance of according special and differential treatment to the newer ASEAN Member States under this Chapter, through:

(a) technical assistance to strengthen their capacity in relation to investment policies and promotion, including in areas such as human resource development;

(b) access to information on the investment policies of other Parties, business information, relevant databases and contact points for investment promotion agencies;

(c) commitments in areas of interest to the newer ASEAN Member States; and

(d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

Article 16. Work Programme

1. The Parties shall enter into discussions on:

(a) schedules of reservations to this Chapter; and

(b) treatment of investment in services which does not qualify as commercial presence in Chapter 8 (Trade in Services).

2. The Parties shall also enter into discussions with a view to agreeing on:

(a) the application of most-favoured-nation treatment to this Chapter, including to those schedules of reservations; and

(b) procedures for the modification of schedules of reservations.

3. The Parties shall conclude the discussions referred to in Paragraphs 1 and 2 within five years from the date of entry into force of this Agreement unless the Parties otherwise agree. These discussions shall be overseen by the Investment Committee established pursuant to Article 17 (Committee on Investment).

4. Schedules of reservations to this Chapter referred to in Paragraph 1 shall enter into force on a date agreed to by the Parties.

5. Notwithstanding anything to the contrary in this Chapter, Article 4 (National Treatment) and Article 12 (Reservations) shall not apply until the Parties' schedules of reservations to this Chapter have entered into force in accordance with Paragraph 4.

Article 17. Committee on Investment

1. The Parties hereby establish a Committee on Investment (Investment Committee) consisting of representatives of the Parties.

2. The Investment Committee shall meet within one year from the date of entry into force of this Agreement and thereafter as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

3. The Investment Committee's functions shall be:

(a) to oversee the discussions referred to in Article 16.1 and 16.2 (Work Programme);

(b) to review the implementation of this Chapter;

(c) to consider any other matters related to this Chapter identified by the Parties; and

(d) to report to the FTA Joint Committee as required.

Section B. Investment Disputes between a Party and an Investor

Article 18. Scope and Definitions

1. This Section shall apply to disputes between a Party and an investor of another Party concerning an alleged breach of an obligation of the former under Section A which causes loss or damage to the covered investment of the investor.

2. This Section shall not apply to investment disputes which have occurred prior to the entry into force of this Agreement.

3. A natural person possessing the nationality or citizenship of a Party may not pursue a claim against that Party under this Section.

4. For the purpose of this Section:

(a) **Appointing Authority** means:

(i) in the case of arbitration under Article 21.1(b) or (c) (Submission of a Claim), the Secretary-General of ICSID;

(ii) in the case of arbitration under Article 21.1(d) or (e) (Submission of a Claim), the Secretary-General of the Permanent Court of Arbitration; or

(iii) any person as agreed between the disputing parties;

(b) **disputing Party** means a Party against which a claim is made under this Section;

(c) **disputing party** means a disputing investor or a disputing Party;

(d) **disputing parties** means a disputing investor and a disputing Party;

(e) **disputing investor** means an investor of a Party that makes a claim against another Party on its own behalf under this Section, and where relevant includes an investor of a Party that makes a claim on behalf of a juridical person of the disputing Party that the investor owns or controls;

(f) **ICSID** means the International Centre for Settlement of Investment Disputes;

(g) **ICSID Convention** means the Convention on the Settlement of Investment Disputes between States and National of other States, done at Washington on 18 March 1965;

(h) **ICSID Additional Facility Rules** means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

(i) **non-disputing Party** means the Party of the disputing investor;

(i) **New York Convention** means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958; and

(k) **UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on_ International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

Article 19. Consultations

1. In the event of an investment dispute referred to in Article 18.1 (Scope and Definitions), the disputing parties shall as far as possible resolve the dispute through consultation, with a view towards reaching an amicable settlement. Such consultations, which may include the use of non-binding, third party procedures, shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Party.

2. With the objective of resolving an investment dispute through consultations, a disputing investor shall provide the disputing Party, prior to the commencement of consultations, with information regarding the legal and factual basis for the investment dispute.

Article 20. Claim by an Investor of a Party

If an investment dispute has not been resolved within 180 days of the receipt by a disputing Party of a request for consultations, the disputing investor may, subject to this Article, submit to conciliation or arbitration a claim:

(a) that the disputing Party has breached an obligation arising under Article 4 (National Treatment), Article 6 (Treatment of Investment), Article 7 (Compensation for Losses), Article 8 (Transfers), and Article 9 (Expropriation and Compensation) relating to the management, conduct, operation or sale or other disposition of a covered investment; and

(b) that the disputing investor or the covered investment has incurred loss or damage by reason of, or arising out of, that breach.

Article 21. Submission of a Claim

1. A disputing investor may submit a claim referred to in Article 20 (Claim by an Investor of a Party) at the choice of the disputing investor:

(a) where the Philippines or Viet Nam is the disputing Party, to the courts or tribunals of that Party, provided that such courts or tribunals have jurisdiction over such claim; or

(b) under the ICSID Convention and the /CS/D Rules of Procedure for Arbitration Proceedings (14), provided that both the disputing Party and the non-disputing Party are parties to the ICSID Convention; or

(c) under the ICSID Additional Facility Rules, provided that either of the disputing Party or non-disputing Party are a party to the ICSID Convention; or

(d) under the UNCITRAL Arbitration Rules; or

(e) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules,

provided that resort to one of the fora under Subparagraphs (a) to (e) shall exclude resort to any other.

2. A claim shall be deemed submitted to arbitration under this Article when the disputing investor's notice of or request for arbitration made in accordance with this Section (notice of arbitration) is received under the applicable arbitration rules.

3. The arbitration rules applicable under Paragraph 1(b) to (e) as in effect on the date the claim or claims were submitted to arbitration under this Article, shall govern the arbitration except to the extent modified by this Section.

4. In relation to a specific investment dispute or class of disputes, the applicable arbitration rules may be waived, varied or modified by written agreement between the disputing parties. Such rules shall be binding on the relevant tribunal or tribunals established pursuant to this Section, and on individual arbitrators serving on such tribunals.

5. The disputing investor shall provide with the notice of arbitration:

(a) the name of the arbitrator that the disputing investor appoints; or

(b) the disputing investor's written consent for the Appointing Authority to appoint that arbitrator.

(14) In the case of the Philippines, the submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings shall be

subject to a written agreement between the disputing parties in the event that an investment dispute arises.

Article 22. Conditions and Limitations on Submission of a Claim

1. The submission of a dispute as provided for in Article 20 (Claim by an Investor of a Party) to conciliation or arbitration under Article 21.1(b) to (e) (Submission of a Claim) in accordance with this Section, shall be conditional upon:

(a) the submission of the investment dispute to such conciliation or arbitration taking place within three years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation referred to in Article 20(a) (Claim by an Investor of a Party) causing loss or damage to the disputing investor or a covered investment;

(b) the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the disputing Party of its intent to submit the investment dispute to such conciliation or arbitration and which briefly summarises the alleged breach of the disputing Party (including the articles or provisions alleged to have been breached) and the loss or damage allegedly caused to the disputing investor or a covered investment; and

(c) the notice of arbitration being accompanied by the disputing investor's written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals of either Party, or other dispute settlement procedures, of any proceeding with respect to any measure alleged to constitute a breach referred to in Article 20 (Claim by an Investor of a Party).

2. Notwithstanding Paragraph 1(c), no Party shall prevent the disputing investor from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving its rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Party.

3. No Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which has been submitted to conciliation or arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this Paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

4. A disputing Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the disputing investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Article 23. Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators:

(a) one arbitrator appointed by each of the disputing parties; and

(b) the third arbitrator, who shall be the presiding arbitrator, appointed by agreement of the disputing parties, shall be a national of a non-Party which has diplomatic relations with the disputing Party and non-disputing Party, and shall not have permanent residence in either the disputing Party or non-disputing Party.

2. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, and be independent of, and not be affiliated with or take instructions from the disputing Party, the non- disputing Party, or disputing investor.

3. The Appointing Authority shall serve as appointing authority for arbitration under this Article.

4. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Appointing Authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

5. The disputing parties may establish rules relating to expenses incurred by the tribunal, including arbitrators' remuneration.

6. Where any arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

Article 24. Consolidation

Where two or more claims have been submitted separately to arbitration under Article 20 (Claim by an Investor of a Party) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

Article 25. Conduct of the Arbitration

1. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, a tribunal shall decide the matter before proceeding to the merits.

2. A disputing Party may, no later than 30 days after the constitution of the tribunal, file an objection that a claim is manifestly without merit. A disputing Party may also file an objection that a claim is otherwise outside the jurisdiction or competence of the tribunal. The disputing Party shall specify as precisely as possible the basis for the objection.

3. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without merit, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render an award to that effect.

4. The tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without merit, and shall provide the disputing parties a reasonable opportunity to comment.

5. Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

6. Where an investor claims that the disputing Party has breached Article 9 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the disputing Party and the non-disputing Party shall, upon request from the disputing Party, hold consultations with a view to determining whether the taxation measure in question has an effect equivalent to expropriation or nationalisation. Any tribunal that may be established pursuant to this Section shall accord serious consideration to the decision of both Parties under this Paragraph.

7. If both Parties fail either to initiate consultations referred to in Paragraph 6, or to determine whether such taxation measure has an effect equivalent to expropriation or nationalisation within the period of 180 days from the date of the receipt of request for consultation referred to in Article 19 (Consultations), the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Section.

Article 26. Transparency of Arbitral Proceedings

1. Subject to Paragraphs 2 and 3, the disputing Party may make publicly available all awards and decisions produced by the tribunal.

2. Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties shall be protected from disclosure to the public.

4. A disputing party may disclose to persons directly connected with the arbitral proceedings such confidential information as it considers necessary for the preparation of its case, but it shall require that such confidential information is protected.

5. The tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting Cabinet confidences, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

6. The non-disputing Party shall be entitled, at its cost, to receive from the disputing Party a copy of the notice of arbitration, no later than 30 days after the date that such document has been delivered to the disputing Party. The disputing Party shall notify all other Parties of the receipt of the notice of arbitration within 30 days thereof.

Article 27. Governing Law

1. Subject to Paragraphs 2 and 3, when a claim is submitted under Article 20 (Claim by an Investor of a Party), the tribunal shall decide the issues in dispute in accordance with this Agreement, any other applicable agreements between the Parties, any relevant rules of international law applicable in the relations between the Parties, and, where applicable, any relevant domestic law of the disputing Party.

2. The tribunal shall, on its own account or at the request of a disputing party, request a joint interpretation of any provision of this Agreement that is in issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days of the delivery of the request. Without prejudice to Paragraph 3, if the Parties fail to issue such a decision within 60 days, any interpretation submitted by a Party shall be forwarded to the disputing parties and the tribunal, which shall decide the issue on its own account.

3. A joint decision of the Parties, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision.

Article 28. Awards

1. Where a tribunal makes a final award against either of the disputing parties, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

2. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

3. A tribunal may not award punitive damages.

4. An award made by a tribunal shall be final and binding upon the disputing parties. An award shall have no binding force except between

the disputing parties and in respect of the particular case.

5. Subject to Paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay. (15)

6. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award under the ICSID Convention:

(i) 120 days has elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed;

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 21.1(e) (Submission of a Claim):

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

7. Each Party shall provide for the enforcement of an award in its territory.

(15) The Parties understand that there may be domestic legal and administrative processes that need to be observed before an award can be complied with.

Annex on expropriation and compensation

1. An action or a series of related actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in a covered investment.

2. Article 9.1 (Expropriation and Compensation) of Chapter 11 (Investment) addresses two situations:

(a) the first situation is direct expropriation, where a covered investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) the second situation is where an action or series of related actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or series of related actions by a Party, in a specific fact situation, constitutes an expropriation of the type referred to in Paragraph 2(b) requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the government action, although the fact that an action or series of related actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;

(b) whether the government action breaches the government's prior binding written commitment to the investor whether by contract, licence or other legal document; and

(c) the character of the government action, including, its objective and whether the action is disproportionate to the public purpose. (1)

4. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment do not constitute expropriation of the type referred to in Paragraph 2(b).

(1) "Public purpose" shall be read with reference to Article 9.1(a) and Article 9.6 (Expropriation and Compensation) of Chapter 11 (Investment).

Chapter 12. Economic Co-operation

Article 1. Scope and Objectives

1. The Parties reaffirm the importance of ongoing economic co-operation initiatives between ASEAN, Australia and New Zealand, and agree to complement their existing economic partnership in areas where the Parties have mutual interests, taking into account the different levels of development of the Parties.

2. The Parties acknowledge the provisions to encourage and facilitate economic co-operation included in various Chapters of this Agreement.

3. Economic co-operation under this Chapter shall support implementation of this Agreement through economic co-operation activities which are trade or investment related as specified in the Work Programme.

Article 2. Definitions

For the purposes of this Chapter:

(a) implementing Party or implementing Parties means, for each component of the Work Programme, the Party or Parties primarily responsible for the implementation of that component; and

(b) Work Programme means the programme of economic co-operation activities, organised into components, mutually determined by the Parties prior to the entry into force of this Agreement.

Article 3. Resources

1. Recognising the development gaps among the ASEAN Member States and among the Parties, the Parties shall contribute appropriately to the implementation of the Work Programme.

2. In determining the appropriate level of contribution to the Work Programme, the Parties shall take into account:

(a) the different levels of development and capacity of Parties;

(b) any in-kind contributions able to be made to Work Programme components by Parties; and

(c) that the appropriate level of contribution enhances the relevance and sustainability of co- operation, strengthens partnerships between Parties and builds Parties' shared commitment to the effective implementation and oversight of Work Programme components.

Article 4. Economic Co-operation Work Programme

1. Each Work Programme component shall:

(a) be trade or investment related and support this Agreement's implementation;

(b) be specified in the Work Programme;

(c) involve a minimum of two ASEAN Member States, Australia and/or New Zealand;

(d) address the mutual priorities of the participating Parties; and

(e) where possible, avoid duplicating existing economic co-operation activities.

2. The description of each Work Programme component shall specify the details necessary to provide clarity to the Parties regarding the scope and purpose of such component.

Article 5. Focal Points for Implementation

1. Each Party shall designate a focal point for all matters relating to the implementation of the Work Programme and shall keep all Parties updated on its focal point's details.

2. The focal points shall be responsible for overseeing and reporting on the implementation of the Work Programme in accordance with Article 6 (Implementation and Evaluation of Work Programme Components) and Article 7 (Review of Work Programme), and for responding to inquiries from any Party regarding the Work Programme.

Article 6. Implementation and Evaluation of Work Programme Components

1. Prior to the commencement of each Work Programme component, the implementing Party or Parties, in consultation with relevant participating Parties, shall develop an implementation plan for that Work Programme component and provide that plan to each Party.

2. The implementing Party or Parties for a Work Programme component may use existing mechanisms for the implementation of that component.

3. Until the completion of a Work Programme component, the implementing Party or Parties shall regularly monitor and evaluate the relevant component and provide periodic reports to each Party including a final component completion report.

Article 7. Review of Work Programme

At the direction of the FTA Joint Committee, the Work Programme shall be reviewed to assess its overall effectiveness and recommendations may be made. The FTA Joint Committee may make modifications to the Work Programme taking into account the review and available resources.

Article 8. Non-application of Chapter 17 (consultations and Dispute Settlement)

Chapter 17 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

Chapter 13. Intellectual Property

Article 1. Objectives

Each Party confirms its commitment to reducing impediments to trade and investment by promoting deeper economic integration through effective and adequate creation, utilisation, protection and enforcement of intellectual property rights, taking into account the different levels of economic development and capacity and differences in national legal systems and the need to maintain an appropriate balance between the rights of intellectual property owners and the legitimate interests of users in subject matter protected by intellectual property rights.

Article 2. Definitions

For the purposes of this Chapter:

(a) intellectual property rights means copyright and related rights; rights in trademarks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as referred to in the TRIPS Agreement; and

(b) WIPO means the World Intellectual Property Organization.

Article 3. Affirmation of the Trips Agreement

Each Party affirms its rights and obligations with respect to each other Party under the TRIPS Agreement.

Article 4. National Treatment

1. Each Party shall accord to the nationals of each other Party treatment no less favourable than it accords to its own nationals with regard to the protection (1) of intellectual property, subject to the exceptions provided in the TRIPS Agreement and in those multilateral agreements concluded under the auspices of WIPO.

2. Each Party may avail itself of the exceptions referred to under Paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of any other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, only where such exceptions are:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

(1) For the purposes of this Paragraph, "protection" includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property tights, as well as those matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this Paragraph, "protection" also includes the prohibition on circumvention of effective technological Measures specified in Article 5 (Copyright).

Article 5. Copyright

1. Each Party shall:

(a) provide to authors of works (2) the exclusive right to authorise any communication to the public of their works by wire or wireless means;

(b) provide criminal procedures and penalties at least in cases where a person wilfully infringes copyright for commercial advantage or financial gain; and

(c) foster the establishment of appropriate bodies for the collective management of copyright and encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.

2. Each Party shall endeavour to:

(a) provide to authors of sound recordings (3) the exclusive right to authorise any communication to the public of their sound recordings by wire or wireless means;

(b) provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures (4) that are used by copyright owners in connection with the exercise of their copyright rights and that restrict acts, in respect of their works, which are not authorised by the copyright owners concerned or permitted by law; and

(c) provide criminal procedures and penalties at least in cases where a person wilfully commits a significant infringement of copyright, that is not committed for commercial advantage or financial gain and which is not otherwise permitted by law, but which has a substantial prejudicial impact on the owner of the copyright.

(2) For the purposes of this Chapter, "works" includes a cinematograph film.

(3) Where a Party is, or becomes, a member of the WIPO Performances and Phonograms Treaty (WPPT), that Party's obligations under this Paragraph shall be subject to any commitments and reservations that Party has made under the WPPT.

(4) For the purposes of this Chapter, "effective technological measures" means any technology, device, or component that is used by copyright owners in connection with the exercise of their copyright rights and that restricts acts, in respect of their works or sound recordings, which are not authorised by the copyright owners concerned or permitted by law.

Article 6. Government Use of Software

Each Party confirms its commitment to:

(a) maintain appropriate laws, regulations or policies that make provision for its central government agencies to continue to use only legitimate computer software in a manner authorised by law and consistent with this Chapter; and

(b) encourage its respective regional and local governments to maintain or adopt similar measures.

Article 7. Trademarks and Geographical Indications

1. Each Party shall maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, as amended from time to time.

2. Each Party shall provide high quality trademark rights through the conduct of examination as to substance and formalities and through opposition and _ cancellation procedures.

3. Each Party shall protect trademarks where they predate, in its jurisdiction, geographical indications in accordance with its domestic law and the TRIPS Agreement.

4. Each Party recognises that geographical indications may be protected through a trademark system.

Article 8. Genetic Resources, Traditional Knowledge and Folklore

Subject to each Party's international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

Article 9. Co-operation

1. The Parties acknowledge the significant differences in capacity between some Parties in the area of intellectual property. Mindful of this, where a Party's implementation of this Chapter is inhibited by capacity constraints, each other Party shall, as appropriate, and upon request, endeavour to provide co-operation to that Party to assist in the implementation of this Chapter.

2. At the request of a Party, any other Party may, to the extent possible and as appropriate, render assistance to the requesting Party in order to enhance the requesting Party's national framework for the acquisition, protection, enforcement, utilisation and creation of intellectual property, with a view to developing intellectual property systems that foster domestic innovation in the requesting Party.

3. The Parties agree to promote dialogue on intellectual property issues, including by:

(a) designating contact points in relevant government agencies, including contact points for the enforcement of intellectual property rights at the border;

(b) encouraging interaction between intellectual property experts in order to broaden understanding of each others' intellectual property systems; and

(c) exchanging information concerning the infringement of intellectual property rights, in accordance with domestic law.

4. The Parties shall endeavour to co-operate in order to promote the efficiency and transparency of intellectual property administration and registration systems, including by exchanging information regarding developments in such systems and by developing publicly accessible databases of registered rights.

5. The Parties shall endeavour to co-operate in order to promote education and awareness regarding the benefits of effective protection and enforcement of intellectual property rights.

6. Parties shall co-operate on border measures with a view to eliminating trade which infringes intellectual property rights. Parties who are members of the WTO shall also co- operate with each other to support the effective implementation of the requirements relating to border measures set out in Articles 51 to 60 of the TRIPS Agreement.

7. Recognising the importance of achieving the objectives of this Chapter, should any Party intend to accede to any of the following treaties, it can seek to co-operate with other Parties to support its accession to, and its implementation of, the following treaties:

(a) the *Patent Cooperation Treaty 1970*;

(b) the *Strasbourg Agreement Concerning the International Patent Classification 1971*;

(c) the *Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure 1977*;

(d) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989*;

(e) the *Patent Law Treaty 2000*;

(f) the *International Convention for the Protection of New Varieties of Plants 1991*;

(g) the *TRIPS Agreement*;

(h) the *Singapore Treaty on the Law of Trademarks 2006*;

(i) the *WIPO Copyright Treaty 1996*; and

(j) the *WIPO Performances and Phonograms Treaty 1996*.

8. Each Party shall, on request and as it considers appropriate, endeavour to provide co-operation to support any Party's efforts to implement an inclusive system (5) of trademark registration.

9. All co-operation under this Article is subject to the availability of resources.

(5) An inclusive system of trademarks does not limit the scope of registrable trademarks and thus permits the registration of all trademarks that are capable of distinguishing a good or service, such as shapes, aspects of packaging, single and multi-colour marks, sounds and scents.

Article 10. Transparency

1. Each Party shall ensure that its laws and regulations of general application that pertain to the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights are made publicly available in at least the national language of that Party or in the English language. Each Party shall also endeavour to provide that final judicial decisions and administrative rulings pertaining to the aforesaid matters are made publicly available in at least the national language of that Party or in the English language.

2. Each Party shall endeavour to make the information referred to in Paragraph 1, which is publicly available, made available in the English language and on the internet.

3. Each Party shall endeavour to make available on the internet databases of all pending and registered trademark rights in its jurisdiction.

Article 11. Recognition of Transitional Periods Under the Trips Agreement

Nothing in this Chapter shall derogate from any transitional period for implementing a provision of the TRIPS Agreement that has been or may be agreed by the Council for TRIPS, established pursuant to Article IV of the WTO Agreement, either prior or subsequent to the entry into force of this Agreement.

Article 12. Committee on Intellectual Property

1. Recognising the importance of achieving the objectives of this Chapter, the Parties hereby establish a Committee on Intellectual Property (IP Committee), consisting of representatives of the Parties to monitor the implementation and administration of this Chapter.

2. The IP Committee shall meet annually or as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

3. The IP Committee shall determine its terms of reference in accordance with this Chapter.

4. The IP Committee shall determine its work programme in response to priorities as identified by the Parties.

5. In the course of fulfilling its functions, the IP Committee may agree that existing or new mechanisms be utilised or developed in order to promote dialogue between the Parties on intellectual property issues, including by providing opportunities for stakeholders to engage with the Parties on such issues.

6. Each Party shall notify the IP Committee annually of its progress in meeting its commitments under Article 5 (Copyright), and developments regarding accession to treaties listed in Article 9.7 (Co-operation). These notifications shall be submitted at least 30 days prior to the first IP Committee meeting of the year.

Chapter 14. Competition

Article 1. Basic Principles

1. The Parties recognise the importance of co-operation in the promotion of competition, economic efficiency, consumer welfare and the curtailment of anti-competitive practices.

2. The Parties recognise the significant differences in capacity between ASEAN Member States, Australia and New Zealand in the area of competition policy.

3. The Parties respect the sovereign rights of each Party to develop, set, administer and enforce its own competition laws and policies.

4. Nothing in this Chapter requires a Party to develop specific competition related measures to address anti- competitive practices, or prevents a Party from adopting policies in other fields, for example to promote economic development.

Article 2. Co-operation

1. The Parties may engage in co-operation activities consistent with Article 1 (Basic Principles) in the field of competition, including:

(a) exchange of experience regarding the promotion and enforcement of competition law and policy;

(b) exchange of publicly available information about competition law and policy;

(c) exchange of officials for training purposes;

(d) exchange of consultants and experts on competition law and policy;

(e) participation of officials as lecturers, consultants, or participants at training courses on competition law and policy;

(f) participation of officials in advocacy programmes;

(g) other related activities following the introduction of a competition law in a Party; and

(h) any other form of technical co-operation as agreed upon by the Parties.

2. Mindful of this, where implementation of this Chapter is inhibited by capacity constraints, Australia and New Zealand may provide co-operation as they deem appropriate to assist ASEAN Member States with such implementation. Co- operation is subject to competition policy-related needs being identified and the availability of resources, having regards to respective Parties' laws and regulations.

Article 3. Contact Points

To ensure that technical co-operation under this Chapter occurs on an ongoing basis, the Parties shall designate contact points for technical co-operation and information exchange under this Chapter.

Article 4. Non-application of Chapter 17 (consultations and Dispute Settlement)

Chapter 17 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

Chapter 15. General Provisions and Exceptions

Article 1. General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods) Chapter 3 (Rules of Origin) Chapter 4 (Customs Procedures), Chapter 5 (Sanitary and Phytosanitary Measures) and Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures), Article XX of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Movement of Natural Persons) and Chapter 11 (Investment), Article XIV of GATS including its footnotes shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

3. For the purposes of this Agreement, the Parties understand that measures referred to in Article XX(f) of GATT 1994 include measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value. (1)

4. For the purposes of Chapter 8 (Trade in Services) and Chapter 11 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services or investment, nothing in these Chapters shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value. (2)

5. A Party shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by the Parties under Chapter 8 (Trade in Services) and Chapter 11 (Investment) if requested by a Party affected by the measures referred to in Paragraph 4.

(1) "Creative arts" include the performing arts — including theatre, dance and music — visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

(2) "Creative arts" include the performing arts — including theatre, dance and music — visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts,

and the study and technical development of these art forms and activities.

Article 2. Security Exceptions

1. Nothing in this Agreement shall be construed:

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

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;

(iii) taken so as to protect critical public infrastructures (3) including communications, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructures;

(iv) taken in time of national emergency or war or other emergency in _ international relations; or

(c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The FTA Joint Committee shall be informed to the fullest extent possible of measures taken under Paragraph 1(b) and (c) and of their termination.

(3) For clarity, this includes critical public infrastructures whether publicly or privately owned.

Article 3. Taxation Measures

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

(a) corresponding rights and obligations are also granted or imposed under the WTO Agreement;

(b) they are granted or imposed under Article 8 (Transfers) of Chapter 11 (Investment); or

(c) they are granted or imposed under Article 9 (Expropriation and Compensation) of Chapter 11 (Investment).

3. Where Paragraph 2(b) or {(c) apply, Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall also apply in respect of taxation measures.

4. If there is a dispute described in Article 18.1 (Scope and Definitions) of Chapter 11 (Investment) that may relate to a taxation measure, the relevant Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established pursuant to Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall accord serious consideration to a joint decision of the relevant Parties as to whether the measure in question is a taxation measure. For this purpose, Article 25.7 (Conduct of the Arbitration) of Chapter 11 (Investment) shall apply mutatis mutandis.

5. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention relating to the avoidance of double taxation in force between any of the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail. Any consultations between the relevant Parties about whether an inconsistency relates to a taxation measure shall be done by the competent tax authorities, as stipulated under the domestic laws and regulations of the relevant Parties. The request for such consultations shall be addressed through the contact points designated in accordance with Article 2 (Communications) of Chapter 16 (Institutional Provisions).

6. Nothing in this Agreement shall oblige a Party to extend to any other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement relating to the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

7. For the purposes of this Article, taxation measures do not include any import or customs duties.

Article 4. Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, adopt restrictive import measures;

(b) in the case of trade in services, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments;

(c) in the case of investments, adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 2(a) (Definitions) of Chapter 11 (Investment)

2. Restrictions adopted or maintained under Paragraph 1(b) or (c) shall:

(a) be consistent with the IMF Articles of Agreement;

(b) avoid unnecessary damage to the commercial, economic and financial interests of any other Party;

(c) not exceed those necessary to deal with the circumstances described in Paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in Paragraph 1 improves; and

(e) be applied on a non-discriminatory basis such that no Party is treated less favourably than any other Party or non-Party.

3. With respect to trade in services and investment,

(a) it is recognised that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition;

(b) in determining the incidence of such restrictions, a Party may give priority to economic sectors which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

4. Any restrictions adopted or maintained by a Party under Paragraph 1, or any changes therein, shall be notified promptly to the other Parties.

5. A Party adopting or maintaining any restrictions under Paragraph 1 shall:

(a) in the case of investment, respond to any other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement;

(b) in the case of trade in services, if consultations in relation to the restrictions adopted by it are not taking place at the WTO, a Party, if requested, shall promptly commence consultations with any interested Party.

Article 5. Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods and services, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfillment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 17 (Consultations and Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of Arbitral Tribunals) of Chapter 17 (Consultations and Dispute Settlement) may be requested to determine only whether any measure (referred to in Paragraph 1) is inconsistent with their rights under this Agreement.

Chapter 16. Institutional Provisions

Article 1. Fta Joint Committee

1. The Parties hereby establish a free trade agreement joint committee (the FTA Joint Committee) consisting of representatives of the Parties.

2. The functions of the FTA Joint Committee shall be to:

(a) review the implementation and operation of this Agreement;

(b) consider and recommend to the Parties any amendmenis to this Agreement;

(c) supervise and co-ordinate the work of all subsidiary bodies established pursuant to this Agreement;

(d) adopt, where appropriate, decisions and recommendations of subsidiary bodies established pursuant to this Agreement;

(e) consider any other matter that may affect the operation of this Agreement or that is entrusted to the FTA Joint Committee by the Parties; and

(f) carry out any other functions as the Parties may agree.

3. In the fulfillment of its functions, the FTA Joint Committee may establish additional subsidiary bodies, including ad hoc bodies, and assign them with tasks on specific matters, or delegate its responsibilities to any subsidiary body established pursuant to this Agreement including:

(a) Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods):

(i) ROO Sub-Committee established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin);

(ii) SPS Sub-Committee established pursuant to Article 10 (Meetings Among the Parties on Sanitary and Phytosanitary Matters) of Chapter 5 (Sanitary and Phytosanitary Measures); and

(iii) STRACAP Sub-Committee established pursuant to Article 13 (Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures) of Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures);

(b) Services Committee established pursuant to Article 24 (Committee on Trade in Services) of Chapter 8 (Trade in Services);

(c) Investment Committee established pursuant to Article 17 (Committee on Investment) of Chapter 11 (Investment); and

(d) IP Committee established pursuant to Article 12 (Committee on Intellectual Property) of Chapter 13 (Intellectual Property).

4. The FTA Joint Committee shall establish its rules and procedures at its first meeting.

5. Unless the Parties agree otherwise, the FTA Joint Committee shall convene its first meeting within one year after this Agreement enters into force. Its subsequent meetings shall be convened at such frequency as the Parties may mutually determine, and as necessary to discharge its functions under this Agreement. The FTA Joint Committee shall convene alternately in ASEAN Member States, Australia and New Zealand, unless the Parties agree otherwise. Special meetings of the FTA Joint Committee may be convened, as agreed by the Parties, within 30 days upon the request of a Party.

6. The FTA Joint Committee shall regularly report to the consultations of the ASEAN Economic Ministers, the Trade Minister of Australia and the Trade Minister of New Zealand through the meetings of their Senior Economic Officials.

Article 2. Communications

Each Party shall designate a contact point to facilitate communications among the Parties on any matter relating to this Agreement. All official communications in this regard shall be in the English language.

Chapter 17. Consultations and Dispute Settlement

Section A. Introductory Provisions

Article 1. Objectives

The objective of this Chapter is to provide an effective, efficient and transparent process for consultations and settlement of disputes arising under this Agreement.

Article 2. Definitions

For the purposes of this Chapter, the following definitions shall apply unless the context otherwise requires:

(a) **Complaining Party** means any Party or Parties that request consultations under Article 6 (Consultations);

(b) **dispute arising under this Agreement** means a complaint made by a Party concerning any measure affecting the operation, implementation or application of this Agreement whereby any benefit accruing to the Complaining Party directly or indirectly under this Agreement is being nullified or impaired, or the attainment of any objective of this Agreement is being impeded, as a result of the failure of the Responding Party to carry out its obligations (1) under this Agreement (2);

(b) Parties to the dispute means the Complaining Party and the Responding Party;

(c) Responding Party means any Party to which the request for consultations is made under Article 6 (Consultations); and

(d) Third Party means any Party who has notified its substantial trade interest or substantial interest in the matter pursuant to Article 6.7 (Consultations) or Article 10.1 (Third Parties) respectively.

(1) A failure to carry out its obligations includes application by the Responding Party of any measure which is in conflict with the obligations under this Agreement.

(2) Non-violation complaints are not permitted under this Agreement.

Article 3. Scope and Coverage

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the avoidance or settlement of disputes arising under this Agreement. This Chapter shall not apply to the settlement of disputes arising under Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 10 (Electronic Commerce), Chapter 12 (Economic Co- operation) and Chapter 14 (Competition).

2. This Chapter shall apply subject to such special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

3. Subject to Article 5 (Choice of Forum), this Chapter is without prejudice to the rights of a Party to have recourse to dispute settlement procedures available under other agreements to which it is a party.

4. This Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by central, regional or local governments or authorities within the territory of a Party.

Article 4. General Provisions

1. This Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law.

2. All notifications, requests and replies made pursuant to this Chapter shall be in writing.

3. The Parties to the dispute are encouraged at every stage of a dispute to make every effort to reach a mutually agreed solution to the dispute. Where a mutually agreed solution is reached, the terms and conditions of the agreement shall be notified to the other Parties.

4. Unless otherwise specified, any time periods provided for in this Chapter may be modified by mutual agreement of the Parties to the dispute provided that any modification shall not prejudice the rights of the Third Parties pursuant to Article 10 (Third Parties).

Article 5. Choice of Forum

1. Where a dispute concerning any matter arises under this Agreement and under another international agreement to which the Parties to the dispute are party, the Complaining Party may select the forum in which to address that matter and that forum shall be used to the exclusion of other possible fora in respect of that matter.

2. For the purposes of this Article, the Complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of an arbitral tribunal pursuant to Article 8 (Request for Establishment of Arbitral Tribunals) or requested the establishment of, or referred a matter to, a similar dispute settlement panel under another international agreement.

3. This Article does not apply where the Parties to the dispute agree in writing that this Article shall not apply to a particular dispute.

Section B. Consultation Provisions

Article 6. Consultations

1. Any Party may request consultations with any other Party with respect to any dispute arising under this Agreement. A Responding Party shall accord due consideration to a request for consultations made by a Complaining Party and shall accord adequate opportunity for such consultations.

2. Any request for consultations shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

3. A copy of all such requests shall be simultaneously provided to all Parties. The Responding Party shall immediately acknowledge receipt of the request by way of notification to all Parties, indicating the date on which the request was received.

4. The Responding Party shall, unless otherwise mutually agreed, reply to the request within seven days after the date of its receipt and shall enter into consultations within a period of no more than:

(a) ten days after the date of receipt of the request in cases of urgency, including perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

5. If the Responding Party does not enter into consultations within the periods specified in Paragraph 4, or a period otherwise mutually agreed, the Complaining Party may proceed directly to request the establishment of an arbitral tribunal pursuant to Article 8 (Request for Establishment of Arbitral Tribunals).

6. The Parties to the dispute shall make every effort to reach a mutually satisfactory solution through consultations. To this end, the Parties to the dispute shall:

(a) provide sufficient information to enable a full examination of the matter, including how the measures at issue might affect the implementation or application of this Agreement;

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and

(c) endeavour to make available for the consultations personnel of its government agencies or other regulatory bodies who have responsibility for and/or expertise in the matter under consultation.

7. Whenever a Party other than the Parties to the dispute considers that it has a substantial trade interest in the consultations, such Party may notify the Parties to the dispute within seven days after the notification of the request for consultations, of its desire to be joined in the consultations. Such notification shall be simultaneously provided to all Parties. Such Party shall be joined in the consultations if the Parties to the dispute agree.

Article 7. Good Offices, Conciliation, Mediation

1. The Parties to the dispute may at any time agree to good offices, conciliation or mediation. Procedures for good offices, conciliation or mediation may begin at any time and may be terminated at any time.

2. If the Parties to the dispute agree, procedures for good offices, conciliation or mediation may continue while the matter is being examined by an arbitral tribunal established or re-convened under this Chapter.

3. Proceedings involving good offices, conciliation and mediation and positions taken by the Parties to the dispute during these proceedings shall be confidential and without prejudice to the rights of any Parties to the dispute in any further or other proceedings.

Section C. Adjudication Provisions

Article 8. Request for Establishment of Arbitral Tribunals

1. The Complaining Party may request the establishment of an arbitral tribunal to consider the matter if:

(a) the Responding Party does not enter into consultations in accordance with Article 6.4 (Consultations); or

(b) if the consultations fail to resolve a dispute within: (i) 20 days after the date of receipt of the request for consultations in cases of urgency including perishable goods;

(ii) 60 days after the date of receipt of the request for consultations regarding any other matter; or

(iii) such other period as the Parties to the dispute may agree.

2. A request made pursuant to Paragraph 1 shall identify the specific measures at issue and provide details of the factual and legal basis of the complaint (including the provisions of this Agreement to be addressed by the arbitral tribunal) sufficient to present the problem clearly.

3. A copy of all such requests shall be simultaneously provided to all Parties. The Responding Party shall immediately acknowledge receipt of the request by way of notification to all Parties, indicating the date on which the request was received.

4. Where a request is made pursuant to Paragraph 1, an arbitral tribunal shall be established in accordance with Article 11 (Establishment and Re-convening of Arbitral Tribunals).

Article 9. Procedures for Multiple Complainants

1. Where more than one Party requests the establishment of an arbitral tribunal related to the same matter, a single arbitral tribunal may be established to examine these complaints if all of the Parties to the disputes agree. The Parties to the disputes should seek to establish a single arbitral tribunal whenever feasible.

2. The single arbitral tribunal shall organise its examination and present its findings in such a manner that the rights which the Parties to the dispute would have enjoyed had separate arbitral tribunals examined the complaints are in no way impaired.

3. If more than one arbitral tribunal is established to examine the complaints related to the same matter, the Parties to the disputes shall endeavour to ensure that the same persons serve as arbitrators for each arbitral tribunal. The arbitral tribunals shall consult to ensure, to the greatest extent possible, that the timetables for the arbitral tribunal processes are harmonised.

Article 10. Third Parties

1. Any Party having a substantial interest in a matter before an arbitral tribunal may notify the Parties to the dispute of this interest no later than ten days after the date of receipt by the Responding Party of the request for the establishment of the arbitral tribunal or the date of a request for a Compliance Review Tribunal pursuant to Article 16 (Compliance Review). Such notification shall be simultaneously provided to all Parties. Any Party notifying its substantial interest shall have the rights and obligations of a Third Party.

2. A Third Party shall receive the submissions of the Parties to the dispute to the first substantive meeting of the arbitral tribunal with the Parties to the dispute.

3. A Third Party shall have an opportunity to make at least one written submission to the arbitral tribunal and shall have an opportunity to be heard by the arbitral tribunal at its first substantive meeting with the Parties to the dispute. Any submissions or other documents submitted by Third Parties shall be simultaneously provided to the Parties to the dispute and other Third Parties.

4. The Parties to the dispute may agree to provide additional or supplemental rights to Third Parties regarding participation in arbitral tribunal proceedings. In providing additional or supplemental rights, the Parties to the dispute may impose conditions. Unless otherwise agreed by the Parties to the dispute, the arbitral tribunal shall not grant any additional or supplemental rights to any Third Parties regarding participation in arbitral tribunal proceedings.

5. If a Third Party considers that a measure already the subject of an arbitral tribunal proceeding nullifies or impairs benefits accruing to it under this Agreement, such Party may have recourse to dispute settlement procedures under this Chapter.

Article 11. Establishment and Re-convening of Arbitral Tribunals

1. An arbitral tribunal requested pursuant to Article 8 (Request for Establishment of Arbitral Tribunals) shall be established in accordance with this Article.

2. Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall consist of three arbitrators. All appointments and nominations of arbitrators under this Article shall conform fully with the requirements in Paragraphs 9 and 10.

3. Within five days of the date of the receipt of a request under Article 8 (Request for Establishment of Arbitral Tribunals), the Parties to the dispute shall enter into consultations with a view to reaching agreement on the procedures for composing the arbitral tribunal, taking into account the factual, technical and legal circumstances of the dispute. The Parties to the dispute may agree to use any of the optional procedures specified in this Chapter's Annex on Optional Procedures for Composing Arbitral Tribunals. Any procedures for composing the arbitral tribunal which are agreed under this Paragraph shall be used for the composition of the arbitral tribunal and shall also be used for the purposes of Paragraphs 12 and 13.

4. If the Parties to the dispute are unable to reach agreement on the procedures for composing the arbitral tribunal within 15 days of the date of the receipt of the request referred to in Paragraph 3, any Party to the dispute may at any time thereafter notify the other Parties to the dispute that it wishes to use the procedures set forth in Paragraphs 5 to 7. Where such a notification is made, the arbitral tribunal shall be composed in accordance with Paragraphs 5 to 7.

5. The Complaining Party or Parties shall appoint one arbitrator within ten days of the date of the receipt of the notification referred to in Paragraph 4. The Responding Party shall appoint one arbitrator within 20 days of the date of the receipt of the notification referred to in Paragraph 4.

6. Following the appointment of the arbitrators in accordance with Paragraph 5, the Parties to the dispute shall agree on the appointment of the third arbitrator who shall serve as the chair of the arbitral tribunal. To assist in reaching this agreement, each of the Parties to the dispute may provide to the other Parties to the dispute a list of up to three nominees for appointment as the chair of the arbitral tribunal. If the Parties to the dispute have not agreed on the chair of the arbitral tribunal within 15 days of the appointment of the second arbitrator, the two appointed arbitrators shall designate by common agreement the third arbitrator who shall chair the arbitral tribunal.

7. If all three arbitrators have not been appointed within 45 days of the date of the receipt of the notification referred to in Paragraph 4, any Party to the dispute may request the Director-General of the WTO to make the remaining appointments within a further period of 15 days. Any lists of nominees which were provided under Paragraph 6 shall also be provided to the Director-General of the WTO and may be used in making the required appointments.

8. The date of establishment of the arbitral tribunal shall be the date on which the last arbitrator is appointed.

9. All arbitrators shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgement;

(c) be independent of, and not be affiliated with or take instructions from, any Party to the dispute;

(d) not have dealt with the matter in any capacity; and

(e) disclose, to the Parties to the dispute, information which may give rise to justifiable doubts as to their independence or impartiality.

10. Unless the Parties to the dispute otherwise agree, arbitrators shall not be nationals of a Party to the dispute. In addition, the chair of arbitral tribunal shall not have his or her usual place of residence in the territory of a Party to the dispute.

11. Arbitrators shall serve in their individual capacities and not as government representatives, nor as representatives of any organisation. Parties shall not give them instructions nor seek to influence them as individuals with regard to matters before an arbitral tribunal.

12. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the appointment of the successor arbitrator.

13. Where an arbitral tribunal is re-convened under Article 16 (Compliance Review) or Article 17 (Compensation and Suspension of Concessions or other Obligations) the re- convened arbitral tribunal shall, where possible, have the same arbitrators as the original arbitral tribunal. Where this is not possible, the replacement arbitrator(s) shall be appointed in the same manner as prescribed for the appointment of the original arbitrator(s), and shall have all the powers and duties of the original arbitrator(s).

Article 12. Functions of Arbitral Tribunals

1. An arbitral tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the facts of the case;

(b) the applicability of the provisions of this Agreement cited by the Parties to the dispute; and

(c) whether the Responding Party has failed to carry out its obligations under this Agreement.

2. An arbitral tribunal shall have the following terms of reference unless the Parties to the dispute agree otherwise within 20 days from the

date of the establishment of an arbitral tribunal:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for establishment of an arbitral tribunal made pursuant to Article 8 (Request for Establishment of Arbitral Tribunals), and to make such findings and if applicable, suggestions provided for in this Agreement."

The arbitral tribunal shall make its findings in accordance with this Agreement.

3. The arbitral tribunal shall set out in its report:

(a) a descriptive section summarising the arguments of the Parties to the dispute and Third Parties;

(b) its findings on the facts of the case and on the applicability of the provisions of this Agreement;

(c) its findings on whether the Responding Party has failed to carry out its obligations under this Agreement; and

(d) its reasons for its findings in Subparagraphs (b) and (c).

4. In addition to Paragraph 3, an arbitral tribunal may include in its report any other findings jointly requested by the Parties to the dispute. The arbitral tribunal may suggest ways in which the Responding Party could implement the findings.

5. Unless the Parties to the dispute otherwise agree, an arbitral tribunal shall base its report solely on the relevant provisions of this Agreement and the submissions and arguments of the Parties to the dispute. An arbitral tribunal shall only make the findings and suggestions provided for in this Agreement.

6. The interests of Third Parties and those of other Parties shall be fully taken into account during the arbitral tribunal proceedings. Third Parties' submissions shall be reflected in the report of the arbitral tribunal.

7. The findings and suggestions of the arbitral tribunal cannot add to or diminish the rights and obligations provided in this Agreement or any other international agreement.

8. The arbitral tribunal shall consult regularly the Parties to the dispute and provide adequate opportunities for the development of a mutually satisfactory solution to the dispute.

9. An arbitral tribunal re-convened under this Chapter shall also carry out functions with regard to compliance review under Article 16 (Compliance Review) and review of level of suspension of concessions or other obligations under Article 17 (Compensation and Suspension of Concessions or other Obligations). Paragraphs 1 to 3 shall not apply to an arbitral tribunal re-convened under Article 16 (Compliance Review) and Article 17 (Compensation and Suspension of Concessions or other Obligations).

10. An arbitral tribunal shall make its findings by consensus provided that where an arbitral tribunal is unable to reach consensus it may make its findings by majority vote.

Article 13. Arbitral Tribunal Procedures

1. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of Arbitral Tribunals) shall adhere to this Chapter. The arbitral tribunal shall apply the rules of procedure set out in this Chapter's Annex on Rules of Procedure for Arbitral Tribunal Proceedings (Rules of Procedure Annex) unless the Parties to the dispute agree otherwise. On the request of a Party to the dispute, or on its own initiative, the arbitral tribunal may, after consulting the Parties to the dispute, adopt additional rules of procedure which do not conflict with the provisions of this Chapter or with the Rules of Procedure Annex.

2. An arbitral tribunal re-convened under Article 16 (Compliance Review) or Article 17 (Compensation and Suspension of Concessions or other Obligations) may establish its own procedures which do not conflict with this Chapter or the Rules of Procedure Annex, in consultation with the Parties to the dispute, drawing as it deems appropriate from this Chapter or the Rules of Procedure Annex.

Timetable

3. After consulting the Parties to the dispute, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties to the dispute agree otherwise.

4. Similarly, a Compliance Review Tribunal re-convened pursuant to Article 16 (Compliance Review) shall, as soon as practicable and whenever possible within 15 days after re- convening, fix the timetable for the compliance review process taking into account the time periods specified in Article 16 (Compliance Review).

Arbitral Tribunal Proceedings

5. Arbitral tribunal proceedings should provide sufficient flexibility so as to ensure high-quality reports, while not unduly delaying the arbitral tribunal process.

6. Arbitral tribunal deliberations shall be confidential. The Parties to the dispute and Third Parties shall be present only when invited by the arbitral tribunal to appear before it. An arbitral tribunal shall hold its hearings in closed session unless the Parties to the dispute agree otherwise. All presentations and statements made at hearings shall be made in the presence of the Parties to the dispute. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

Submissions

7. Each Party to the dispute shall have an opportunity to set out in writing the facts of its case, its arguments and counter arguments. The timetable fixed by the arbitral tribunal shall include precise deadlines for submissions by the Parties to the dispute and Third Parties.

Hearings

8. The timetable fixed by the arbitral tribunal shall provide for at least one hearing for the Parties to the dispute to present their case to the arbitral tribunal. As a general rule, the timetable shall not provide more than two hearings unless special circumstances exist.

9. The venue for hearings shall be decided by mutual agreement between the Parties to the dispute. If there is no agreement, the venue shall alternate between the capitals of the Parties to the dispute with the first hearing to be held in the capital of the Responding Party.

Confidentiality

10. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties to the dispute. No Party to the dispute shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by a Party to the dispute or Third Party. The Parties to the dispute, Third Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the dispute to the arbitral tribunal which that Party has designated as confidential. A Party to the dispute shall upon request of a Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Additional Information and Technical Advice

11. The Parties to the dispute and Third Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

12. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties to the dispute. Where the Parties to the dispute agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties to the dispute with any information or technical advice it receives and an opportunity to provide comments.

Report

13. The arbitral tribunal shall provide to the Parties to the dispute an interim report, meeting the requirements specified in Article 12.3 (Functions of Arbitral Tribunals).

14. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to the dispute to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties to the dispute in its final report.

15. The interim and final report of the arbitral tribunal shall be drafted without the presence of the Parties to the dispute. Opinions expressed in the report of the arbitral tribunal by its individual members shall be anonymous.

16. The arbitral tribunal shall provide its final report to all other Parties seven days after the report is presented to the Parties to the dispute, and at any time thereafter a Party to the dispute may make the report publicly available subject to the protection of any confidential information contained in the report.

Article 14. Suspension and Termination of Proceedings

1. The Parties to the dispute may agree that the arbitral tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended arbitral proceeding shall be resumed upon the request of any Party to the dispute. If the work of the arbitral tribunal has been continuously suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties to the dispute agree otherwise.

2. The Parties to the dispute may agree to terminate the proceedings of an arbitral tribunal in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the arbitral tribunal presents its final report, it may at any stage of the proceedings propose to the Parties to the dispute that the dispute be settled amicably.

4. The Parties to the dispute shall notify the other Parties that the arbitral tribunal has been suspended, terminated or its authority has lapsed pursuant to Paragraph 1.

Section D. Implementation Provisions

Article 15. Implementation

1. Where an arbitral tribunal finds that the Responding Party has failed to carry out its obligations under this Agreement, the Responding Party shall comply with its obligations under this Agreement.

2. Within 30 days of the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute, the Responding Party shall notify the Complaining Party:

(a) of its intentions with respect to implementation, including an indication of possible actions it may take to comply with the obligation in Paragraph 1;

(b) whether such implementation can take place immediately; and

(c) if such implementation cannot take place immediately, the reasonable period of time the Responding Party would need to implement.

3. If it is impracticable to comply immediately with the obligation in Paragraph 1, the Responding Party shall have a reasonable period of time to do so.

4. If a reasonable period of time is required, it shall, whenever possible, be mutually agreed by the Parties to the dispute. Where the Parties to the dispute are unable to agree on the reasonable period of time within 45 days of the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute, any Party to the dispute may request that the chair of the arbitral tribunal determine the reasonable period of time. Unless the Parties to the dispute otherwise agree, such requests shall be made no later than 120 days from the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute.

5. Where a request is made pursuant to Paragraph 4, the chair of the arbitral tribunal shall present the Parties to the dispute with a report containing a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the request.

6. As a guideline, the reasonable period of time determined by the chair of the arbitral tribunal should not exceed 15 months from the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.

Article 16. Compliance Review

1. Where the Parties to the dispute disagree on the existence or consistency with this Agreement of measures taken to comply with the obligation in Article 15.1 (Implementation), such dispute shall be decided through recourse to an arbitral tribunal re-convened for this purpose (Compliance Review Tribunal). (3) Unless otherwise specified in this Chapter, a Compliance Review Tribunal may be convened at the request of any Party to the dispute.

2. Such request may only be made after the earlier of: (a) the expiry of the reasonable period of time; or (b) a notification to the Complaining Party by the Responding Party that it has complied with the obligation in Article 15.1 (Implementation).

3. A Compliance Review Tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the factual aspects of any implementation action taken by the Responding Party; and

(b) whether the Responding Party has complied with the obligation in Article 15.1 (Implementation).

4. The Compliance Review Tribunal shall set out in its report:

(a) adescriptive section summarising the arguments of the Parties to the dispute and Third Parties;

(b) its findings on the factual aspects of the case; and

(c) its findings on whether the Responding Party has complied with the obligation in Article 15.1 (Implementation).

5. The Compliance Review Tribunal shall, where possible, provide its interim report to the Parties to the dispute within 75 days of the date it re-convenes, and its final report 15 days thereafter. When the Compliance Review Tribunal considers that it cannot provide either report within the relevant timeframe, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will submit the report.

6. Where an arbitral tribunal is requested to re-convene pursuant to Paragraph 1, it shall re-convene within 15 days of the date of the request. The period from the date of the request for the arbitral tribunal to re-convene to the submission of its final report shall not exceed 120 days, unless Article 11.12 (Establishment and Re-convening of Arbitral Tribunals) applies or the Parties to the dispute otherwise agree.

(3) Consultations under Article 6 (Consultations) are not required for these procedures.

Article 17. Compensation and Suspension of Concessions or other Obligations

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the Responding Party does not comply with its obligation under Article 15.1 (Implementation). However, neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation under _ Article 15.1 (Implementation). Compensation is voluntary and, if granted, shall be consistent with this Agreement.

2. Where either of the following circumstances exists:

(a) the Responding Party has notified the Complaining Party that it does not intend to comply with the obligation in Article 15.1 (Implementation); or

(b) a failure to comply with the obligation in Article 15.1 (Implementation) has been established in accordance with Article 16 (Compliance

Review),

the Responding Party shall, if so requested by the Complaining Party, enter into negotiations with a view to developing mutually acceptable compensation.

3. If no satisfactory compensation has been agreed within 30 days of the date of a request made under Paragraph 2, the Complaining Party may at any time thereafter notify the Responding Party and the other Parties that it intends to suspend the application to the Responding Party of concessions or other obligations equivalent to the level of nullification and impairment, and shall have the right to begin suspending concessions or other obligations 30 days after the date of receipt of the notification.

4. The right to suspend concessions or other obligations arising under Paragraph 3 shall not be exercised where:

(a) a review is being undertaken pursuant to Paragraph 8; or

(b) amutually agreed solution has been reached.

5. Anotification made under Paragraph 3 shall specify the level of concessions or other obligations that the Complaining Party proposes to suspend, and the relevant Chapter and sector(s) which the concessions or other obligations are related to.

6. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles:

(a) the Complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure; and

(b) the Complaining Party may suspend concessions or other obligations in other sectors it if considers that it is not practicable or effective to suspend concessions or other obligations in the same sector.

7. The level of suspending concessions or other obligations shall be equivalent to the level of nullification and impairment.

8. Within 30 days from the date of receipt of a notification made under Paragraph 3, if the Responding Party objects to the level of suspension proposed or considers that the principles set forth in Paragraph 6 have not been followed, the Responding Party may request the arbitral tribunal to re-convene to make findings on the matter. The arbitral tribunal shall provide its assessment to the Parties to the dispute within 30 days of the date it re-convenes. Where an arbitral tribunal is requested to re-convene pursuant to this Paragraph, it shall re-convene within 15 days of the date of the request, unless Article 11.12 (Establishment and Re-convening of Arbitral Tribunals) applies.

9. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the obligation in Article 15.1 (Implementation) has been complied with or a mutually satisfactory solution is reached.

10. Where the right to suspend concessions or other obligations has been exercised under this Article, if the Responding Party considers that:

(a) the level of concessions or other obligations suspended by the Complaining Party is not equivalent to the level of the nullification and impairment; or

(b) it has complied with the obligation in Article 15.1 (Implementation),

it may request the arbitral tribunal to re-convene to examine the matter. (4)

11. Where the arbitral tribunal re-convenes pursuant to Paragraph 10(a), Paragraph 8 shall apply. Where the arbitral tribunal re-convenes pursuant to Paragraph 10(b), Article 16.3 to 16.5 (Compliance Review) shall apply.

(4) Where a Compliance Review Tribunal determines that measures taken to comply are inconsistent with this Agreement, it may also, on request, assess whether the level of any existing suspension of concessions is still appropriate and, if not, assess an appropriate level.

Section E. Final Provisions

Article 18. Special and Differential Treatment Involving Newer Asean Member States

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving newer ASEAN Member States, particular sympathetic consideration shall be given to the special situation of newer ASEAN Member States. In this regard, Parties shall exercise due restraint in raising matters under these procedures involving a least-developed country Party. If nullification or impairment is found to result from a measure taken by a least-developed country Party, a Complaining Party shall exercise due restraint regarding matters covered under Article 17 (Compensation and Suspension of Concessions or other Obligations) or other obligations pursuant to these procedures.

2. Where one or more of the Parties to a dispute is a newer ASEAN Member State, the arbitral tribunal's reports shall explicitly indicate the form in which account has been taken of relevant provisions on special and differential treatment for a newer ASEAN Member State that form part of this Agreement which have been raised by the newer ASEAN Member State in the course of the dispute settlement procedures.

Article 19. Expenses

1. Unless the Parties to the dispute otherwise agree, each Party to a dispute shall bear the costs of its appointed arbitrator and its own expenses and legal costs.

2. Unless the Parties to the dispute otherwise agree, the costs of the chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties to the dispute.

Article 20. Contact Points

1. Each Party shall designate a contact point for this Chapter and shall notify the other Parties of the details of this contact point within 30 days of the entry into force of this Agreement. Each Party shall notify the other Parties of any change to its contact point.

2. Any request, written submission or other document relating to any proceedings pursuant to this Chapter shall be delivered to the relevant Party or Parties through their designated contact points who shall provide confirmation of receipt of such documents in writing.

Article 21. Language

1. All proceedings pursuant to this Chapter shall be conducted in the English language.

2. Any document submitted for use in any proceedings pursuant to this Chapter shall be in the English language. If any original document is not in the English language, a Party submitting it for use in the proceedings shall provide an English language translation of that document.

Annex on rules of procedure for arbitral tribunal proceedings

1. Any reference made in these Rules to an Article is a reference to the appropriate Article in Chapter 17 (Consultations and Dispute Settlement).

Timetable

2. After consulting the Parties to the dispute, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties to the dispute agree otherwise.

3. In determining the timetable for the arbitral tribunal process, the arbitral tribunal shall provide sufficient time for the Parties to the dispute to prepare their respective submissions. The arbitral tribunal shall set precise deadlines for written submissions by the Parties to the dispute and they shall respect those deadlines. The interim report shall be provided at least four weeks before the deadline for completion of the final report.

4. The arbitral tribunal shall present to the Parties to the dispute its final report within 180 days from the date of its establishment. In cases of urgency, including those relating to perishable goods, the arbitral tribunal shall aim to present its report to the Parties to the dispute within 90 days from the date of its establishment. When the arbitral tribunal considers that it cannot present its final report within 180 days or within 90 days in cases of urgency, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will present its report.

5. Any time period applicable to the arbitral tribunal proceeding shall be suspended for a period that begins on the date on which any member of the arbitral tribunal resigns or becomes unable to act and ends on the date on which the successor member is appointed.

6. Unless otherwise agreed by the Parties to the dispute, an arbitral tribunal may, in consultation with the Parties to the dispute, modify any time period applicable in the arbitral tribunal proceeding and make such other procedural or administrative adjustments as may be required in the proceeding.

Operation of Arbitral Tribunals

7. The chair of the arbitral tribunal shall preside at all of its meetings. An arbitral tribunal may delegate to the chair authority to make administrative and procedural decisions.

8. Except as otherwise provided in this Annex, the arbitral tribunal may conduct its business by any means, including by telephone, facsimile transmission and any other means of electronic communication.

9. Only members of the arbitral tribunal may take part in the deliberations of the arbitral tribunal.

10. The arbitral tribunal may, in consultation with the Parties to the dispute, retain such number of assistants, interpreters or translators, or designated note takers as may be required for the proceeding and permit them to be present during its deliberations. Any such arrangements established by the arbitral tribunal may be modified by the agreement of the Parties to the dispute.

11. The arbitral tribunal's deliberations shall be confidential.

The members of the arbitral tribunal and the persons retained by the arbitral tribunal shall maintain the confidentiality of arbitral tribunal proceedings and deliberations.

12. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

13. The interests of Third Parties and those of other Parties shall be fully taken into account during the arbitral tribunal proceedings.

Written Submissions and Other Documents

14. Each Party to the dispute shall transmit to the arbitral tribunal a first submission in writing setting out the facts of its case and its arguments. Unless the Parties agree otherwise, a Complaining Party shall deliver its first submission to the arbitral tribunal and to the Responding Party within 14 days after the date of the establishment of the arbitral tribunal. The Responding Party shall deliver its first submission to the arbitral tribunal and to the Complaining Party within 21 days after the date of receipt of the first submission of the Complaining Party. Any subsequent written submissions shall be submitted simultaneously.

15. A Party to the dispute shall deliver no less than four copies of its written submissions to the arbitral tribunal and one copy to the other Parties to the dispute. Third Parties shall receive the submissions of the Parties to the dispute to the first substantive hearing.

16. In respect of any request, notice or other document(s) related to the arbitral tribunal proceeding that is not covered by Rules 14 and 15, each Party to the dispute may deliver a copy of the document(s) to the other Party to the dispute by facsimile, email or other means of electronic transmission.

17. A Party to the dispute may at any time correct minor errors of a clerical nature in any request, notice, written submission or other document(s) related to the arbitral tribunal proceeding by delivering a new document clearly indicating the changes.

Hearings

18. At the first substantive hearing with the Parties to the dispute, each Party to the dispute shall present the facts of its case and its arguments. The Complaining Party shall present its position first. The Parties to the dispute shall be given an opportunity for final statements, with the Complaining Party presenting its statement first.

19. All Third Parties shall be invited to present their views during a separate session of the first substantive hearing of the arbitral tribunal set aside for that purpose. All Third Parties may be present during the entirety of this session.

20. The Parties to the dispute and Third Parties shall make available to the arbitral tribunal written versions of their oral statements and responses to questions made in hearings with the arbitral tribunal.

Availability of Information

21. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties to the dispute. No Party to the dispute shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by a Party to the dispute or Third Party. The Parties to the dispute, Third Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the dispute to the arbitral tribunal which that Party has designated as confidential. A Party to the dispute shall, upon request of another Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Information Gathering

22. The Parties to the dispute and Third Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

23. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties to the dispute. Where the Parties to the dispute agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties to the dispute with any information or technical advice it receives and an opportunity to provide comments.

Reports

24. The arbitral tribunal shall provide to the Parties to the dispute an interim report, meeting the requirements specified in Article 12.3 (Functions of Arbitral Tribunals).

25. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to the dispute to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties to the dispute in its final report.

26. The interim report and final report of the arbitral tribunal shall be drafted without the presence of the Parties to the dispute. Opinions expressed in the reports of the arbitral tribunal by its individual members shall be anonymous.

Venue

27. The venue for the arbitral tribunal hearings shall be decided by mutual agreement between the Parties to the dispute. If there is no agreement, the venue shall alternate between the capitals of the Parties to the dispute with the first hearing to be held in the capital of the Responding Party.

Remuneration and Payment of Expenses

28. The arbitral tribunal shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to its assistants, designated note takers or other individuals that it retains pursuant to Rule 10.

Annex on optional procedures for composing arbitral tribunals

As provided in Article 11.3 (Establishment and Re-convening of Arbitral Tribunals), the Parties to the dispute may agree to use any of the following optional procedures, or variations thereof, for the purpose of composing an arbitral tribunal.

Optional Procedure A

1. The Complaining Party and the Responding Party shall each appoint one arbitrator within (period to be agreed by the Parties to the dispute) of the date of the receipt of a request to establish an arbitral tribunal. If either Party fails to appoint an arbitrator within such period, then the arbitrator appointed by the other Party shall act as the sole arbitrator of the arbitral tribunal.

2. Where two arbitrators are appointed in accordance with Paragraph 1, the Parties to the dispute shall designate by common agreement the third arbitrator who shall chair the arbitral tribunal. If the Parties to the dispute have not designated the chair of the arbitral tribunal within (period to be agreed by the Parties to the dispute) of the appointment of the second arbitrator, the two arbitrators appointed in accordance with Paragraph 1 shall designate by common agreement the third arbitrator who shall chair the tribunal. If the chair of the arbitral tribunal has not been designated by the arbitrators within (period to be agreed by the Parties to the dispute) of the appointment of the second arbitrator, the Director-General of the WTO shall, at the request of any Party to the dispute, appoint the chair of the arbitral tribunal within (period to be agreed by the Parties to the dispute) of that request.

Optional Procedure B

1. The Complaining Party and the Responding Party shall each appoint one arbitrator within (period to be agreed by the Parties to the dispute) of the date of the receipt of a request to establish an arbitral tribunal.

2. The Parties to the dispute shall agree on the appointment of the third arbitrator within (period to be agreed by the Parties to the dispute) of the appointment of the third arbitrator who shall serve as chair of the arbitral tribunal. If all three appointments have not been made within (period to be agreed by the Parties to the dispute), the necessary appointments shall be made at the request of any Party to the dispute by the Director-General of the WTO within a further (period to be agreed by the Parties to the dispute).

Optional Procedure C

1. Within (period to be agreed by the Parties to the dispute) of the date of the receipt of a request to establish an arbitral tribunal, each Party to the dispute shall provide to the other Parties to the dispute a list of up to (number to be agreed by the Parties to the dispute) nominees for appointment as arbitrators, including at least two individuals suitable for appointment as chair. The Parties to the dispute shall then consult with each other on the composition of the arbitral tribunal with the objective of appointing the arbitrators drawing as appropriate on the lists of nominees.

2. If all of the arbitrators have not been appointed within (period to be agreed by the Parties to the dispute) of the request to establish an arbitral tribunal, any of the remaining arbitrators shall be appointed at the request of any Party to the dispute by random drawing from the lists of nominees separated for this purpose into separate lists of nominations for appointment as chair or as a regular arbitrator.

Chapter 18. Final Provisions

Article 1. Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 2. Relation to other Agreements

1. Each Party reaffirms its rights and obligations under the WTO Agreement and other agreements to which the Parties are party.

2. Nothing in this Agreement shall be construed to derogate from any right or obligation of a Party under the WTO Agreement and other agreements to which the Parties are party.

3. In the event of any inconsistency between this Agreement and any other agreement to which two or more Parties are party, such Parties shall immediately consult with a view to finding a mutually satisfactory solution.

4. Nothing in this Agreement shall prevent any individual ASEAN Member State from entering into any agreement with any one or more ASEAN Member State and/or Australia and/or New Zealand relating to trade in goods, trade in services, investment, and/or other areas of economic co- operation.

5. The provisions of this Agreement shall not apply to any agreement among ASEAN Member States. The provisions of this Agreement shall also not apply to any agreement involving any ASEAN Member State and/or Australia and/or New Zealand unless otherwise agreed by the parties to that agreement. (1)

(1) This Paragraph does not apply to any future agreement concluded in accordance with this Agreement.

Article 3. Amended or Successor International Agreements

If any international agreement, or a provision therein, referred to in this Agreement (or incorporated into this Agreement) is amended, the Parties shall consult on whether it is necessary to amend this Agreement, unless this Agreement provides otherwise.

Article 4. Disclosure of Information

Unless otherwise provided in this Agreement, nothing in this Agreement shall require any 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 enterprises, public or private.

Article 5. Confidentiality

Unless otherwise provided in this Agreement, where a Party provides information to another Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except to the extent that the Party receiving the information is required under its domestic law to provide the information to judicial proceedings.

Article 6. Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall come into force on such date or dates as may be agreed among them.

Article 7. Entry Into Force

1. Each Party shall notify each other Party in writing upon completion of its internal requirements (2) necessary for entry into force of this Agreement. This Agreement shall enter into force on 1 July 2009 for any Party that has made such notifications provided that Australia, New Zealand and at least four ASEAN Member States have made such notifications by that date.

2. If this Agreement does not enter into force on 1 July 2009 it shall enter into force, for any Party that has made the notification referred to in Paragraph 1, 60 days after the date by which Australia, New Zealand and at least four ASEAN Member States have made the notifications referred to in Paragraph 1.

3. After the entry into force of this Agreement pursuant to Paragraph 1 or 2, this Agreement shall enter into force for any Party 60 days after the date of its notification referred to in Paragraph 1.

(2) For greater certainty, the term "internal requirements" may include obtaining governmental approval or parliamentary approval in accordance with domestic law.

Article 8. Withdrawal and Termination

1. Any Party may withdraw from this Agreement by giving six months advance notice in writing to the other Parties.

2. This Agreement shall terminate if, pursuant to Paragraph 1:

(b) Australia withdraws;

(c) New Zealand withdraws; or

(d) this Agreement is in force for less than four ASEAN Member States.

Article 9. Review

The Parties shall undertake a general review of this Agreement with a view to furthering its objectives in 2016, and every five years thereafter, unless otherwise agreed by the Parties.

SIGNED at Cha-am, Petchaburi, Thailand, this 27" day of February, two thousand and nine, in three copies in the English language.

For the Government of Brunei Darussalam:

For the Government of Australia:

For the Government of New Zealand:

For the Government of the Kingdom of Cambodia:

For the Government of the Republic of Indonesia:

For the Government of the Lao People's Democratic Republic:

For the Government of Malaysia:

For the Government of the Union of Myanmar:

For the Government of the Republic of the Philippines:

For the Government of the Republic of Singapore:

For the Government of the Kingdom of Thailand:

For the Government of the Socialist Republic of Viet Nam: