

# **Agreement between the Government of the United States of America and the Government of the Sultanate of Oman on the Establishment of a Free Trade Area**

The Government of the United States of America (hereinafter "the United States") and the Government of the Sultanate of Oman (hereinafter "Oman") (together referred to as "Parties", and individually as "Party"),

Recognizing the strong bonds of friendship between them and wishing to strengthen their economic relations;

Recognizing that open and competitive markets are key drivers of economic efficiency, innovation, and growth;

Desiring to create new employment opportunities and raise the standard of living for their citizens by liberalizing and expanding trade between them;

Desiring to enhance the competitiveness of their enterprises in global markets; Desiring to establish clear and mutually advantageous rules governing their trade;

Building on their rights and obligations under the WTO Agreement and other agreements to which both Parties are party;

Affirming their commitment to transparency and their desire to eliminate bribery and corruption in international trade and investment;

Desiring to foster creativity and innovation, improve technology, and enhance the protection and enforcement of intellectual property rights;

Desiring to protect, enhance, and enforce basic workers' rights and to strengthen the development and enforcement of labor laws and policies;

Desiring to strengthen the development and enforcement of environmental laws and policies, promote sustainable development, and implement this Agreement in a manner consistent with the objectives of environmental protection and conservation;

Affirming their support for the participation of the Parties in the establishment of an expanded free trade area in the Middle East that would contribute to economic liberalization and development in the region;

Have agreed as follows:

## **Chapter ONE. INITIAL PROVISIONS AND DEFINITIONS**

### **Section A. Initial Provisions**

#### **Article 1.1. ESTABLISHMENT OF A FREE TRADE AREA**

Consistent with Article XXIV of GATT 1994 and Article V of GATS, the Parties hereby establish a free trade area in accordance with the provisions of this Agreement.

#### **Article 1.2. RELATION TO OTHER AGREEMENTS**

1. Each Party affirms its existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.
2. This Agreement shall not be construed to derogate from any legal obligation between the Parties that entitles goods or services, or suppliers of goods or services, to treatment more favorable than that accorded by this Agreement.

## **Section B. General Definitions**

### **Article 1.3. DEFINITIONS**

For purposes of this Agreement, unless otherwise specified:

Agreement on Textiles and Clothing means the Agreement on Textiles and Clothing, contained in Annex 1A to the WTO Agreement;

central level of government means:

(a) for Oman, the government of Oman; and

(b) for the United States, the federal level of government;

covered investment means, with respect to a Party, an investment, as defined in Article 10.27 (Definitions), in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

customs duties includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(b) antidumping or countervailing duty that is applied pursuant to a Party's domestic law; and

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

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

days means calendar days as reckoned according to the Gregorian calendar;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

enterprise of a Party means an enterprise constituted or organized under a Party's law; existing means in effect on the date of entry into force of this Agreement; GATS means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

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

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

government procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;

Harmonized System (HS) means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

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

national means:

(a) with respect to Oman, any person who is a citizen within the meaning of its domestic laws governing nationality; and

(b) with respect to the United States, "national of the United States" as defined in Title III of the Immigration and Nationality Act;

originating good means a good qualifying under the rules of origin set out in Chapter Four (Rules of Origin) or Chapter Three

(Textiles and Apparel);

person means a natural person or an enterprise;

person of a Party means a national or an enterprise of a Party;

preferential tariff treatment means the duty rate applicable under this Agreement to an originating good;

regional level of government means:

(a) for Oman, "regional level of government" is not applicable; and

(b) for the United States, a state of the United States, the District of Columbia, or Puerto Rico;

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

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement;

state enterprise means an enterprise owned, or controlled through ownership interests, by a Party;

TBT Agreement means the Agreement on Technical Barriers to Trade, contained in Annex 1A to the WTO Agreement;

territory means:

(a) with respect to Oman, all the lands of Oman within its geographical boundaries, the internal waters, maritime areas including the territorial sea, and airspace under its sovereignty, and the exclusive economic zone and the continental shelf where Oman exercises sovereign rights and jurisdiction in accordance with its domestic law and international law, including the United Nations Convention on the Law of the Sea;

(b) with respect to the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) the foreign trade zones located in the United States and Puerto Rico; and

(iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

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

WTO means the World Trade Organization; and

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

(1) For greater certainty, TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

## **Chapter TWO. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS**

### **Article 2.1. SCOPE AND COVERAGE**

Except as otherwise provided, this Chapter applies to trade in goods of a Party.

### **Section A. National Treatment**

#### **Article 2.2. NATIONAL TREATMENT**

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

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment that regional level government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2-A.

## **Section B. Tariff Elimination**

### **Article 2.3. TARIFF ELIMINATION**

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

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods, in accordance with its Schedule to Annex 2-B.

3. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 2-B. An agreement by the Parties to accelerate the elimination of a customs duty on a good shall supercede any duty rate or staging category determined pursuant to their Schedules to Annex 2-B for that good when approved by each Party in accordance with its applicable legal procedures.

4. For greater certainty, a Party may:

(a) raise a customs duty back to the level established in its Schedule to Annex 2-B following a unilateral reduction; or

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

## **Section C. Special Regimes**

### **Article 2.4. WAIVER OF CUSTOMS DUTIES**

1. Neither Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. Neither Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

### **Article 2.5. TEMPORARY ADMISSION OF GOODS (1)**

1. Each Party shall grant duty-free temporary admission for:

(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;

(b) goods intended for display or demonstration;

(c) commercial samples and advertising films and recordings; and

(d) goods imported for sports purposes, regardless of their origin.

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

3. Neither Party may condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that the good:

(a) be used solely by or under the personal supervision of a national or resident of the other Party in the exercise of the business activity, trade, profession, or sport of that person;

(b) not be sold or leased while in its territory;

(c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final

importation, releasable on exportation of the good;

(d) be capable of identification when exported;

(e) be exported on the departure of the person referenced in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish;

(f) be imported in no greater quantity than is reasonable for its intended use; and

(g) be otherwise admissible into the Party's territory under its laws.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good.

5. Each Party, through its customs authority, shall adopt and maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, these procedures shall provide that when such goods accompany a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.

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

7. Each Party, through its customs authority, shall relieve the importer or other person responsible for a good admitted under this Article from any liability for failure to export the good on destruction of the good in the presence of the Party's customs authority or presentation of satisfactory proof to its customs authority, in accordance with its law, that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services):

(a) each Party shall allow a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such container;

(b) neither Party may require any security or impose any penalty or charge solely because of any difference between the port of entry and the port of departure of a container;

(c) neither Party may condition the release of any obligation, including any security, that it imposes in respect of the entry of a container into its territory on its exit through any particular port of departure; and

(d) neither Party may require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes such container to the territory of the other Party.

(1) For greater certainty, for purposes of this Article, the term "exported" also means "re-exported," and the term "exportation" also means "re-exportation," in accordance with the law of Oman.

## **Article 2.6. GOODS RE-ENTERED AFTER REPAIR OR ALTERATION**

1. Neither Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.

2. Neither Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

3. For purposes of this Article, repair or alteration means restoration, renovation, cleaning, resterilizing, or other operation or process that does not:

(a) destroy a good's essential characteristics or create a new or commercially different good; or

(b) transform an unfinished good into a finished good.

## **Article 2.7. DUTY-FREE ENTRY OF COMMERCIAL SAMPLES OF NEGLIGIBLE VALUE AND PRINTED ADVERTISING MATERIALS**

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

(a) such samples be imported solely for the solicitation of orders for goods, or the solicitation of orders for services provided from the territory, of the other Party or a non-Party; or

(b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

## **Section D. Non-Tariff Measures**

### **Article 2.8. IMPORT AND EXPORT RESTRICTIONS**

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretive notes, and to this end Article XI of GATT 1994 and its interpretive notes are incorporated into and made a part of this Agreement, *mutatis mutandis*. (2)

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

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

(b) measures conditioning the grant of an import license on the fulfillment of a performance requirement; or

(c) voluntary export restraints inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the WTO Agreement on Subsidies and Countervailing Measures and Article 8.1 of the WTO Agreement on Implementation of Article VI of GATT 1994.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent the Party from:

(a) limiting or prohibiting the importation of the good of the non-Party from the territory of the other Party; or

(b) requiring as a condition for exporting the good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, and distribution arrangements in the other Party.

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 2-A.

(2) For greater certainty, paragraph 1 applies to prohibitions or restrictions on the importation of remanufactured goods.

### **Article 2.9. ADMINISTRATIVE FEES AND FORMALITIES**

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than import and export duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994, and antidumping and countervailing duties applied pursuant to a Party's law) imposed on, or in connection with, importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

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

3. Each Party shall make available on the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

4. The United States shall eliminate its merchandise processing fee on originating goods.

## **Article 2.10. EXPORT TAXES**

Neither Party may adopt or maintain any tax, duty, or other charge on the export of any good to the territory of the other Party, unless the tax, duty, or charge is also adopted or maintained on the good when destined for domestic consumption.

## **Section E. Section : Agriculture**

### **Article 2.11. AGRICULTURAL EXPORT SUBSIDIES**

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together toward an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.
2. Except as provided in paragraph 3, neither Party may introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.
3. Where an exporting Party considers that a non-Party is exporting an agricultural good to the territory of the other Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports. If the importing Party adopts the agreed-on measures, the exporting Party shall refrain from applying any export subsidy to exports of such good to the territory of the importing Party.(3)

(3) For greater certainty, each Party confirms that any measure that it adopts pursuant to this paragraph shall be consistent with the WTO Agreement.

## **Section F. Definitions**

### **Article 2.12. DEFINITIONS**

For Purposes of this Chapter:

advertising films and recordings means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;

agricultural goods means those goods referred to in Article 2 of the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement;

commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in Omani currency, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or use except as commercial samples;

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

consumed means

(a) actually consumed; or

(b) further processed or manufactured so as to result in a substantial change in value, form, or use of the good or in the production of another good;

duty-free means free of customs duty;

export subsidies means "export subsidies" as defined in Article 1(e) of the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement, including any amendment of that article;

goods imported for sports purposes means sports requisites for use in sports contests, demonstrations, or training in the territory of the importing Party;

goods intended for display or demonstration includes their component parts, ancillary apparatus, and accessories;

import license means a license issued by a Party pursuant to an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the Party;

performance requirement means a requirement that:

(a) a given level or percentage of goods or services be exported;

(b) domestic goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods or services;

(c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;

(d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or

(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows; but does not include a requirement that an imported good be:

(f) subsequently exported;

(g) used as a material in the production of another good that is subsequently exported;

(h) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or

(i) substituted by an identical or similar good that is subsequently exported; and

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicize, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge.

## **Chapter Three. TEXTILES AND APPAREL**

### **Article 3.1. BILATERAL EMERGENCY ACTIONS**

1. If, as a result of the reduction or elimination of a duty under this Agreement, a textile or apparel good benefiting from preferential tariff treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent and for such time as may be necessary to prevent or remedy such damage and to facilitate adjustment, take emergency action, consisting of an increase in the rate of duty on the good to a level not to exceed the lesser of:

(a) the most-favored-nation (MFN) applied rate of duty in effect at the time the action is taken; and

(b) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.

2. In determining serious damage, or actual threat thereof, the importing Party:

(a) shall examine the effect of increased imports of the good from the exporting Party on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(b) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

3. The importing Party may take an emergency action under this Article only following an investigation by its competent authorities.



4. The importing Party shall deliver to the exporting Party, without delay, written notice of its intent to take emergency action, and, on the request of the exporting Party, shall enter into consultations with that Party regarding the matter.

5. The following conditions and limitations apply to any emergency action taken under this Article:

(a) no emergency action may be maintained for a period exceeding three years;

(b) no emergency action against a good may be taken or maintained beyond the period ending ten years after duties on that good have been eliminated pursuant to this Agreement;

(c) no emergency action may be taken by an importing Party against the same good of the exporting Party more than once; and

(d) on termination of the emergency action, the importing Party shall accord to the good that was subject to the emergency action the tariff treatment that would have been in effect but for the action.

6. The Party taking an emergency action under this Article shall provide to the exporting Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the emergency action. Such concessions shall be limited to textile and apparel goods, unless the Parties otherwise agree. If the Parties are unable to agree on compensation, the Party against whose good the emergency action is taken may take tariff action having trade effects substantially equivalent to the trade effects of the emergency action taken under this Article. Such tariff action may be taken against any goods of the Party taking the emergency action. The Party taking the tariff action shall apply the tariff action only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action terminate when the emergency action terminates.

7. Nothing in this Agreement shall be construed to limit a Party's right to restrain imports of textile and apparel goods in a manner consistent with the Safeguards Agreement. However, a Party may not take or maintain an emergency action under this Article against a textile or apparel good that is subject, or becomes subject, to a safeguard measure that a Party takes pursuant to the Safeguards Agreement.

## **Article 3.2. RULES OF ORIGIN AND RELATED MATTERS**

### Application of Chapter Four

1. Except as provided in this Chapter, including its Annex, Chapter Four (Rules of Origin) applies to textile and apparel goods.

2. The rules of origin set forth in this Agreement shall not apply in determining the country of origin of a textile or apparel good for non-preferential purposes.

### Consultations

3. On the request of either Party, the Parties shall consult to consider whether the rules of origin applicable to particular textile and apparel goods should be revised to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the parties.

4. In the consultations referred to in paragraph 3, each Party shall consider all data presented by the other Party that demonstrate substantial production in its territory of a particular fiber, yarn, or fabric. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the fiber, yarn, or fabric in a timely manner.

5. The Parties shall endeavor to conclude consultations within 60 days of a request. If the Parties agree in the consultations to revise a rule of origin, the agreed revision shall supersede any prior rule of origin for such good when approved by the Parties in accordance with Article 22.2 (Amendments).

### De Minimis

6. A textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3-A shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component. Notwithstanding the preceding sentence, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

## Treatment of Sets

7. Notwithstanding the specific rules of origin set out in Annex 3-A, textile and apparel goods classifiable under General Rule of Interpretation 3 of the Harmonized System as goods put up in sets for retail sale shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10 percent of the customs value of the set.

## Preferential Tariff Treatment for Certain Non-Originating Apparel Goods

8. Subject to paragraph 9, each Party shall accord preferential tariff treatment to cotton or man-made fiber apparel goods provided for in Chapters 61 or 62 of the Harmonized System that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of a Party from fabric or yarn produced or obtained outside the territory of a Party, if they meet the applicable conditions for preferential tariff treatment under this Agreement other than the condition that they be originating goods.

9. The treatment described in paragraph 8 shall be limited to goods imported into the territory of a Party up to an annual total quantity of 50,000,000 square meters equivalent in each of the first ten twelve-month periods after entry into force of this Agreement. To determine the quantity in square meters equivalent that is charged against the annual quantity, the importing Party shall apply the conversion factors listed in the Correlation: U.S. Textile and Apparel Category System with the Harmonized Tariff Schedule of the United States of America ("The Textile Correlation"), 2004, U.S. Department of Commerce, Office of Textiles and Apparel, or successor publication.

10. At the written request of an exporting Party, an importing Party shall require an importer claiming preferential tariff treatment under paragraph 8 to submit to the importing Party a certificate of eligibility. An importing Party shall not accept such a claim unless the certificate of eligibility is properly completed and signed by an authorized official of the exporting Party and is presented at the time the preferential tariff treatment is claimed.

11. Where an importing Party has reason to question the accuracy of a claim under paragraph 8, or where an importing Party seeks such information in the course of a verification under Article 3.3, it may require an importer claiming preferential tariff treatment for an apparel good under paragraph 8 to prepare, sign, and submit to its competent authority a declaration supporting such a claim for preferential tariff treatment and to provide all pertinent information concerning the production of the good, including:

- (a) a description of the good, quantity, invoice numbers, and bills of lading;
- (b) a description of the operations performed in the production of the good in the territory of one or both of the Parties; and
- (c) a statement as to any yarn or fabric of a non-Party and the origin of such materials used in the production of the good. The importing Party may require the importer to retain all documents relied upon to prepare the declaration for a period of five years.

12. Paragraphs 8 through 11 shall cease to apply beginning on the first day of the 11th twelve-month period following the date of entry into force of this Agreement.

## **Article 3.3. CUSTOMS COOPERATION FOR TEXTILE AND APPAREL GOODS**

1. The Parties shall cooperate for purposes of:

- (a) enforcing or assisting in the enforcement of their measures affecting trade in textile or apparel goods;
- (b) ensuring the accuracy of claims of origin;
- (c) enforcing or assisting in the enforcement of measures implementing international agreements affecting trade in textile or apparel goods; and
- (d) preventing circumvention of international agreements affecting trade in textile or apparel goods.

2. Oman shall establish and maintain a program to ensure that textile and apparel goods that are imported into or exported from Oman, or that are processed or manipulated in Oman or in a free trade zone or export processing zone in Oman en route to the United States, are marked with the correct country of origin and that the documents accompanying the goods accurately describe the goods. In this program, Oman shall provide for:

- (a) immediate referral by Omani officials of suspected violations of either Party's measures relating to circumvention to the appropriate enforcement authorities;

(b) with respect to enforcement action by Omani officials involving textile or apparel goods destined for the United States, not later than 30 days after the resolution of the matter, issuance by Omani officials to the United States of a written report describing:

(i) each violation of law relating to circumvention, including a failure to maintain or produce records;

(ii) any other act of circumvention;

(iii) the resolution of the matter, including any enforcement action taken and any penalty imposed; and

(iv) the identity of the enterprise found to have engaged in such circumvention.

3. Oman shall establish and maintain a program to verify that textile and apparel goods that an enterprise claims as originating goods or marks as products of Oman and that are exported to the United States are produced in Oman. In this program, Oman shall include on-site government inspections of such enterprises. These visits should occur without providing prior notification to the enterprise to verify compliance with measures of either Party affecting trade in textile or apparel goods and to verify that production of and capability to produce such goods are consistent with claims regarding the origin of such goods.

4. On the request of the importing Party, the exporting Party shall conduct a verification for purposes of enabling the importing Party to determine that a claim of origin for a textile or apparel good is accurate. The exporting Party shall conduct such a verification, regardless of whether an importer claims preferential tariff treatment for the good. The exporting Party also may conduct such a verification on its own initiative.

5. Where the importing Party has a reasonable suspicion that an enterprise of the exporting Party is engaging in unlawful activity relating to trade in textile or apparel goods, the exporting Party shall conduct, on the request of the importing Party, a verification for purposes of enabling the importing Party to determine that the enterprise is complying with applicable customs measures affecting trade in textile or apparel goods, including measures that the exporting Party adopts and maintains pursuant to this Agreement and measures of either Party implementing other international agreements affecting trade in textile or apparel goods, or to determine that a claim of origin regarding textile or apparel goods exported or produced by that enterprise is accurate. For purposes of this paragraph, a reasonable suspicion of unlawful activity means a suspicion based on relevant factual information of the type set forth in Article 5.5 (Cooperation) or factors that indicate:

(a) circumvention by an enterprise of applicable customs measures affecting trade in textile or apparel goods, including measures adopted to implement this Agreement; or

(b) the existence of conduct that would facilitate the violation of measures relating to other international agreements affecting trade in textile or apparel goods or the nullification or impairment of rights or benefits accruing to a Party under such agreements.

6. The exporting Party, through its competent authorities, shall permit the importing Party, through its competent authorities, to assist in a verification conducted pursuant to paragraph 4 or 5, including by conducting, along with the competent authorities of the exporting Party, visits in the territory of the exporting Party to the premises of an exporter, producer, or any other enterprise involved in the movement of a textile or apparel good from the territory of the exporting Party to the territory of the importing Party. If an exporter, producer, or other enterprise refuses to consent to a visit by the competent authorities of the importing Party, the importing Party may consider that the verification cannot be completed and the determination described in paragraph 4 or 5 cannot be made and may take appropriate action as described in paragraph 11.

7. Oman shall require each enterprise that exports, produces, or is otherwise involved in the movement of textile or apparel goods within the territory of Oman to maintain in Oman records relating to textile and apparel good production or exportation for a period of five years from the date on which such records are created. Oman also shall require each enterprise that produces textile or apparel goods in the territory of Oman to maintain in Oman records relating to its production capabilities in general, the number of persons it employs, and any other records and information sufficient to allow officials of each Party to verify the enterprise's production and exportation of textile or apparel goods.

8. Each Party shall provide to the other Party, consistent with its law, production, trade, and transit documents and other information necessary to conduct a verification under paragraph 4 or 5. Each Party shall consider any documents or information exchanged between the Parties in the course of such a verification to be confidential within the meaning of Article 5.6 (Confidentiality). Notwithstanding the previous sentence and Article 5.6 (Confidentiality), a governmental entity of a Party may share information gathered under this Article with other government entities of that Party for a purpose set forth in paragraph 1. Sharing information as described in this paragraph for a purpose set forth in paragraph 1 is deemed not to prejudice the competitive position of persons providing such information for purposes of Article 5.6.3

(Confidentiality).

9. While a verification is being conducted, the importing Party may, consistent with its law, take appropriate action, which may include suspending the application of preferential tariff treatment to:

- (a) the textile or apparel good for which a claim of origin has been made, in the case of a verification under paragraph 4; or
- (b) any textile and apparel goods exported or produced by the enterprise subject to a verification under paragraph 5, where the reasonable suspicion of unlawful activity relates to those goods.

10. The Party conducting a verification under paragraph 4 or 5 shall provide the other Party with a written report on the results of the verification, which shall include all documents and facts supporting any conclusion that the Party reaches.

11. (a) If the importing Party is unable to make the determination described in paragraph 4 within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its laws, regulations, and procedures, take appropriate action, including denying preferential tariff treatment to the textile or apparel good subject to the verification, and to similar goods exported or produced by the enterprise that exported or produced the good.

(b) If the importing Party is unable to make one of the determinations described in paragraph 5 within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its laws, regulations, and procedures, take appropriate action, including denying preferential tariff treatment to any textile or apparel goods exported or produced by the enterprise subject to the verification.

12. Prior to commencing any action under paragraph 11, the importing Party shall notify the other Party. The importing Party may continue to take appropriate action under paragraph 11 until it receives information sufficient to enable it to make the determination described in paragraph 4 or 5, as the case may be. A Party may make public the identity of an enterprise that it has determined to have made an inaccurate claim of origin for a textile or apparel good as described in paragraph 4 or to have engaged in unlawful activity relating to trade in textile and apparel goods as described in paragraph 5.

13. On the request of either Party, the Parties shall enter into consultations to resolve any technical or interpretive difficulties that may arise under this Article or to discuss ways to improve the effectiveness of their cooperative efforts. In addition, either Party may request technical or other assistance from the other Party in implementing this Article. The Party receiving such a request shall make every effort to respond favorably and promptly to it. Each Party shall, at the request of either Party, establish and maintain working level contact points in order to facilitate the effective implementation of this Article.

### **Article 3.4. COMMITTEE ON TEXTILE AND APPAREL TRADE MATTERS**

The Parties hereby establish a Committee on Textile and Apparel Trade Matters. The Committee on Textile and Apparel Trade Matters will meet upon the request of either party or the Joint Committee provided for in Article 19.2 (Joint Committee) and may consider any matter arising under this Chapter.

### **Article 3.5. DEFINITIONS**

for Purposes of this Chapter:

Claim of Origin Means a Claim That a Textile or Apparel Good Is an Originating Good or a Product of a Party;

Exporting Party Means the Party from Whose Territory a Textile or Apparel Good Is Exported;

Importing Party Means the Party Into Whose Territory a Textile or Apparel Good Is Imported; and

Textile or Apparel Good Means a Good Listed In the Annex to the Agreement on Textiles and Clothing.

## **Chapter FOUR. RULES OF ORIGIN**

### **Article 4.1. ORIGINATING GOODS**

Except as otherwise provided in this Chapter or Chapter Three (Textiles and Apparel), each Party shall provide that a good is an originating good where it is imported directly from the territory of one Party into the territory of the other Party, and:

- (a) it is a good wholly the growth, product, or manufacture of one or both of the Parties;

(b) for goods other than those covered by the rules in Annex 3-A (Rules of Origin for Textile or Apparel Goods) or Annex 4-A, the good is a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties; and the sum of (i) the value of materials produced in the territory of one or both of the Parties, plus (ii) the direct costs of processing operations performed in the territory of one or both of the Parties is not less than 35 percent of the appraised value of the good at the time it is imported into the territory of a Party; or

(c) for goods covered by the rules in Annex 3-A (Rules of Origin for Textile or Apparel Goods) or Annex 4-A, the good has satisfied the requirements specified in that Annex.

(1) The formula for calculating whether the value of materials produced in the territory of one or both of the Parties plus the direct costs of processing operations performed in the territory of one or both of the Parties is not less than 35 percent of the appraised value of the good is:

$$\text{VOM} + \text{DCP} \times 100 / \text{AV}$$

where: AV is the appraised value of the good;

VOM is the value of a material produced in the territory of one or both of the Parties as described in Article 4.5; and

DCP is the direct cost of processing operations as described in Article 4.6. 4-2

## **Article 4.2. NEW OR DIFFERENT ARTICLE OF COMMERCE**

For purposes of this Chapter, new or different article of commerce means a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed.

## **Article 4.3. NON-QUALIFYING OPERATIONS**

Each Party shall provide that, for purposes of Article 4.1, no good shall be considered a new or different article of commerce by virtue of having merely undergone (a) simple combining or packaging operations or (b) mere dilution with water or with another substance that does not materially alter the characteristics of the good.

## **Article 4.4. CUMULATION**

1. Each Party shall provide that direct costs of processing operations performed in the territory of one or both of the Parties as well as the value of materials produced in the territory of one or both of the Parties may be counted without limitation toward satisfying the 35 percent value-content requirement specified in Article 4.1(b).

2. Each Party shall provide that an originating good or a material produced in the territory of one or both of the Parties, incorporated into a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.

3. Each Party shall provide that a good shall originate where the good is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers, provided that the good satisfies the requirements of Article 4.1 and all other applicable requirements in this Chapter or Chapter Three (Textiles and Apparel).

## **Article 4.5. VALUE OF MATERIALS**

1. For purposes of this Chapter, each Party shall provide that the value of a material produced in the territory of one or both of the Parties includes:

(a) the price actually paid or payable by the producer of the good for the material;

(b) when not included in the price actually paid or payable by the producer of the good for the material, the freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant;

(c) the cost of waste or spoilage, less the value of recoverable scrap; and

(d) taxes or customs duties imposed on the material by one or both of the Parties, provided the taxes or customs duties are not remitted upon exportation.

2. Each Party shall provide that where the relationship between the producer of the good and the seller of the material influenced the price actually paid or payable for the material, or where paragraph 1 is otherwise not applicable, the value of the material produced in the territory of one or both of the Parties includes:

(a) all expenses incurred in the growth, production, or manufacture of the material, including general expenses; (b) a reasonable amount for profit; and

(c) freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

#### **Article 4.6. DIRECT COSTS OF PROCESSING OPERATIONS**

1. For purposes of this Chapter, direct costs of processing operations means those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good. Such costs include the following, to the extent that they are includable in the appraised value of goods imported into the territory of a Party:

(a) all actual labor costs involved in the growth, production, or manufacture of the specific good, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(b) tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;

(c) research, development, design, engineering, and blueprint costs to the extent that they are allocable to the specific good;

(d) costs of inspecting and testing the specific good; and

(e) costs of packaging the specific good for export to the territory of the other Party.

2. For greater certainty, those items that are not included as direct costs of processing operations are those that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include:

(a) profit; and

(b) general expenses of doing business that are either not allocable to the specific good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

#### **Article 4.7. PACKAGING AND PACKING MATERIALS AND CONTAINERS FOR RETAIL SALE AND FOR SHIPMENT**

Each Party shall provide that packaging and packing materials and containers in which a good is packaged for retail sale and for shipment, if classified with the good, shall be disregarded in determining whether the good qualifies as an originating good, except that the value of originating packaging and packing materials and containers may be counted toward satisfying, where applicable, the 35 percent value-content requirement specified in Article 4.1(b).

#### **Article 4.8. INDIRECT MATERIALS**

Each Party shall provide that indirect materials shall be disregarded in determining whether the good qualifies as an originating good, except that the cost of such indirect materials may be counted toward satisfying the 35 percent value-content requirement where applicable.

#### **Article 4.9. TRANSIT AND TRANSSHIPMENT**

For purposes of this Chapter, a good shall not be considered to be imported directly from the territory of the other Party if the good undergoes subsequent production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party.

#### **Article 4.10. IMPORTER REQUIREMENTS**

Each Party Shall Provide That Whenever an Importer Makes a Claim for Preferential Tariff Treatment, the Importer:

(a) Shall Be Deemed to Have Certified That such Good Qualifies for Preferential Tariff Treatment; and

(b) shall submit to the customs authorities of the importing Party, upon request, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. Each Party may require that the information on the declaration should contain at least the following pertinent details:

- (i) a description of the good, quantity, invoice numbers, and bills of lading;
- (ii) a description of the operations performed in the growth, production, or manufacture of the good in the territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;
- (iii) a description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;
- (iv) a description of the operations performed on, and a statement as to the origin and value of, any foreign materials used in the good that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in the territory of one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in Annex 3-A (Rules of Origin for Textile or Apparel Goods) or Annex 4-A; and
- (v) a description of the origin and value of any foreign materials used in the good that are not claimed to have been substantially transformed in the territory of one or both of the Parties, or are not claimed to have undergone an applicable change in tariff classification specified in Annex 3-A (Rules of Origin for Textile or Apparel Goods) or Annex 4-A. The importing Party should request a declaration only when that Party has reason to question the accuracy of a deemed certification referred to in subparagraph (a), when that Party's risk assessment procedures indicate that verification of a claim is appropriate, or when the Party conducts a random verification. The importer shall retain the information necessary for the preparation of the declaration for five years from the date of importation of the good.

#### **Article 4.11. OBLIGATIONS RELATING TO IMPORTATION**

1. Each Party shall grant any claim for preferential tariff treatment made in accordance with this Chapter, unless the Party possesses information indicating that the importer's claim fails to comply with any requirement under this Chapter or Chapter Three (Textiles and Apparel).
2. To determine whether a good imported into its territory qualifies for preferential tariff treatment, the importing Party may verify the origin.
3. Where a Party denies a claim for preferential tariff treatment, it shall issue a written determination containing findings of fact and the legal basis for its determination. The Party shall issue the determination within a period established under its law.
4. Each Party shall provide that, where an originating good was imported into its territory but the importer of the good did not make a claim for preferential tariff treatment at the time of importation, that importer may, no later than one year after the date of importation, make a claim for preferential tariff treatment and apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation of:
  - (a) a written declaration that the good was originating at the time of importation; and
  - (b) such other documentation and information relating to the importation of the good as the importing Party may require.
5. Nothing in this Article shall prevent a Party from taking action under Article 5.5 (Cooperation).

#### **Article 4.12. CONSULTATIONS AND MODIFICATIONS**

1. The Parties shall consult and cooperate to ensure that this Chapter is applied in an effective and uniform manner, in accordance with the objectives of this Agreement.
2. The Parties may establish ad hoc working groups, or a subcommittee of the Joint Committee established pursuant to Article 19.2 (Joint Committee), to consider any matter related to this Chapter (including Annex 4-A). On request of a Party, the Parties may direct a working group or subcommittee to review operation of this Chapter (including Annex 4-A) and develop recommendations for amendments in the light of any pertinent developments, including changes in technology and production processes, and other relevant factors.

#### **Article 4.13. REGIONAL CUMULATION**

In light of their desire to promote regional integration, the Parties shall endeavor to develop to the extent practicable, within six months of the date of entry into force of this Agreement, a regional cumulation regime covering the United States and Middle Eastern countries that have free trade agreements with the United States.

## Article 4.14. DEFINITIONS

for Purposes of this Chapter:

foreign material means a material other than a material produced in the territory of one or both of the Parties;

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

goods wholly the growth, product, or manufacture of one or both of the Parties means goods consisting entirely of one or more of the following:

- (a) mineral goods extracted in the territory of one or both of the Parties;
- (b) vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;
- (c) live animals born and raised in the territory of one or both of the Parties;
- (d) goods obtained from live animals raised in the territory of one or both of the Parties;
- (e) goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;
- (f) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;
- (g) goods produced on board factory ships from the goods referred to in subparagraph (f) provided such factory ships are registered or recorded with that Party and fly its flag;
- (h) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;
- (i) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;
- (j) waste and scrap derived from:
  - (i) production or manufacture in the territory of one or both of the Parties; or
  - (ii) used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;
- (k) recovered goods derived in the territory of a Party from used goods, and utilized in the Party's territory in the production of remanufactured goods; and
- (l) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production;

indirect material means a good used in the growth, production, manufacture, 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 growth, production, or manufacture of a good, including:

- (a) fuel and energy;
- (b) tools, dies, and molds;
- (c) spare parts and materials used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment, and supplies;
- (f) equipment, devices, and supplies used for testing or inspecting the goods;
- (g) catalysts and solvents; and
- (h) any other goods that are not incorporated into the good but whose use in the growth, production, or manufacture of the



good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

material means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

material produced in the territory of one or both of the Parties means a good that is either wholly the growth, product, or manufacture of one or both of the Parties or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

recovered goods means materials in the form of individual parts that are the result of: (1) the disassembly of used goods into individual parts; and (2) the cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

remanufactured goods means industrial goods assembled in the territory of a Party that: (1) are entirely or partially comprised of recovered goods; (2) have similar life expectancies as new goods; and (3) enjoy similar factory warranties as such new goods;

simple combining or packaging operations means operations such as adding batteries to devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking or packaging components together; and

substantially transformed means, with respect to a good or material, changed as the result of a manufacturing or processing operation where: (1) the good or material has multiple uses and is converted into a good or material with limited uses; (2) the physical properties of the good or material are changed to a significant extent; or (3) the operation undergone by the good or material is complex in terms of the number of different processes and materials involved, as well as the time and level of skill required to perform these processes, and the good or material loses its separate identity in the resulting, new good or material.

## **Chapter Five. CUSTOMS ADMINISTRATION**

### **Article 5.1. PUBLICATION**

1. Each Party shall publish, including on the Internet, its customs laws, regulations, and administrative procedures.
2. Each Party shall designate one or more inquiry points to address inquiries from interested persons concerning customs matters and shall make available on the Internet information concerning procedures for making such inquiries.
3. Further to Article 18.1 (Publication) and to the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment on such proposed regulations prior to their adoption.

### **Article 5.2. RELEASE OF GOODS**

Each Party Shall:

- (a) adopt or maintain procedures providing for the release of goods within a period no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of arrival;
- (b) adopt or maintain procedures allowing goods to be released at the point of arrival, without interim transfer to warehouses or other facilities;
- (c) adopt or maintain procedures allowing the release of goods prior to, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes, and fees, and as part of such procedures may require an importer to provide sufficient guarantee in the form of a surety or other appropriate instrument to ensure payment of any customs duties, taxes, and fees that may ultimately be assessed; and
- (d) otherwise endeavor to adopt or maintain simplified procedures for the release of goods.

### **Article 5.3. AUTOMATION**

Each Party's customs authority shall:

- (a) endeavor to use information technology that expedites procedures for the importation of goods; and

(b) in deciding on the information technology to be used for this purpose, take into account international standards.

## **Article 5.4. RISK ASSESSMENT**

Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to concentrate inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods.

## **Article 5.5. COOPERATION**

1. Each Party shall endeavor to provide the other Party with advance notice of any significant modification of administrative policy regarding the implementation of its customs laws that is likely to substantially affect the operation of this Agreement.

2. The Parties shall cooperate in achieving compliance with their laws and regulations pertaining to:

(a) the implementation and operation of the provisions of this Agreement relating to the importation of goods, including Chapter Four (Rules of Origin) and this Chapter;

(b) the implementation and operation of the Customs Valuation Agreement;

(c) restrictions or prohibitions on imports or exports; or

(d) such other matters relating to the importation or exportation of goods as the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importation, the Party may request that the other Party provide specific confidential information that pertains to that activity and that is normally collected by the other Party in connection with the importation of goods. The Party shall make its request in writing, shall identify the requested information with specificity sufficient to enable the other Party to locate it, and shall specify the purposes for which the information is sought.

4. The other Party shall respond by providing any information that it has collected that is material to the request.

5. For purposes of paragraph 3, a reasonable suspicion of unlawful activity means a suspicion based on relevant factual information obtained from public or private sources, including:

(a) historical evidence that a specific importer, exporter, producer, or other enterprise involved in the movement of goods from the territory of one Party to the territory of the other Party has not complied with a Party's laws or regulations governing importation;

(b) historical evidence that some or all of the enterprises involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importation; or

(c) other information that the Parties agree is sufficient in the context of a particular request.

6. Each Party shall endeavor to provide the other Party with any other information that would assist in determining whether imports from or exports to the territory of the other Party are in compliance with the other Party's laws and regulations governing importation, in particular those related to the prevention of unlawful shipments.

7. The United States shall endeavor to provide Oman with technical advice and assistance for the purpose of improving risk assessment techniques, simplifying and expediting customs procedures, advancing technical skills, and enhancing the use of technologies that can lead to improved compliance with laws and regulations governing importation.

8. Building on the procedures established in this Article, the Parties shall use best efforts to explore additional means of cooperation to enhance each Party's ability to enforce its laws and regulations governing importation, including by:

(a) endeavoring to conclude a mutual assistance agreement between their respective customs authorities within one year after the date of entry into force of this Agreement; and

(b) considering whether to establish additional channels of communication to facilitate the secure and rapid exchange of information and to improve coordination on customs issues.

## **Article 5.6. CONFIDENTIALITY**

1. Where a Party providing information to the other Party in accordance with this Chapter designates the information as

confidential, the other Party shall maintain the confidentiality of the information. The Party providing the information may require written assurances from the other Party that the information will be held in confidence, will be used only for the purposes specified in the other Party's request for information, and will not be disclosed without the Party's specific permission. The Parties may agree that the information may be used or disclosed for law enforcement purposes or in the context of judicial proceedings.

2. A Party may decline to provide confidential information requested by the other Party where the other Party has failed to act in conformity with assurances provided under paragraph 1.

3. Each Party shall adopt or maintain procedures that protect confidential information submitted in connection with the administration of its customs laws and regulations from unauthorized disclosure, including information the disclosure of which could prejudice the competitive position of the person providing the information.

## **Article 5.7. EXPRESS SHIPMENTS**

Each Party shall adopt or maintain separate, expedited customs procedures for express shipments, including procedures:

- (a) that allow the information necessary for the release of express shipments to be submitted electronically;
- (b) in which the information necessary for the release of an express shipment may be submitted, and processed by the Party's customs authority, before the shipment arrives;
- (c) allowing a shipper to submit a single manifest covering all goods contained in an express shipment;
- (d) that, to the extent possible, minimize the documentation required for the release of express shipments; (e) that, under normal circumstances, allow for an express shipment that has arrived at a point of importation to be released no later than six hours after the submission of the information necessary for release;
- (f) that apply without regard to weight or customs value; and
- (g) that provide, under normal circumstances, that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments valued at US\$200 or less. (1)

(1) Notwithstanding Article 5.7(g), a Party may require that express shipments be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may assess customs duties or taxes and may require formal entry documents for express shipments of goods subject to licensing or similar requirements or goods that are otherwise restricted

## **Article 5.8. REVIEW AND APPEAL**

Each Party shall ensure that with respect to a determination of the Party on customs matters, the importer in its territory has access to:

- (a) administrative review independent of the official or office that issued the determination; and
- (b) judicial review of the determination.

## **Article 5.9. PENALTIES**

Each Party shall adopt or maintain measures that provide for the imposition of civil, administrative, and, where appropriate, criminal sanctions for violations of its customs laws, including its laws governing tariff classification, customs valuation, country of origin, and the entitlement to preferential tariff treatment.

## **Article 5.10. ADVANCE RULINGS**

1. Each Party shall issue written advance rulings prior to the importation of a good into its territory at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party, on the basis of the facts and circumstances set forth by the requester, concerning:

- (a) tariff classification;
- (b) the application of customs valuation criteria, including the criteria in the Customs Valuation Agreement;

(c) duty drawback;

(d) whether a good qualifies as an originating good; and

(e) whether a good qualifies for duty-free treatment in accordance with Article 2.6 (Goods Re-Entered After Repair or Alteration).

2. Each Party shall provide that its customs authority shall issue advance rulings within 150 days of a request, provided that the requester has submitted all necessary information.
3. Each Party shall provide that advance rulings shall be valid from their date of issuance, or such other date specified by the ruling, for at least three years, provided that the facts and circumstances (including laws and regulations) on which the ruling is based remain unchanged.
4. The issuing Party may modify or revoke an advance ruling when facts or circumstances warrant, such as where the information on which the ruling is based is false or inaccurate.
5. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs authority may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which the advance ruling was based.
6. Each Party shall make its advance rulings publicly available, subject to confidentiality requirements in its law.
7. If a requester provides false information or omits relevant circumstances or facts in its request for an advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative penalties or other sanctions.
8. For purposes of this Article, advance ruling means a written response by a Party to a request made in accordance with this Article, setting forth the official position of the Party on the interpretation of its relevant laws and regulations pertaining to a matter referenced in paragraph 1(a) through (e), as applied to a specific, prospective customs transaction.
9. This Article shall apply to Oman beginning two years after the date of entry into force of this Agreement.

## **Article 5.11. TECHNICAL COOPERATION AND IMPLEMENTATION**

1. Within 120 days after the date of entry into force of this Agreement, the Parties shall consult and establish a work program on procedures that Oman may adopt to implement Article 5.10 and shall consult on technical assistance that the United States may provide to assist Oman in that endeavor.
2. Not later than 18 months after the date of entry into force of this Agreement, the Parties shall consult on Oman's progress in implementing Article 5.10 and on whether to undertake further cooperative activities.

## **Chapter Six. SANITARY AND PHYTOSANITARY MEASURES**

### **Article 6.1. OBJECTIVES**

The objectives of this Chapter are to protect human, animal, or plant life or health in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, and provide a forum for addressing sanitary and phytosanitary matters.

### **Article 6.2. SCOPE AND COVERAGE**

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

### **Article 6.3. GENERAL PROVISIONS**

1. the Parties Affirm Their Existing Rights and Obligations with Respect to Each other Under the SPS Agreement.
2. The Parties affirm their desire to provide a forum for addressing sanitary and phytosanitary matters affecting trade between the Parties, through the Joint Committee established pursuant to Article 19.2 (Joint Committee) or a subcommittee established thereunder.
3. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

## **Article 6.4. DEFINITION for Purposes of this Chapter:**

sanitary or phytosanitary measure means any measure referred to in Annex A, paragraph 1, of the SPS Agreement.

# **Chapter Seven. TECHNICAL BARRIERS TO TRADE**

## **Article 7.1. SCOPE AND COVERAGE**

1. This Chapter applies to all standards, technical regulations, and conformity assessment procedures of the central level of government that may, directly or indirectly, affect trade in goods between the Parties.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

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

(b) sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement.

## **Article 7.2. AFFIRMATION OF THE TBT AGREEMENT**

Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

## **Article 7.3. INTERNATIONAL STANDARDS**

In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.8, 23 May 2002, Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement), issued by the WTO Committee on Technical Barriers to Trade.

## **Article 7.4. TRADE FACILITATION**

The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating access to each other's markets. In particular, the Parties shall seek to identify trade facilitating bilateral initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as alignment with international standards and use of accreditation to qualify conformity assessment bodies.

## **Article 7.5. CONFORMITY ASSESSMENT PROCEDURES**

1. Each Party recognizes that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment procedures conducted in the other Party's territory. For example:

(a) the importing Party may recognize the results of conformity assessment procedures conducted in the territory of the other Party;

(b) conformity assessment bodies located in each Party's territory may enter into voluntary arrangements to accept the results of the other's assessment procedures;

(c) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;

(d) a Party may designate conformity assessment bodies located in the territory of the other Party; and

(e) the importing Party may rely on a supplier's declaration of conformity.

The Parties shall intensify their exchange of information on these and similar mechanisms.

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than those it accords to conformity assessment bodies in its territory. Where a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and it refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

4. Where a Party declines a request from the other Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of the other Party, explain the reasons for its decision.

## **Article 7.6. TRANSPARENCY**

1. Each Party shall allow its own persons and persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures. Each Party shall permit persons of the other Party to participate in the development of such measures on terms no less favorable than those accorded to its own persons.

2. Each Party shall recommend that non-governmental standardizing bodies in its territory observe paragraph 1.

3. In order to enhance the meaningful opportunity for persons to provide comments on proposed technical regulations and conformity assessment procedures, a Party publishing a notice in accordance with Article 2.9 or 5.6 of the TBT Agreement shall:

(a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing;

(b) transmit the proposal electronically to the other Party through the inquiry point the Party has established in accordance with Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal in accordance with the TBT Agreement; and

(c) publish, preferably by electronic means, or otherwise make available to the public its responses to significant comments it receives from the public or the other Party on the proposed technical regulation or conformity assessment procedure no later than the date it publishes the final technical regulation or conformity assessment procedure.

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for the public and the other Party to provide comments in writing on the proposal.

4. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification electronically to the other Party through the inquiry point referenced in subparagraph 3(b).

5. On request, each Party shall provide the other Party information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.

6. Each Party shall implement this Article as soon as is practicable and in no event later than five years after the date of entry into force of this Agreement.

## **Article 7.7. TBT CHAPTER COORDINATORS**

1. The TBT Chapter Coordinators designated in Annex 7-A shall work jointly to facilitate implementation of this Chapter and cooperation between the Parties on matters pertaining to this Chapter. The Coordinators shall:

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

(b) promptly address any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;

(c) enhance cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;

(d) where appropriate, facilitate sectoral cooperation between governmental and non-governmental conformity assessment bodies in the Parties' territories;

(e) facilitate consideration of any sector-specific proposal a Party makes for further cooperation under this Chapter;

(f) exchange information on developments in non-governmental, regional, and multilateral fora related to standards, technical regulations, and conformity assessment procedures;

(g) on request of a Party, consult on any matter arising under this Chapter;

(h) review this Chapter in light of any developments under the TBT Agreement and develop recommendations for amendments to this Chapter in light of those developments; and

(i) take any other steps the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade between them.

In carrying out its functions, each Party's TBT Chapter Coordinator shall coordinate with interested parties in its territory.

2. The TBT Chapter Coordinators shall communicate with each other by any method they agree is appropriate and shall meet as they agree is necessary.

## **Article 7.8. INFORMATION EXCHANGE**

Where a Party requests the other Party to provide information pursuant to this Chapter, the requested Party shall provide it within a reasonable period of time and, if possible, by electronic means.

## **Article 7.9. DEFINITIONS**

For purposes of this Chapter, technical regulation, standard, conformity assessment procedures, non-governmental body, and central government body have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

# **Chapter Eight. SAFEGUARDS**

## **Article 8.1. APPLICATION OF A SAFEGUARD MEASURE**

If as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such originating good from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may:

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

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

(i) the most-favored-nation (MFN) applied rate of duty on the good in effect at the time the action is taken, and

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

## **Article 8.2. CONDITIONS AND LIMITATIONS**

1. A Party shall notify the other Party in writing on initiation of an investigation described in paragraph 2 and shall consult with the other Party as far in advance of applying a safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the measure.

2. A Party shall apply a safeguard measure only following an investigation by the Party's competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement, and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made a part of this Agreement, *mutatis mutandis*.

3. In the investigation described in paragraph 2, the Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement, and to this end, Article 4.2(a) is incorporated into and made a part of this Agreement, *mutatis mutandis*.

4. Neither Party may apply a safeguard measure against a good:

(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 three years; or

(c) beyond the expiration of the transition period, except with the consent of the other Party.

5. Neither Party may apply a safeguard measure more than once against the same good.

6. Where the expected duration of the safeguard measure is over one year, the importing Party shall progressively liberalize it at regular intervals.

7. On the termination of the safeguard measure, the rate of customs duty shall be the rate that, according to the Party's Schedule to Annex 2-B (Tariff Elimination), would have been in effect but for the measure.

### **Article 8.3. COMPENSATION**

A Party applying a safeguard measure shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. If the Parties are unable to agree on compensation within 30 days from the date the Party announces a decision to apply the measure, the other Party may take tariff action having trade effects substantially equivalent to the safeguard measure. The Party shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects and, in any event, only while the safeguard measure is being applied.

### **Article 8.4. GLOBAL SAFEGUARD ACTIONS**

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken under Article XIX of GATT 1994 and the Safeguards Agreement.

### **Article 8.5. DEFINITIONS for Purposes of this Chapter:**

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

safeguard measure means a measure described in Article 8.1;

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

substantial cause means a cause that is important and not less than any other cause;

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

transition period means the 10-year period following entry into force of this Agreement.

## **Chapter Nine. GOVERNMENT PROCUREMENT**

### **Article 9.1. SCOPE AND COVERAGE**

Application of Chapter

1. This Chapter applies to any measure regarding covered procurement.

2. For purposes of this Chapter, covered procurement means a procurement of goods, services, or both:

(a) by any contractual means, including purchase, rental, or lease, with or without an option to buy; build-operate-transfer contracts; and public works concessions contracts;

(b) for which the value, as estimated in accordance with paragraphs 6 and 7, as appropriate, equals or exceeds the relevant threshold specified in Annex 9;

(c) that is conducted by a procuring entity; and

(d) that is not excluded from coverage by this Agreement.



3. For greater certainty relating to the procurement of digital products as defined in Article 14.5 (Definitions):

(a) covered procurement includes the procurement of digital products; and

(b) no provision of any other Chapter shall be construed as imposing obligations on a Party with respect to the procurement of digital products.

4. This Chapter does not apply to:

(a) non-contractual agreements or any form of assistance that a Party or a government enterprise provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, and government provision of goods or services to persons or to state, regional, or local governments;

(b) purchases funded by international grants, loans, or other international assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter;

(c) acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;

(d) procurement for the direct purpose of providing foreign assistance; and

(e) procurement outside the territory of the Party for consumption outside the territory of the procuring Party. Compliance

5. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurement. Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor use a particular method for estimating the value of the procurement for the purpose of avoiding the application of this Chapter;

(b) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for under the contract and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases; and

(c) without prejudice to paragraph 6, where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation of the total maximum value of the procurement over its entire duration.

7. In the case of procurement by lease or rental or procurement that does not specify a total price, the basis for estimating the value of the procurement shall be, with respect to:

(a) a fixed-term contract,

(i) where the term is 12 months or less, the total estimated contract value for the contract's duration; or

(ii) where the term exceeds 12 months, the total estimated contract value, including the estimated residual value; or

(b) a contract for an indefinite period, the estimated monthly installment multiplied by 48. Where there is doubt as to whether the contract is to be a fixed-term contract, a procuring entity shall use the basis for estimating the value of the procurement described in this subparagraph.

## **Article 9.2. GENERAL PRINCIPLES National Treatment and Non-Discrimination**

1. With respect to any measure covered by this Chapter, each Party, including its procuring entities, shall accord unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering the goods or services of a Party, treatment no less favorable than the most favorable treatment the Party or the procuring entity accords to domestic goods, services, and suppliers.

2. A procuring entity of a Party may not:

(a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; nor

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

## Rules of Origin

3. For purposes of procurement covered by this Chapter, neither Party may apply rules of origin to goods imported from the other Party that are different from the rules of origin the Party applies in the normal course of trade to imports of the same goods from the other Party.

## Offsets

4. A procuring entity may not seek, take account of, impose, or enforce offsets in the qualification and selection of suppliers, goods, or services, in the evaluation of tenders or in the award of contracts, before or in the course of a covered procurement.

## Measures Not Specific to Procurement

5. Paragraphs 1 and 2 do not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

## **Article 9.3. PUBLICATION OF PROCUREMENT MEASURES**

1. Each Party shall promptly publish laws, regulations, judicial decisions, administrative rulings of general application, and procedures regarding covered procurement, and any changes to such measures, in officially designated electronic or paper media that are widely disseminated and remain readily accessible to the public.

2. Each Party shall, on request of the other Party, promptly provide an explanation relating to any such measure to the requesting Party.

## **Article 9.4. PUBLICATION OF NOTICE OF INTENDED PROCUREMENT AND NOTICE OF PLANNED PROCUREMENT**

### Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice inviting interested suppliers to submit tenders ("notice of intended procurement") or, where appropriate, applications for participation in the procurement. The notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering.

2. A procuring entity shall include the following information in each notice of intended procurement:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement;

(b) a description of the procurement, including the nature, scope, and, where quantifiable, the quantity of the goods or services to be procured and any conditions for participation;

(c) the time frame for the delivery of goods or services; (d) the procurement method that will be used;

(e) the address and the time limit for the submission of tenders and, where appropriate, any time limit for the submission of an application for participation in a procurement; and

(f) an indication that the procurement is covered by this Chapter. Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year a notice regarding the procuring entity's procurement plans. The notice should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement. Where the notice is published in accordance with Article 9.5.2(a), a procuring entity may apply Article 9.5.3 for the purpose of establishing shorter time limits for tendering for covered procurements.

## **Article 9.5. TIME LIMITS FOR TENDERING PROCESS**

1. A procuring entity shall prescribe time limits for tendering that allow suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. Except as provided for in paragraphs 2 and 3, a procuring entity shall provide no less than 40 days from the date of publication of a notice of intended

procurement to the deadline for submission of tenders.

2. Under the following circumstances, a procuring entity may establish a time limit for tendering that is less than 40 days, provided that such time limit is sufficiently long to enable suppliers to prepare and submit responsive tenders and is in no case less than 10 days:

(a) where the procuring entity has published a separate notice, including a notice of planned procurement under Article 9.4.3, at least 40 days and not more than 12 months in advance, and such separate notice contains a description of the procurement; the time limits for the submission of tenders or, where appropriate, applications for participation in a procurement; and the address from which documents relating to the procurement may be obtained;

(b) where the entity procures commercial goods or services, except that the entity may not rely on this provision if it requires suppliers to satisfy conditions for participation; or

(c) in duly substantiated cases of extreme urgency brought about by events unforeseeable by the procuring entity, such that a 40-day deadline would result in serious adverse consequences to the procuring entity or the relevant Party.

3. When a procuring entity publishes a notice of intended procurement in accordance with Article 9.4 in an electronic medium, the procuring entity may reduce the time limit for submission of a tender or an application for participation in a procurement by up to five days. In no case shall the procuring entity reduce the time limit to less than 10 days from the date on which the notice of intended procurement is published.

4. A procuring entity shall require all participating suppliers to submit tenders in accordance with a common deadline. For greater certainty, this requirement also applies where:

(a) as a result of a need to amend information provided to suppliers during the procurement process, the procuring entity extends the time limit for qualification or tendering procedures; or

(b) negotiations are concluded and the procuring entity permits suppliers to submit new tenders.

## **Article 9.6. INFORMATION ON INTENDED PROCUREMENTS**

### Tender Documentation

1. A procuring entity shall provide to interested suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature, scope and, where quantifiable, the quantity of the goods or services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials;

(b) any conditions for participation, including any financial guarantees, information, and documents that suppliers are required to submit;

(c) all criteria to be considered in the awarding of the contract, and the relative importance of such criteria;

(d) the date, time, and place for the opening of tenders; and

(e) any other terms or conditions, including terms of payment relating to the procurement.

2. A procuring entity shall promptly:

(a) provide, on request, the tender documentation to a supplier participating in the procurement; and

(b) reply to any reasonable request for relevant information by a supplier participating in the covered procurement, provided that such information does not give that supplier an advantage over its competitors in the procurement.

### Technical Specifications

3. A procuring entity may not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

4. In prescribing the technical specifications for the good or service being procured, a procuring entity shall:

(a) specify the technical specification, wherever appropriate, in terms of performance and functional requirements, rather

than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist and are applicable to the procuring entity, except where the use of an international standard would fail to meet the procuring entity's program requirements or would impose more burdens than the use of a recognized national standard.

5. A procuring entity may not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.

6. A procuring entity may not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific covered procurement from a person that may have a commercial interest in the procurement.

7. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or to protect the environment.

#### Modifications

8. If, during the course of covered procurement, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit all such modifications or amended or re-issued notice or tender documentation:

(a) to all the suppliers that are participating at the time the information is amended, if known, and in all other cases, in the same manner as the original information; and

(b) in adequate time to allow such suppliers to modify and re-submit their tenders, as appropriate.

## **Article 9.7. CONDITIONS FOR PARTICIPATION**

#### General Requirements

1. Where a procuring entity of a Party requires suppliers to satisfy conditions for participation, the entity shall, subject to the other provisions of this Chapter:

(a) limit any conditions for participation in a covered procurement to those that are essential to ensure that a supplier has the legal, commercial, technical, and financial abilities to fulfill the requirements and technical specifications of the procurement;

(b) evaluate the financial, commercial, and technical abilities of a supplier on the basis of its global business activities, including both its activities in the territory of the other Party, as well as its activities, if any, in the territory of the Party conducting the procurement, and may not impose the condition that, in order for a supplier to participate in a covered procurement, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party;

(c) base its determination of whether a supplier has satisfied the conditions for participation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation; and

(d) allow all suppliers that satisfy the conditions for participation to participate in the procurement.

2. Nothing in this Article shall preclude a procuring entity from excluding a supplier from a procurement on grounds such as:

(a) bankruptcy;

(b) false declarations; or

(c) significant deficiencies in performance of any substantive requirement or obligation under a prior contract.

3. Where a procuring entity requires suppliers to satisfy conditions for participation, the entity shall publish a notice inviting suppliers to apply for participation. The entity shall publish the notice sufficiently in advance to provide interested suppliers adequate time to prepare and submit responsive applications and for the entity to evaluate and make its determination based on such applications.

## Multi-Use Lists

4. A procuring entity may establish a multi-use list provided that the entity annually publishes in a paper or electronic medium, or otherwise makes available continuously in electronic form, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

- (a) a description of the goods or services that may be procured using the list;
- (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;
- (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
- (d) the date on which use of the list will terminate, or where a date is not provided, an indication of the method by which advance notice will be given of the termination of use of the list;
- (e) any deadlines for submission of applications for inclusion on the list; and
- (f) an indication that the list may be used for procurement covered by this Chapter.

5. A procuring entity that maintains a multi-use list shall allow suppliers to apply at any time for inclusion on the list and shall include on the list all suppliers that apply and satisfy the conditions for participation within a reasonably short time after a supplier applies.

## Information on Procuring Entity Decisions

6. Where a supplier applies for participation in a covered procurement, or for inclusion on a multi-use list, a procuring entity shall promptly advise such supplier of its decision with respect to its application.

7. Where a procuring entity rejects an application for participation in a covered procurement or for inclusion on a multi-use list or ceases to recognize a supplier as having satisfied the conditions for participation, the entity shall promptly inform the supplier and, on request of such supplier, promptly provide the supplier a written explanation of the reasons for its decision.

## **Article 9.8. TENDERING PROCEDURES**

1. A procuring entity shall conduct procurement covered by this Agreement in a manner that is consistent with this Chapter, and, except where specifically provided otherwise in this Chapter, in a transparent and impartial manner and shall permit any interested supplier to submit a tender.

2. Provided that the tendering procedure is not used to avoid competition, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, a procuring entity may contact a supplier or suppliers of its choice and may choose not to apply Articles 9.4 through 9.7, paragraph 1 and paragraphs 3 through 7 of Article 9.9 in the following circumstances:

(a) where, in response to a prior notice of intended procurement or invitation to tender,

(i) no tenders were submitted;

(ii) no tenders were submitted that conform to the essential requirements in the tender documentation; or

(iii) no suppliers satisfied the conditions for participation;

and the entity does not substantially modify the essential requirements of the procurement or the conditions for participation;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist because:

(i) the requirement is for a work of art;

(ii) the procuring entity is obligated to protect patents, copyrights, or other exclusive rights, or proprietary information; or

(iii) there is an absence of competition for technical reasons;

(c) for additional deliveries of goods or services by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, where a change of supplier would compel the procuring entity to procure goods or services that do not meet requirements of interchangeability with existing equipment, software, services, or installations;

(d) for goods purchased on a commodity market;

(e) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. When such a contract has been fulfilled, subsequent procurements of goods or services shall be subject to this Chapter; or

(f) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time under procedures consistent with Articles 9.4 through 9.7, paragraph 1 and paragraphs 3 through 7 of Article 9.9, and the use of such procedures would result in serious injury to the procuring entity or the relevant Party.

3. For each contract awarded under paragraph 2, a procuring entity shall prepare a written report that includes the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 2 that justify the use of a limited tendering procedure.

## **Article 9.9. TREATMENT OF TENDERS AND AWARDING OF CONTRACTS.**

### Receipt and Opening of Tenders

1. A procuring entity or relevant authority shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.

2. A procuring entity or relevant authority shall treat tenders in confidence. In particular, it shall not provide information to particular suppliers that might prejudice fair competition between suppliers.

3. In the event of a delay in the opening of a tender, a procuring entity or relevant authority shall not penalize any supplier whose tender is submitted by the time specified for receiving tenders, if the delay is due solely to mishandling on the part of the procuring entity.

4. Where a procuring entity or relevant authority provides suppliers with opportunities to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity or relevant authority shall provide the same opportunities to all participating suppliers.

### Awarding of Contracts

5. A procuring entity or relevant authority shall require that, in order to be considered for award, a tender:

(a) be submitted in writing by a supplier that satisfies the conditions, if any, for participation; and

(b) at the time of opening, conform to the essential requirements and evaluation criteria specified in the notices and tender documentation.

6. Unless a procuring entity or relevant authority determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity or authority has determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender determined to be the most advantageous solely on the basis of the requirements and evaluation criteria set out in the notices and tender documentation.

7. A procuring entity or relevant authority may not cancel a procurement, nor terminate or modify a contract it has awarded, in a manner that circumvents the obligations of this Chapter. Information Provided to Suppliers

8. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decision. Subject to Article 9.13, a procuring entity, on request of a supplier whose tender was not selected for award, shall provide the supplier the reasons for not selecting its tender. Publication of Award Information

9. Not later than 60 days after the award of a contract for a covered procurement, a procuring entity or relevant authority shall publish a notice in an officially designated publication, which may be in an electronic or paper medium. The notice shall include at least the following information about the contract:

(a) the name and address of the procuring entity;

(b) a description of the goods or services procured;

(c) the date of award;

(d) the name and address of the successful supplier;

(e) the contract value; and

(f) the procurement method used and, in cases where a procedure has been used pursuant to Article 9.8.2, a description of the circumstances justifying the procedure used unless such justification was included in the notice of intended procurement.

#### Provision of Information to Other Party

10. On request of the other Party, a Party shall provide pertinent information on the tender and evaluation procedures used in the conduct of a covered procurement sufficient to demonstrate that the particular procurement was conducted fairly, impartially, and in accordance with this Chapter. Such information shall include information on the characteristics and relative advantages of the successful tender and on the contract price.

#### Maintenance of Records

11. A procuring entity or relevant authority shall maintain reports and records of tendering procedures relating to covered procurements, including the reports required by paragraph 3 of Article 9.8, for at least three years after the date a contract is awarded.

### **Article 9.10. ENSURING INTEGRITY IN PROCUREMENT PRACTICES**

Each Party shall adopt or maintain procedures to declare ineligible for participation in the Party's procurements, either indefinitely or for a specified time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to procurement. On request of the other Party, a Party shall identify the suppliers determined to be ineligible under these procedures, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

### **Article 9.11. DOMESTIC REVIEW OF SUPPLIER CHALLENGES**

1. Each Party shall provide timely, effective, transparent, and predictable means for a supplier to challenge the conduct of a covered procurement, without prejudice to that supplier's participation in ongoing or future procurement activities. Each Party shall ensure that its review procedures are made publicly available in writing and are timely, transparent, effective, and consistent with the principle of due process.

2. Each Party shall establish or designate at least one impartial authority that is independent of the procuring entity that is the subject of the challenge to receive and review challenges that suppliers submit in connection with any covered procurement.

3. Where a body other than an authority referred to in paragraph 2 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity that is the subject of the challenge.

4. Each Party shall authorize the authority that it establishes or designates under paragraph 2 to take prompt interim measures, pending the resolution of a challenge, to preserve the opportunity to correct potential breaches of this Chapter, including the suspension of the award of a contract or the performance of a contract already awarded. However, in deciding whether to apply an interim measure, each Party may take into account any overriding adverse consequences to the public interest if an interim measure were taken.

5. Each Party shall ensure that the authority that it establishes or designates under paragraph 2 conducts its review in accordance with the following:

(a) a supplier shall be allowed sufficient time to prepare and submit a written challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier;

(b) the procuring entity shall respond in writing to the supplier's challenge and provide all relevant documents to the authority;

(c) the supplier that initiates the challenge shall be provided an opportunity to reply to the procuring entity's response before the authority makes a decision on the challenge; and

(d) the authority shall promptly provide decisions relating to a supplier's challenge in writing, with an explanation of the grounds for each decision.

## **Article 9.12. MODIFICATIONS AND RECTIFICATIONS TO COVERAGE**

1. Either Party May Modify Its Coverage Under this Chapter Provided That It:

(a) notifies the other Party in writing and the other Party does not object in writing within 30 days after the notification; and

(b) within 30 days after notifying the other Party, offers acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing before the modification, except as provided in paragraphs 2 and 3.

2. Either Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Annex to this Chapter, provided that it notifies the other Party in writing and that the other Party does not object in writing within 30 days after the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Party.

3. A Party need not provide compensatory adjustments where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. Where the Parties do not agree that government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

4. The Joint Committee established under Chapter 19 (Administration of the Agreement) shall adopt any agreed modification, technical rectification, or minor amendment made in accordance with paragraph 1 or 2.

## **Article 9.13. NON-DISCLOSURE OF INFORMATION**

1. A Party, including its procuring entities, shall not disclose information that is designated as confidential or that is by nature confidential, without the authorization of the persons providing the information. This includes information the disclosure of which would prejudice legitimate commercial interests of a particular person or might prejudice fair competition between suppliers.

2. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, to provide confidential information the disclosure of which would:

(a) impede law enforcement;

(b) prejudice fair competition between suppliers;

(c) prejudice the legitimate commercial interests of particular suppliers or persons, including the protection of intellectual property; or

(e) otherwise be contrary to the public interest.

## **Article 9.14. EXCEPTIONS**

1. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

(a) necessary to protect public morals, order, or safety;

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic institutions, or of prison labor.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.



## **Article 9.15. DEFINITIONS**

for Purposes of this Chapter:

build-operate-transfer contract and public works concession contract mean any contractual arrangement, the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period, temporary ownership of or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

commercial goods and services means goods and services of a type that are sold or offered for sale to, and customarily purchased by, non-governmental buyers for non-governmental purposes; it includes goods and services with modifications customary in the commercial marketplace, as well as minor modifications not customarily available in the commercial marketplace;

conditions for participation means any registration, qualification, and other pre-requisites for participation in a procurement;

in writing or written means any worded or numbered expression that can be read, reproduced, and later communicated; it may include electronically transmitted and stored information;

multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

offsets means any conditions or undertakings that require use of domestic content, domestic suppliers, the licensing of technology, technology transfer, investment, counter-trade, or similar actions to encourage local development or to improve a Party's balance-of-payments accounts;

procurement official means any person who performs procurement functions;

procuring entity means an entity listed in Annex 9;

relevant authority means any authority authorized by a Party to conduct any aspect of a procurement; services includes construction services, unless otherwise specified;

supplier means a person that provides or could provide goods or services to a procuring entity; and technical specification means a tendering requirement that:

(a) sets out the characteristics of:

(i) goods to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production; or

(ii) services to be procured, or the processes or methods for their provision, including any applicable administrative provisions; or

(b) addresses terminology, symbols, packaging, marking, or labeling requirements, as they apply to a good or service.

## **Chapter TEN. INVESTMENT**

### **Section A. Investment**

#### **Article 10.1. SCOPE AND COVERAGE**

1. this Chapter Applies to Measures Adopted or Maintained by a Party Relating to:

(a) Investors of the other Party;

(b) Covered Investments; and

(c) with Respect to Articles 10.8 and 10.10, All Investments In the Territory of the Party.

2. A Party's obligations under this Section shall apply to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party.

## **Article 10.2. RELATION TO OTHER CHAPTERS**

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.
3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Twelve (Financial Services).

## **Article 10.3. NATIONAL TREATMENT**

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the treatment accorded, in like circumstances, by that regional level of government to natural persons resident in and enterprises constituted under the laws of other regional levels of government of the Party of which it forms a part, and to their respective investments.

## **Article 10.4. MOST-FAVORED-NATION TREATMENT**

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

## **Article 10.5. MINIMUM STANDARD OF TREATMENT (1)**

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:
  - (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
  - (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
4. Notwithstanding Article 10.12.5(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

5. Notwithstanding paragraph 4, if an investor of a Party, in the situations referred to in paragraph 4, suffers a loss in the territory of the other Party resulting from:

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

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in accordance with Article 10.6.2 through 10.6.4, *mutatis mutandis*.

6. Paragraph 4 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.3 but for Article 10.12.5(b).

(1) Notwithstanding Article 5.7(g), a Party may require that express shipments be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may assess customs duties or taxes and may require formal entry documents for express shipments of goods subject to licensing or similar requirements or goods that are otherwise restricted.

## **Article 10.6. EXPROPRIATION AND COMPENSATION(2)**

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

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law and Article 10.5.1 through 10.5.3. 2. The compensation referred to in paragraph 1(c) shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

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

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

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

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

(2) Article 10.6 shall be interpreted in accordance with Annexes 10-A and 10-B.

## **Article 10.7. TRANSFERS**

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

- (a) contributions to capital;
- (b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
- (c) interest, royalty payments, management fees, and technical assistance and other fees;
- (d) payments made under a contract, including a loan agreement;
- (e) payments made pursuant to Article 10.5.4 and 10.5.5 and Article 10.6; and
- (f) payments arising out of a dispute.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) criminal or penal offenses;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

## **Article 10.8. PERFORMANCE REQUIREMENTS**

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement or enforce any commitment or undertaking: (3)

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or
- (g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its

territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraph 1(f) does not apply:

(i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.<sup>(4)</sup>

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and

(f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

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

(iii) related to the conservation of living or non-living exhaustible natural resources.

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to government procurement.

(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

(3) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for the purposes of paragraph 1.

(4) The Parties recognize that a patent does not necessarily confer market power.

## **Article 10.9. SENIOR MANAGEMENT AND BOARDS OF DIRECTORS**

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

## **Article 10.10. INVESTMENT AND ENVIRONMENT**

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

## **Article 10.11. DENIAL OF BENEFITS**

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise.

## **Article 10.12. NON-CONFORMING MEASURES**

1. Articles 10.3, 10.4, 10.8, and 10.9 Do Not Apply to:

(a) Any Existing Non-conforming Measure That Is Maintained by a Party at:

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

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

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3, 10.4, 10.8, or 10.9.

2. Articles 10.3, 10.4, 10.8, and 10.9 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 10.3 and 10.4 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 15.1.5 (General Provisions) as specifically provided in that Article.

5. Articles 10.3, 10.4, and 10.9 do not apply to:

(a) government procurement; or

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

## **Article 10.13. SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS**

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 10.3 and 10.4, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

## **Section B. Investor-State Dispute Settlement**

### **Article 10.14. CONSULTATION AND NEGOTIATION**

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

### **Article 10.15. SUBMISSION OF A CLAIM TO ARBITRATION**

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement;

and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or

(d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

## **Article 10.16. CONSENT OF EACH PARTY TO ARBITRATION**

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of the New York Convention for an "agreement in writing."

## **Article 10.17. CONDITIONS AND LIMITATIONS ON CONSENT OF EACH PARTY**

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.15.1 and knowledge that the claimant (for claims brought under Article 10.15.1(a)) or the enterprise (for claims brought under Article 10.15.1(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied,

(i) for claims submitted to arbitration under Article 10.15.1(a), by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 10.15.1(b), by the claimant's and the enterprise's written waivers

of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.15.



3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.15.1(a)) and the claimant or the enterprise (for claims brought under Article 10.15.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

## **Article 10.18. SELECTION OF ARBITRATORS**

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 10.15.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 10.15.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

## **Article 10.19. CONDUCT OF THE ARBITRATION**

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.15.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. The tribunal shall have the authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.25.

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment).

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the

respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

8. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.15. For purposes of this paragraph, an order includes a recommendation.

9. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Party. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.

(b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 10 or Annex 10-D. 10. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 10.25 in arbitrations commenced after the multilateral agreement enters into force between the Parties.

## **Article 10.20. TRANSPARENCY OF ARBITRAL PROCEEDINGS**

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.19.2 and 10.19.3 and Article 10.24;

(d) minutes or transcripts of hearings of the tribunal, where available; and

(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 21.2 (Essential Security) or Article 21.4 (Disclosure of Information).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;

(c) A disputing party shall, at the time it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Party and made public in accordance with paragraph 1; and

(d) The tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

## **Article 10.21. GOVERNING LAW**

1. Subject to paragraph 3, when a claim is submitted under Article 10.15.1(a)(i)(A) or Article 10.15.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.15.1(a)(i)(B) or (C), or Article 10.15.1(b)(i)(B) or (C), the tribunal shall apply:

(a) the rules of law specified in the pertinent investment authorization or investment agreement, or as the disputing parties may otherwise agree; or

(b) if the rules of law have not been specified or otherwise agreed: (i) the law of the respondent, including its rules on the conflict of laws; (5) and (ii) such rules of international law as may be applicable.

3. A decision of the Joint Committee declaring its interpretation of a provision of this Agreement under Article 19.2.3(b) (Joint Committee) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

(5) The law of the respondent means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

## **Article 10.22. INTERPRETATION OF ANNEXES**

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an entry set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Joint Committee on the issue. The Joint Committee shall submit in writing any decision declaring its interpretation under Article 19.2.3(b) (Joint Committee) to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Joint Committee under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Joint Committee fails to issue such a decision within 60 days, the tribunal shall decide the issue.

## **Article 10.23. EXPERT REPORTS**

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties

may agree.

## **Article 10.24. CONSOLIDATION**

1. Where two or more claims have been submitted separately to arbitration under Article 10.15.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants; (b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.15.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

(c) instruct a tribunal previously established under Article 10.18 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that

(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.15.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought. The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules,

except as modified by this Section.

9. A tribunal established under Article 10.18 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.18 be stayed, unless the latter tribunal has already adjourned its proceedings.

## **Article 10.25. AWARDS**

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.15.1(b):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A tribunal may not award punitive damages.

4. An award made by a tribunal 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.

6. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention,

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.15.3(d),

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

7. Each Party shall provide for the enforcement of an award in its territory. 8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the non-disputing Party, a panel shall be established under Article 20.7 (Establishment of Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) in accordance with Article 20.9.2 (Panel Report), a recommendation that the respondent abide by or comply with the final award.

9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 8.

10. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

## **Article 10.26. SERVICE OF DOCUMENTS.**

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-C.

## **Section C. Definitions**

### **Article 10.27. DEFINITIONS**

For purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes ("ICSID") established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with the other Party;

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

enterprise means an enterprise as defined in Article 1.3 (Definitions), and a branch of an enterprise;

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

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement,

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans; (6)

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts; (f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;(7) (8) and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

investment agreement means a written agreement (9) between a national authority(10) of a Party and a covered investment or an investor of the other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

(b) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

investment authorization (11) means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party;

investor of a non-Party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

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

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;

non-disputing Party means the Party that is not a party to an investment dispute;

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

respondent means the Party that is a party to an investment dispute;

Secretary-General means the Secretary-General of ICSID; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

(6) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

(7) Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

(8) The term investment does not include an order or judgment entered in a judicial or administrative action.

(9) Written agreement refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.21.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

(10) For purposes of this definition, national authority means an authority at the central level of government.

(11) For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

## **ANNEX 10-A. CUSTOMARY INTERNATIONAL LAW**

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 10.5 and Annex 10-B results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all

customary international law principles that protect the economic rights and interests of aliens.

## **ANNEX 10-B. EXPROPRIATION**

The Parties confirm their shared understanding that: 1. Article 10.6.1 is intended to reflect customary international law concerning the obligation of States with respect to expropriation. 2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment. 3. Article 10.6.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure. 4. The second situation addressed by Article 10.6.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred; (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and (iii) the character of the government action.

(b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

## **ANNEX 10-C. SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B**

Oman

Notices and other documents in disputes under Section B shall be served on Oman by delivery to: Director General of Organizations and Commercial Relations Ministry of Commerce and Industry P.O. Box 550 P.C. 113 Muscat Sultanate of Oman

United States

Notices and other documents in disputes under Section B shall be served on the United States by delivery to:

Executive Director (L/EX) Office of the Legal Adviser Department of State Washington, D.C. 20520 United States of America

## **ANNEX 10-D. POSSIBILITY OF A BILATERAL APPELLATE MECHANISM**

Within three years after the date of entry into force of this Agreement, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 10.25 in arbitrations commenced after they establish the appellate body or similar mechanism.

# **Chapter Eleven. CROSS-BORDER TRADE IN SERVICES**

## **Article 11.1. SCOPE AND COVERAGE**

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

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

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

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

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

2. For the purposes of this Chapter, "measures adopted or maintained by a Party" means measures adopted or maintained 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. Notwithstanding paragraph 1, Articles 11.4, 11.7, and 11.8 shall also apply to measures by a Party affecting the supply of a service in its territory by a covered investment.(1)

4. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) financial services as defined in Article 12.20 (Definitions), except that paragraph 3 shall apply where the financial service is supplied by a covered investment that is not a covered investment in a financial institution (as defined in Article 12.20 (Definitions) in the Party's territory;

(b) government procurement;

(c) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service; and

(ii) specialty air services; or

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

5. This Chapter does not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

6. This chapter does not apply to services supplied in the exercise of governmental authority in a Party's territory. A "service supplied in the exercise of governmental authority" means any service that is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

(1) The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B of Chapter 10 (Investment).

## **Article 11.2. NATIONAL TREATMENT**

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

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

## **Article 11.3. MOST-FAVORED-NATION TREATMENT**

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

## **Article 11.4. MARKET ACCESS**

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

(a) impose limitations on:

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

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

(iii) the total number of service operations or the total quantity of services output expressed in terms of designated

numerical units in the form of quotas or the requirement of an economic needs test; (2) or

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

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

(2) This paragraph does not cover measures of a Party that limit inputs for the supply of services.

## **Article 11.5. LOCAL PRESENCE**

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

## **Article 11.6. NON-CONFORMING MEASURES**

1. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

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

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

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.2, 11.3, 11.4, or 11.5.

2. Articles 11.2, 11.3, 11.4, and 11.5 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 Annex II.

## **Article 11.7. DOMESTIC REGULATION**

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party's competent authorities shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 11.6.2.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure, as appropriate for individual sectors, that such measures are:

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

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

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

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which each of the Parties participate) enter into effect for each of the Parties, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties shall coordinate on such negotiations, as appropriate.

## **Article 11.8. TRANSPARENCY IN DEVELOPING AND APPLYING REGULATIONS(3)**

Further to Chapter 18 (Transparency):

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter.
2. If a Party does not provide advance notice and opportunity for comment pursuant to Article 18.1 (Publication), it shall, to the extent possible, address in writing the reasons therefore.
3. At the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, address in writing substantive comments received from interested persons with respect to the proposed regulations.
4. To the extent possible, each Party shall allow reasonable time between publication of final regulations and their effective date.

(3) For greater certainty, regulations includes regulations establishing or applying to licensing authorization or criteria.

## **Article 11.9. RECOGNITION**

1. For the purposes of fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 11.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.
3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if such other Party is interested, to negotiate accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.
4. Neither Party may accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.
5. Annex 11.9 (Professional Services) applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

## **Article 11.10. TRANSFERS AND PAYMENTS**

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.
2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.
3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws 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) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
  - (d) criminal or penal offences; or
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

## **Article 11.11. DENIAL OF BENEFITS**

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or of the denying Party that has no substantial business activities in the territory of the other Party.

## **Article 11.12. SPECIFIC COMMITMENTS**

### Express Delivery Services

1. For the purposes of this Agreement, express delivery services means the collection, transport, and delivery of documents, printed matter, parcels, goods, or other items on an expedited basis while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include (i) air transport services, (ii) services supplied in the exercise of governmental authority, or (iii) maritime transport services.(4)

2. The Parties confirm their desire to maintain at least the level of market openness for express delivery services they provide on the date this Agreement is signed. If a Party considers that the other Party is not maintaining such level of access, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the level of access and any related matter.

3. Each Party shall ensure that, where a Party's monopoly supplier of postal services competes, either directly or through an affiliated company, in the supply of express delivery services outside the scope of its monopoly rights, such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with the Party's obligations under Articles 11.2, 11.3, or 11.4; or Articles 10.3 (National Treatment) or 10.4 (Most-Favored- Nation Treatment). The Parties also reaffirm their rights and obligations under Article VIII of GATS.(5)

4. Each Party confirms its intention to prevent the direction of revenues derived from monopoly postal services to confer an advantage to its own or any other competitive supplier's express delivery services.

5. Annex 11.12 sets out additional specific commitments of Oman.

(4) For greater certainty, for the United States, express delivery services do not include delivery of letters subject to the Private Express Statutes (18 U.S.C. 1693 et seq., 39 U.S.C. 601 et seq.), but do include delivery of letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters.

(5) For greater certainty, the Parties reaffirm that nothing in this Article is subject to investor-state dispute settlement pursuant to Section B of Chapter 10 (Investment).

## **Article 11.13. IMPLEMENTATION**

The Parties shall consult annually, or as otherwise agreed, on any issues of mutual interest arising from the implementation of this Chapter.

## **Article 11.14. DEFINITIONS**

For the purposes of this Chapter:

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

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

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

(c) by a national of a Party in the territory of the other Party; but does not include the supply of a service in the territory of a Party by a covered investment;

2. enterprise means an "enterprise" as defined in Article 1.3 (Definitions), and a branch of an enterprise;

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

4. professional services means services, the supply of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by trades-persons or vessel and aircraft crew members;

5. service supplier of a Party means a person of that Party that seeks to supply or supplies a service; (6) and

6. specialty air services means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

(6) For the purposes of Articles 11.2 and 11.3, "service suppliers" has the same meaning as "services and service suppliers" as used in Articles II and XVII of GATS.

## **ANNEX 11.9. PROFESSIONAL SERVICES**

### Development of Professional Services

1. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional services suppliers and to provide recommendations on mutual recognition to the Joint Committee.

2. The standards and criteria referred to in paragraph 1 may be developed with regard to the following matters:

(a) education- accreditation of schools or academic programs;

(b) examinations - qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;

(c) experience- length and nature of experience required for licensing;

(d) conduct and ethics- standards of professional conduct and the nature of disciplinary action for non- conformity with those standards;

(e) professional development and re-certification- continuing education and ongoing requirements to maintain professional certification;

(f) scope of practice- extent of, or limitations on, permissible activities;

(g) local knowledge- requirements for knowledge of such matters as local laws, regulations, geography, or climate; and

(h) consumer protection- including alternatives to residency requirements, such as bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.

3. On receipt of a recommendation referred to in paragraph 1, the Joint Committee shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Joint Committee's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

### Temporary Licensing

4. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service suppliers of the other Party.

### Review

5. The Joint Committee shall review the implementation of this Annex at least once every three years.

## **ANNEX 11.12. SPECIFIC COMMITMENTS**

1. (a) Subject to subparagraph (b), Oman reserves the right to require that up to 80 percent of the employees of a covered investment be Omani nationals.  
  
(b) For purposes of subparagraph (a), "employees" does not include managers, members of the board of directors, or specialty personnel.
2. For greater certainty:  
  
(a) Oman shall not restrict the ability of a covered investment to employ U.S. nationals as managers and specialty personnel; and  
  
(b) nothing in this Annex shall be construed to limit Oman's obligations under Article 12.8 (Senior Management and Boards of Directors).
3. Notwithstanding paragraph 1, Oman shall allow a covered investment to employ a non-Omani national in the event that the covered investment is unable to locate a qualified Omani national for the relevant position.
4. For purposes of this Annex, specialty personnel means natural persons who are employed to use their expert or proprietary knowledge of a covered investment's services, equipment, techniques, or management and may include, but are not limited to, members of licensed professions.
5. Notwithstanding paragraphs 1 and 5 of Article 11.1, this Annex applies to all limitations described in paragraph 1 relating to covered investments.

## **Chapter Twelve. FINANCIAL SERVICES**

### **Article 12.1. SCOPE AND COVERAGE**

1. this Chapter Applies to Measures Adopted or Maintained by a Party Relating to:  
  
(a) financial institutions of the other Party;  
  
(b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and  
  
(c) cross-border trade in financial services.
2. Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) apply to measures described in Paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.  
  
(a) Articles 10.6 (Expropriation and Compensation), 10.7 (Transfers), 10.10 (Investment and Environment), 10.11 (Denial of Benefits), 10.13 (Special Formalities and Information Requirements), and 11.11 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.  
  
(b) Section B of Chapter Ten (Investor-State Dispute Settlement) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 10.6 (Expropriation and Compensation), 10.7 (Transfers), 10.11 (Denial of Benefits), or 10.13 (Special Formalities and Information Requirements), as incorporated into this Chapter.  
  
(c) Article 11.10 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 12.5.
3. This Chapter does not apply to measures adopted or maintained by a Party relating to:  
  
(a) activities or services forming part of a public retirement plan or statutory system of social security; or  
  
(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities, except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

### **Article 12.2. NATIONAL TREATMENT**

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own

investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

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

3. For purposes of the national treatment obligations in Article 12.5.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

### **Article 12.3. MOST-FAVORED-NATION TREATMENT**

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded autonomously;

(b) achieved through harmonization or other means; or

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

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

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

### **Article 12.4. MARKET ACCESS FOR FINANCIAL INSTITUTIONS**

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

(a) impose limitations on:

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

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

(iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (1) or

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

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

(1) This clause does not cover measures of a Party which limit inputs for the supply of financial services.

### **Article 12.5. CROSS-BORDER TRADE**

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the services specified in Annex 12.5.1.
2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define "doing business" and "solicitation" for purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.
3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

## **Article 12.6. NEW FINANCIAL SERVICES(2)**

Each Party shall permit a financial institution of the other Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 12.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires authorization to supply a new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

(2) The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is supplied in neither Party's territory. Such application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.6.

## **Article 12.7. TREATMENT OF CERTAIN INFORMATION**

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

- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
- (b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

## **Article 12.8. SENIOR MANAGEMENT AND BOARDS OF DIRECTORS**

1. A Party may not require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
2. A Party may not require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

## **Article 12.9. NON-CONFORMING MEASURES**

1. Articles 12.2 through 12.5 and 12.8 do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at
    - (i) the central level of government, as set out by that Party in Section A of its Schedule to Annex III,
    - (ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III, or
    - (iii) a local level of government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 12.2, 12.3, 12.4, or 12.8.(3)



2. Articles 12.2 through 12.5 and 12.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by that Party in Section B of its Schedule to Annex III.

3. A non-conforming measure set out in a Party's Schedule to Annex I or II as not subject to Articles 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), 11.2 (National Treatment), or 11.3 (Most-Favored-Nation Treatment) shall be treated as a non-conforming measure not subject to Articles 12.2 or 12.3, as the case may be, to the extent that the measure, sector, subsector, or activity set out in the non-conforming measure is covered by this Chapter.

(3) For greater certainty, Article 12.5 does not apply to an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed on the date of entry into force of the Agreement, with Article 12.5.

## **Article 12.10. EXCEPTIONS**

1. Notwithstanding any other provision of this Chapter or Chapters Ten (Investment), Thirteen (Telecommunications), or Fourteen (Electronic Commerce), including specifically Article 13.16 (Relationship to Other Chapters), and Article 11.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, (4) including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters Ten (Investment), Thirteen (Telecommunications), or Fourteen (Electronic Commerce), including specifically Article 13.16 (Relationship to Other Chapters), and Article 11.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies.

This paragraph shall not affect a Party's obligations under Article 10.8 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or under Articles 10.7 (Transfers) or 11.10 (Transfers and Payments).

3. Notwithstanding Articles 10.7 (Transfers) and 11.10 (Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, 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 to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

(4) It is understood that the term prudential reasons includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

## **Article 12.11. TRANSPARENCY AND ADMINISTRATION OF CERTAIN MEASURES**

1. The Parties recognize that transparent regulations and policies 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 markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

3. In lieu of Article 18.1.2 (Publication), each Party shall, to the extent practicable:

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

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

4. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

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

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

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

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

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

10. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

11. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

## **Article 12.12. SELF-REGULATORY ORGANIZATIONS**

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such self-regulatory organization.

## **Article 12.13. PAYMENT AND CLEARING SYSTEMS**

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

## **Article 12.14. EXPEDITED AVAILABILITY OF INSURANCE SERVICES**

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

## **Article 12.15. SPECIFIC COMMITMENTS**

Annex 12.15 Sets Out Certain Specific Commitments by Each Party. ARTICLE 12.16:

## **Article 12.16. FINANCIAL SERVICES COMMITTEE**

1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.16.1.

2. The Committee shall:

- (a) supervise the implementation of this Chapter and its further elaboration;
- (b) consider issues regarding financial services that are referred to it by a Party; and
- (c) participate in the dispute settlement procedures in accordance with Article 12.19.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Joint Committee established under Article 19.2 (Joint Committee) of the results of each meeting.

### **Article 12.17. CONSULTATIONS**

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

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.16.1.

### **Article 12.18. DISPUTE SETTLEMENT**

1. Chapter 20 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. When a Party claims that a dispute arises under this Chapter, Article 20.7 (Establishment of Panel) shall apply, except that:

(a) where the Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and

(b) in any other case,

(i) each Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 20.7.4 (Establishment of Panel), and

(ii) if the Party complained against invokes Article 12.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties agree otherwise.

3. Financial services panelists shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, a disputing Party; and

(d) comply with the code of conduct to be established by the Joint Committee.

4. Notwithstanding Article 20.11 (Non-Implementation), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

(a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector.

### **Article 12.19. INVESTMENT DISPUTES IN FINANCIAL SERVICES**

1. Where an investor of a Party submits a claim to arbitration under Section B of Chapter Ten (Investor-State Dispute Settlement), and the respondent invokes Article 12.10 as a defense, the following provisions shall apply:

(a) The respondent shall, within 120 days of the date the claim is submitted to arbitration under Section B of Chapter Ten (Investor-State Dispute Settlement), submit in writing to the Financial Services Committee a request for a joint determination on the issue of whether and to what extent Article 12.10 is a valid defense to the claim. The respondent shall promptly

provide the tribunal, if constituted, a copy of such request. The arbitration may proceed with respect to the claim only as provided in subparagraph (d).

(b) The Financial Services Committee shall attempt in good faith to make a determination as described in subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties and, if constituted, to the tribunal. The determination shall be binding on the tribunal.

(c) If the Financial Services Committee, within 60 days of the date by which it has received the respondent's written request for a determination under subparagraph (a), has not made a determination as described in that subparagraph, the tribunal shall decide the issue left unresolved by the Financial Services Committee. The provisions of Section B of Chapter Ten (Investor-State Dispute Settlement) shall apply, except as modified by this subparagraph.

(i) In the appointment of all arbitrators not yet appointed to the tribunal, each disputing party shall take appropriate steps to ensure that the tribunal has expertise or experience as described in Article 12.18.3(a). The expertise or experience of particular candidates with respect to financial services shall be taken into account to the greatest extent possible in the appointment of the presiding arbitrator.

(ii) If, prior to the submission of the request for a determination in conformance with subparagraph (a), the presiding arbitrator has been appointed pursuant to Article 10.18.3, such arbitrator shall be replaced upon the request of either disputing party and the tribunal shall be reconstituted consistent with subparagraph (c)(i). If, within 30 days of the date the arbitration proceedings are resumed under subparagraph (d), the disputing parties have not agreed on the appointment of a new presiding arbitrator, the Secretary-General, on the request of a disputing party, shall appoint the presiding arbitrator consistent with subparagraph (c)(i).

(iii) The Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 12.10 is a valid defense to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for purposes of the arbitration, to take a position on Article 12.10 not inconsistent with that of the respondent.

(d) The arbitration referred to in subparagraph (a) may proceed with respect to the claim:

(i) 10 days after the date the determination of the Financial Services Committee has been received by the disputing parties and, if constituted, the tribunal; or

(ii) 10 days after the expiration of the 60-day period extended to the Financial Services Committee in subparagraph (c).

2. For purposes of this Article, the definitions of the following terms set out in Article 10.27 (Definitions) are incorporated, mutatis mutandis: disputing parties; disputing party; respondent; and Secretary-General.

## **Article 12.20. DEFINITIONS**

for Purposes of this Chapter:

Claimant Means an Investor of a Party That Is a Party to an Investment Dispute with the other Party;

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

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

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

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

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

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

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

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

financial service means any service of a financial nature.

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

a) Direct insurance (including co-insurance):

(i) life,

(ii) non-life;

(b) Reinsurance and retrocession;

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

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

Banking and other financial services (excluding insurance)

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

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

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;

(i) Guarantees and commitments;

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

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

(ii) foreign exchange;

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

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

(v) transferable securities;

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

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

(l) Money broking;

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

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

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

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

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means "investment" as defined in Article 10.27 (Definitions), except that, with respect to "loans" and "debt

instruments" referred to in that Article:

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

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment; for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for purposes of Chapter Ten (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 10.27 (Definitions);

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

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 1.3 (Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions.

## **ANNEX 12.5.1. Cross-Border Trade**

Insurance and insurance-related services

1. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.20 with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession, services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service.

2. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in paragraph (c) of the definition of cross-border supply of financial services in Article 12.20 with respect to insurance services.

Banking and other financial services (excluding insurance)

Article 12.5.1 Applies with Respect to the Provision and Transfer of Financial Information and Financial Data Processing and Related Software as Referred to In Subparagraph (o) of the Definition of Financial Service, and Advisory and other Auxiliary Services, Excluding Intermediation, Relating to Banking and other Financial Services as Referred to In Subparagraph (p) of the Definition of Financial Service.

## **ANNEX 12.11. Transparency**

Oman shall implement the obligations of paragraphs 3 and 4 of Article 12.11 no later than three years after the date of entry into force of this Agreement.

## **ANNEX 12.15. Specific Commitments**

## Portfolio Management

1. A Party shall allow a financial institution (other than a trust company) organized outside its territory to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in the Party's territory. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. For purposes of paragraph 1, collective investment scheme means:

(a) in Oman, companies operating in the area of securities and investment funds registered with the Capital Market Authority under Capital Market Law 80/98; and

(b) in the United States, an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940.

## Expedited Availability of Insurance

3. Oman requires prior product approval before the introduction of a new insurance product. Oman shall provide that once an enterprise seeking approval for such a product files all the required information with Oman's supervisory authority, the authority shall grant approval or issue disapproval in accordance with Oman's law for the sale of the new product within 30 days for non-life insurance products and 60 days for life insurance products. Oman does not maintain any limitations on the number or frequency of product introductions.

## Branching

4. Oman shall not limit the number of branches that a financial institution of the United States may establish in any one location in Oman by conditioning the establishment of a new branch in that location on the establishment of a branch elsewhere in Oman.

## Hiring

5. Subject to paragraph 6, Oman reserves the right to require that up to 80 percent of the employees of a financial institution of the United States be Omani nationals.

6. Oman shall grant a financial institution described in paragraph 5 a minimum of three years from the date it commences business to meet the requirement described in paragraph 5. During that three-year period, Oman shall not restrict the ability of such a financial institution to employ U.S. nationals.

7. For greater certainty, nothing in this Annex shall be construed to limit Oman's obligations under Article 12.8.

## **ANNEX 12.16.1. Financial Services Committee**

Authorities Responsible for Financial Services The authority of each Party responsible for financial services is:

(a) for Oman, the Central Bank of Oman for banking and other financial institutions licensed by the Central Bank and the Capital Market Authority for insurance and other financial services; and

(b) for the United States, the Department of the Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance.

## **Chapter Thirteen . TELECOMMUNICATIONS**

### **Article 13.1. SCOPE AND COVERAGE**

1. This Chapter applies to:

(a) measures relating to access to and use of public telecommunications services;

(b) measures relating to obligations of suppliers of public telecommunications services;

(c) other measures relating to public telecommunications networks or services; and

(d) measures relating to the supply of value-added services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, this Chapter does not apply to any measure relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally; or

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.

## **Article 13.2. ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS SERVICES**

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 4.

2. Each Party shall ensure that service suppliers of the other Party are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased circuits;(1)

(c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;

(d) perform switching, signaling, processing, and conversion functions; and

(e) use operating protocols of their choice in the supply of any service.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

(1) For greater certainty, this subparagraph does not prohibit a Party from requiring a service supplier to obtain a license to supply specific services.

## **Article 13.3. OBLIGATIONS RELATING TO SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES(2)**

### **Interconnection**

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly, or indirectly within the same territory, interconnection with suppliers of public telecommunications services of the other Party at reasonable rates.

(b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and only use such information for the purpose of providing these services.

### **Resale**

2. Each Party shall ensure that suppliers of public telecommunications services do not impose unreasonable or discriminatory conditions or limitations on the resale of those services. Number Portability

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, and on reasonable terms and conditions. Dialing Parity



4. Each Party shall ensure that suppliers of a particular public telecommunications service in its territory provide dialing parity to suppliers of the same public telecommunications service of the other Party, and afford suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers, directory assistance, directory listing, and operator services with no unreasonable dialing delays.

(2) This Article is subject to Annex 13-A.

### **Article 13.4. ADDITIONAL OBLIGATIONS RELATING TO MAJOR SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES (3)**

#### Treatment by Major Suppliers

1. Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications services of the other Party treatment no less favorable than such major supplier accords to its subsidiaries, its affiliates, or non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection. Competitive Safeguards

2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

(b) The anti-competitive practices referred to in subparagraph (a) include in particular:

(i) engaging in anti-competitive cross-subsidization;

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

(iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

#### Resale

3. Each Party shall ensure that a major supplier in its territory:

(a) offers for resale, at reasonable rates,(4) to suppliers of public telecommunications services of the other Party, public telecommunications services that the major supplier provides at retail to end-users that are not suppliers of public telecommunications services; and

(b) does not impose unreasonable or discriminatory conditions or limitations on the resale of such services.(5)

#### Unbundling of Network Elements

4. Each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services.

#### Interconnection

5. (a) General Terms and Conditions Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

(i) at any technically feasible point in the major supplier's network;

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(iii) of a quality no less favorable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

(iv) in a timely fashion, and on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

(v) on 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.

(b) Options for Interconnecting with Major Suppliers

Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of a major supplier in its territory pursuant to the following options:

(i) either

(I) a reference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

(II) the terms and conditions of an interconnection agreement in effect; and (ii) through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers major supplier offers generally to suppliers of public telecommunications services.

(i) Each Party shall require a major supplier in its territory to make publicly available any reference interconnection offer that the

(ii) Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

(iii) Each Party shall require a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body.(6)

(iv) Each Party shall make publicly available interconnection agreements in force between a major supplier in its territory and other suppliers of public telecommunications services in its territory.

Provisioning and Pricing of Leased Circuits Services

6. (a) Each Party shall ensure that a major supplier in its territory provides service suppliers of the other Party leased circuits services that are public telecommunications services on terms and conditions, and at rates, that are reasonable and non-discriminatory.

(b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of the other Party at capacity-based, cost-oriented prices.

Co-Location

7. (a) Subject to subparagraphs (b) and (c), each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

(b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory:

(i) provides an alternative solution; or (ii) facilitates virtual co-location, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

(c) Each Party may determine through its law or regulations which premises are subject to subparagraphs (a) and (b).

Access to Poles, Ducts, Conduits, and Rights-of-Way

8. Each Party shall ensure that a major supplier in its territory affords access to poles, ducts, conduits, and rights-of-way owned or controlled by the major supplier to suppliers of public telecommunications services of the other Party on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent.

(3) This Article is subject to Annex 13-B.

(4) For purposes of subparagraph (a), wholesale rates set pursuant to a Party's law and regulations satisfy the standard of reasonableness.

(5) Where provided in its law or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

(6) The United States may comply with this obligation by requiring filing with a state regulatory authority.

## **Article 13.5. SUBMARINE CABLE SYSTEMS**

Each Party shall ensure that any enterprise that it authorizes to operate a submarine cable system in its territory as a public telecommunications service accords reasonable and non-discriminatory treatment with respect to access to that system (including landing facilities) to suppliers of public telecommunications services of the other Party.

## **Article 13.6. CONDITIONS FOR THE SUPPLY OF VALUE-ADDED SERVICES**

1. Neither Party may require an enterprise in its territory that it classifies as a supplier of value-added services and that supplies those services over facilities that it does not own to:

(a) supply those services to the public generally;

(b) cost-justify its rates for those services;

(c) file a tariff for those services;

(d) connect its networks with any particular customer for the supply of those services; or

(e) conform with any particular standard or technical regulation for connecting to any other network, other than a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in paragraph 1 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

## **Article 13.7. INDEPENDENT REGULATORY BODIES AND GOVERNMENT OWNERSHIP.**

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

3. Neither Party may accord more favorable treatment to a supplier of public telecommunications services or to a supplier of value-added services in its territory than that accorded to a like supplier of the other Party on the basis that the supplier receiving more favorable treatment is owned, wholly or in part, by the national government of the Party.

4. Each Party shall maintain the absence of or eliminate as soon as feasible national government ownership in any supplier of public telecommunications services. Where a Party has an ownership interest in a supplier of public telecommunications services and intends to reduce or eliminate its interest, it shall notify the other Party of its intention as soon as possible.

## **Article 13.8. UNIVERSAL SERVICE**

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

## **Article 13.9. LICENSING PROCESS**

1. When a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly

available:

- (a) all the licensing criteria and procedures it applies;
- (b) the period it normally requires to reach a decision concerning an application for a license; and
- (c) the terms and conditions of all licenses it has issued.

2. Each Party shall ensure that, on request, an applicant receives the reasons for its denial of a license.

## **Article 13.10. ALLOCATION AND USE OF SCARCE RESOURCES**

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.
2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.
3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article 11.4 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 11.1.3 (Scope and Coverage) to an investor of the other Party or a covered investment. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

## **Article 13.11. ENFORCEMENT**

Each Party shall provide its competent authority the authority to enforce the Party's measures relating to the obligations set out in Articles 13.2 through 13.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses.

## **Article 13.12. RESOLUTION OF TELECOMMUNICATIONS DISPUTES**

Further to Articles 18.3 (Administrative Proceedings) and 18.4 (Review and Appeal), each Party shall ensure the following:

### Recourse to Telecommunications Regulatory Bodies

- (a) (i) enterprises may seek review by a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Articles 13.2 through 13.5, and
- (ii) suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period after the supplier requests interconnection, by its telecommunications regulatory body (7) to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier;

### Reconsideration

- (b) any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision; and

### Judicial Review

- (c) any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party. Neither Party may permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless the relevant judicial body stays such determination or decision.

(7) The United States may comply with this obligation by providing for review by a state regulatory authority.

## **Article 13.13. TRANSPARENCY OF MEASURES RELATING TO TELECOMMUNICATIONS**

Further to Article 18.1 (Publication), Each Party Shall Ensure That:

- (a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end- user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;
- (b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and
- (c) its measures relating to public telecommunications services are made publicly available, including measures relating to:
  - (i) tariffs and other terms and conditions of service;
  - (ii) procedures relating to judicial and other adjudicatory proceedings;
  - (iii) specifications of technical interfaces;
  - (iv) conditions for attaching terminal or other equipment to the public telecommunications network; and
  - (v) notification, permit, registration, or licensing requirements, if any.

## **Article 13.14. FLEXIBILITY IN THE CHOICE OF TECHNOLOGIES**

Neither Party may prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests.

## **Article 13.15. FORBEARANCE**

1. The Parties recognize the importance of relying on competitive market forces to provide wide choice in the supply of telecommunications services. To this end, each Party may forbear, to the extent provided for in its law, from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

- (a) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;
- (b) enforcement of the regulation is not necessary for the protection of consumers; and
- (c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

2. For greater certainty, each Party shall subject its regulatory body's decision to forebear to judicial review in accordance with subparagraph (c) of Article 13.12.

## **Article 13.16. RELATIONSHIP TO OTHER CHAPTERS**

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

## **Article 13.17. DEFINITIONS**

For purposes of this Chapter:

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

commercial mobile services means public telecommunications services supplied through mobile wireless means;

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

dialing parity means the ability of an end-user to use an equal number of digits to access a particular public telecommunications service, regardless of which public telecommunications services supplier the end-user chooses;

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

enterprise means an "enterprise" as defined in Article 1.3 (Definitions) and includes a branch of an enterprise;

essential facilities means facilities of a public telecommunications network or service that:

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

(b) cannot feasibly be economically or technically substituted in order to supply a service;

interconnection means linking with suppliers providing public telecommunications 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;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular customer or service supplier or other user of the service supplier's choosing;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities, or

(b) use of its position in the market;

network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of that facility or equipment;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers without impairment of quality, reliability, or convenience when switching between the same category of suppliers of public telecommunications services;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body<sup>(8)</sup> that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

service supplier of the other Party means, with respect to a Party, a person that is either a covered investment in the territory of the Party or a person of the other Party and that seeks to supply or supplies services in or into the territory of the Party, and includes a supplier of public telecommunications services;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means;

telecommunications regulatory body means a national body responsible for the regulation of telecommunications;

user means a service consumer or a service supplier; and

value-added services means services that add value to telecommunications services through enhanced functionality. In the United States, these are services as defined in 47 U.S.C. Â§ 153(20). In Oman, these are services as defined in Article 1 (22) and (28) of the License Granted by Sultani Decree Pursuant to the Sultani Decree on Telecommunications to Oman Telecommunications Company S.A.O.C (OMANTEL) for the Installation, Operation, Maintenance and Exploitation of a Fixed Public Telecommunications System in the Sultanate of Oman, 2003.

<sup>(8)</sup> In the United States, this body may be a state regulatory authority.

# Chapter Fourteen . ELECTRONIC COMMERCE

## Article 14.1. GENERAL

The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce.

## Article 14.2. ELECTRONIC SUPPLY OF SERVICES

The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapters Ten (Investment), Eleven (Cross- Border Trade in Services), and Twelve (Financial Services), subject to any exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.

## Article 14.3. DIGITAL PRODUCTS

1. Neither Party may apply customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.

2. Each Party shall determine the customs value of an imported carrier medium bearing a digital product of the other Party based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.

3. Neither Party may accord less favorable treatment to some digital products than it accords to other like digital products<sup>(1)</sup>

(a) on the basis that:

(i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party, or

(ii) the author, performer, producer, developer, distributor, or owner of such digital products is a person of the other Party; or

(b) so as otherwise to afford protection to other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.

4. Neither Party may accord less favorable treatment to digital products:

(a) created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to like digital products created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or

(b) whose author, performer, producer, developer, distributor, or owner is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, distributor, or owner is a person of a non-Party.

5. Paragraphs 3 and 4 do not apply to measures adopted or maintained in accordance with Articles 10.12 (Non- Conforming Measures), 11.6 (Non-Conforming Measures), and 12.9 (Non-Conforming Measures).

(1) Recognizing the Parties' objective to promote trade between them, the prohibition in paragraph 3 on according less favorable treatment to a digital product applies only if the digital product is created, produced, published, contracted for, or commissioned in the territory of the other Party, or if the author, performer, producer, developer, or owner of the digital product is a person of the other Party.

## Article 14.4. CONSUMER PROTECTION

The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.

## Article 14.5. DEFINITIONS for Purposes of this Chapter:

carrier medium means any physical object capable of storing a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, including an optical medium, a floppy disk, and a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically; and

electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means.

## **Chapter Fifteen. INTELLECTUAL PROPERTY RIGHTS**

### **Article 15.1. GENERAL PROVISIONS**

1. Each Party shall, at a minimum, give effect to this Chapter. International Agreements
2. Each Party shall ratify or accede to the following agreements by the date of entry into force of the Agreement:
  - (a) the Patent Cooperation Treaty (1970), as amended in 1979;
  - (b) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);
  - (c) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989);
  - (d) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended in 1980;
  - (e) the International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention);
  - (f) the Trademark Law Treaty (1994);
  - (g) the WIPO Copyright Treaty (1996); and
  - (h) the WIPO Performances and Phonograms Treaty (1996).
3. Each Party shall make all reasonable efforts to ratify or accede to the following agreements: (a) the Patent Law Treaty (2000); and
  - (b) the Hague Agreement Concerning the International Registration of Industrial Designs (1999). More Extensive Protection and Enforcement
4. A Party may provide more extensive protection for, and enforcement of, intellectual property rights under its law than this Chapter requires, provided that the more extensive protection and enforcement do not contravene this Chapter.

#### National Treatment

5. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals (1) of the other Party treatment no less favorable than that it accords to its own nationals with regard to the protection (2) and enjoyment of such intellectual property rights and any benefits derived from such rights.
6. A Party may derogate from paragraph 5 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation:
  - (a) is necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and
  - (b) is not applied in a manner that would constitute a disguised restriction on trade.

7. Paragraph 5 does not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization (WIPO) in relation to the acquisition or maintenance of intellectual property rights.

#### Application of Agreement to Existing Subject Matter and Prior Acts

8. Except as it provides otherwise, including in Article 15.4.5, this Chapter gives rise to obligations in respect of all subject



matter existing at the date of entry into force of this Agreement that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

9. Except as otherwise provided in this Chapter, including Article 15.4.5, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory.

10. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

#### Transparency

11. Further to Article 18.1 (Publication), and with the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published, (3) or where publication is not practicable, made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

(1) For purposes of Articles 15.1.5, 15.1.6, 15.2.12, and 15.6.1, a national of a Party shall also mean, in respect of the relevant right, an entity of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 15.1.2 and the TRIPS Agreement.

(2) For purposes of this paragraph, "protection" includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for purposes of this paragraph, "protection" also includes the prohibition on circumvention of effective technological measures set out in Article 15.4.7 and the rights and obligations concerning rights management information set out in Article 15.4.8.

(3) For greater certainty, a Party may satisfy the requirement to publish a law, regulation, or procedure by making it available to the public on the Internet.

## **Article 15.2. TRADEMARKS, INCLUDING GEOGRAPHICAL INDICATIONS**

1. Neither Party may require, as a condition of registration, that signs be visually perceptible, nor may a Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or a scent.

2. Each Party shall provide that trademarks shall include certification marks. Each Party shall also provide that geographical indications are eligible for protection as trademarks.(4)

3. Each Party shall ensure that its measures mandating the use of the term customary in common language as the common name for a good or service ("common name") including, inter alia, requirements concerning the relative size, placement, or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such good or service.

4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, including a geographical indication, for identical goods or services, a likelihood of confusion shall be presumed.

5. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

6. Article 6bis of the Paris Convention for the Protection of Industrial Property (1967) shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark,(5) whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

7. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark or geographical indication that is identical or similar to a well-known trademark, for related goods or services, if the use of

that trademark or geographical indication is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark or geographical indication with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the trademark. Such measures shall not apply when the registrant, applicant, or person that is using the trademark or geographical indication is the owner of the well-known trademark.

8. Each Party shall provide a system for the registration of trademarks, which shall include:

- (a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register a trademark;
- (b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;
- (c) an opportunity for interested parties to oppose a trademark application or to seek cancellation of a trademark after it has been registered; and
- (d) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

9. Each Party shall provide:

- (a) an electronic means for applying for, processing, registering, and maintaining trademarks; and
- (b) a publicly available electronic database, including an online database, of trademark applications and registrations.

10. Each Party shall provide that:

- (a) each registration, or publication that concerns a trademark application or registration, that indicates goods or services shall indicate the goods or services by their names, grouped according to the classes of the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1979), as revised and amended (Nice Classification); and
- (b) goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

11. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than ten years.

12. Neither Party may require recordation of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes.

13. If a Party provides the means to apply for protection or petition for recognition of geographical indications, through a system of protection of trademarks or otherwise, it shall:

- (a) accept those applications and petitions without requiring intercession by a Party on behalf of its nationals;
- (b) process those applications or petitions, as relevant, with a minimum of formalities;
- (c) ensure that its regulations governing filing of those applications or petitions, as relevant, are readily available to the public and set out clearly the procedures for these actions;
- (d) make available contact information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and to allow applicants, petitioners, or their representatives to ascertain the status of, and to obtain procedural guidance concerning, specific applications and petitions; and
- (e) ensure that applications or petitions, as relevant, for geographical indications are published for opposition, and provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel a registration resulting from an application or a petition.

14. (a) Each Party shall provide that each of the following shall be grounds for refusing protection or recognition of a geographical indication:

- (i) the geographical indication is likely to cause confusion with a trademark that is the subject of a good faith pending application or registration in the territory of such Party and that has a priority date that predates the protection or

recognition of the geographical indication in such territory;

(ii) the geographical indication is likely to cause confusion with a trademark, the rights to which have been acquired in the territory of the Party through use in good faith, that has a priority date that predates the protection or recognition of the geographical indication in such territory; and

(iii) the geographical indication is likely to cause confusion with a trademark that has become well known in the territory of the Party and that has a priority date that predates the protection or recognition of the geographical indication in such territory.

(b) For purposes of subparagraph (a), the date of protection of the geographical indication in a territory of a Party shall be:

(i) in the case of protection or recognition provided as a result of an application or petition, the date of such application or petition; and

(ii) in the case of protection or recognition provided through other means, the date of protection or recognition under the laws of such territory.

(4) For purposes of this Chapter, geographical indications means indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign or combination of signs (such as words, including geographical and personal names, as well as letters, numerals, figurative elements, and colors, including single colors), in any form whatsoever, shall be eligible to be a geographical indication. The term "originating" in this chapter does not have the meaning ascribed to that term in Article 1.3 (Definitions).

(5) For purposes of determining whether a trademark is well-known, neither Party shall require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

### **Article 15.3. DOMAIN NAMES ON THE INTERNET**

1. In order to address the problem of trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain ("ccTLD") provide an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy.

2. Each Party shall require that the management of its ccTLD provide online public access to a reliable and accurate database of contact information for domain-name registrants.

### **Article 15.4. COPYRIGHT AND RELATED RIGHTS**

1. Each Party shall provide that authors, performers, and producers of phonograms<sup>(6)</sup> have the right <sup>(7)</sup> to authorize or prohibit all reproductions of their works, performances, and phonograms, <sup>(8)</sup> in any manner or form, permanent or temporary (including temporary storage in electronic form).

2. Each Party shall provide to authors, performers, and producers of phonograms the right to authorize the making available to the public of the original and copies of their works, performances, and phonograms through sale or other transfer of ownership.

3. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

4. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) on a basis other than the life of a natural person, the term shall be

(i) not less than 95 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram, or

(ii) failing such authorized publication within 25 years from the creation of the work, performance, or phonogram, not less than 120 years from the end of the calendar year of the creation of the work, performance, or phonogram.

5. Each Party shall apply Article 18 of the Berne Convention for the Protection of Literary and Artistic Works (1971) (Berne Convention) and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to the subject matter, rights, and obligations in this Article and Articles 15.5 and 15.6.

6. Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right in a work, performance, or phonogram:

(a) may freely and separately transfer that right by contract; and

(b) by virtue of a contract, including contracts of employment underlying the creation of works, performances, and phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.

7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:

(i) circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or

(ii) manufactures, imports, distributes, offers to the public, provides, or otherwise trafficks in devices, products, or components, or offers to the public or provides services, that:

(A) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure;

(B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

(C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure, shall be liable and subject to the remedies set out in Article 15.10.14. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities. Such criminal procedures and penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b), and (e) of Article 15.10.27 as applicable to infringements, *mutatis mutandis*.

(b) In implementing subparagraph (a), neither Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing subparagraph (a).

(c) Each Party shall provide that a violation of a measure implementing this paragraph is a separate civil or criminal offense, independent of any infringement that might occur under the Party's law on copyright and related rights.

(d) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to the following activities, which shall be applied to relevant measures in accordance with subparagraph (e):

(i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

(ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance, or display of a work, performance, or phonogram and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of research consisting of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;

(iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii);

(iv) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;

(v) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;

(vi) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes;

(vii) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram not otherwise available to it, for the sole purpose of making acquisition decisions; and

(viii) noninfringing uses of a work, performance, or phonogram in a particular class of works, performances, or phonograms when an actual or likely adverse impact on those noninfringing uses is demonstrated in a legislative or administrative proceeding by substantial evidence; provided that any limitation or exception adopted in reliance upon this clause shall have effect for a renewable period of not more than three years from the date of conclusion of such proceeding.

(e) The exceptions and limitations to measures implementing subparagraph (a) for the activities set forth in subparagraph (d) may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) Measures implementing subparagraph (a)(i) may be subject to exceptions and limitations with respect to each activity set forth in subparagraph (d).

(ii) Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i), (ii), (iii), (iv), and (vi).

(iii) Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i) and (vi).

(f) For purposes of this paragraph, effective technological measure means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright.

8. (a) In order to provide adequate and effective legal remedies to protect rights management information:

(i) Each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(A) knowingly removes or alters any rights management information;

(B) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or

(C) distributes, imports for distribution, broadcasts, communicates, or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority, shall be liable and subject to the remedies set out in Article 15.10.14. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities. Such criminal procedures and penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (6) and (e) of Article 15.10.27 as applicable to infringements, mutatis mutandis.

(ii) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a)(i) to lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence,

essential security, or similar governmental purposes.

(b) For purposes of this paragraph, rights management information means:

(i) information that identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;

(ii) information about the terms and conditions of the use of the work, performance, or phonogram; or

(iii) any numbers or codes that represent such information, when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance or phonogram, to the public. (9)

9. Each Party shall issue appropriate laws, orders, regulations, or administrative or executive decrees mandating that its agencies use computer software only as authorized by the right holder. These measures shall actively regulate the acquisition and management of software for government use.

10. (a) With respect to this Article and Articles 15.5 and 15.6, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

(b) Notwithstanding subparagraph (a) and Article 15.6.3(b), neither Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.

(6) Authors, performers, and producers of phonograms" include any successors in interest.

(7) With respect to copyright and related rights in this Chapter, the "right to authorize or prohibit" and the "right to authorize" refer to exclusive rights.

(8) With respect to copyright and related rights in this Chapter, performance means a performance fixed in a phonogram unless otherwise specified.

(9) For greater certainty, nothing in paragraph 8 obligates a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

## **Article 15.5. COPYRIGHT**

Without prejudice to Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii), and 14bis(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

## **Article 15.6. RELATED RIGHTS**

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms to the performers and producers of phonograms who are nationals of the other Party and to performances or phonograms first published or first fixed in the territory of the other Party. A performance or phonogram shall be considered first published in the territory of a Party in which it is published within 30 days of its original publication. (10)

2. Each Party shall provide to performers the right to authorize or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.

3. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding subparagraph (a) and Article 15.4.10, the application of this right to analog transmissions and free over-the-air broadcasts, and exceptions or limitations to this right for such activity, shall be a matter of each Party's law.

(c) Each Party may adopt limitations to this right in respect of other noninteractive transmissions in accordance with Article 15.4.10, provided that the limitations do not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.

4. Neither Party may subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.

5. For purposes of this Article and Article 15.4, the following definitions apply with respect to performers and producers of phonograms:

(a) broadcasting means the transmission to the public by wireless means or satellite of sounds or sounds and images, or representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; "broadcasting" does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;

(b) communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For purposes of paragraph 3, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public;

(c) fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(d) performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(e) phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

(f) producer of a phonogram means the person who, or the legal entity which, takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

(g) publication of a performance or a phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.

(10) For purposes of this Article, fixation includes the finalization of the master tape or its equivalent.

## **Article 15.7. PROTECTION OF ENCRYPTED PROGRAM-CARRYING SATELLITE SIGNALS**

1. Each Party Shall Make It a Criminal Offense:

(a) to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) willfully to receive or further distribute a program-carrying signal that originated as an encrypted satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.

## **Article 15.8. PATENTS**

1. Subject to Paragraph 2, Each Party:

(a) shall make patents available for any invention, whether product or process, in all fields of technology, provided that it is new, involves an inventive step, and is capable of industrial application; and

(b) confirms that it shall make patents available for any new uses for, or new methods of using, a known product, including new uses and new methods for the treatment of particular medical conditions.

2. Each Party may exclude from patentability:

(a) inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by law;

(b) animals other than micro-organisms, and essentially biological processes for the production of animals other than non-biological and microbial processes; and

(c) diagnostic, therapeutic, and surgical procedures for the treatment of humans or animals.

3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. Each Party shall provide that a patent may be revoked only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for revoking a patent or holding a patent unenforceable. Where a Party provides proceedings that permit a third party to oppose the grant of a patent, a Party shall not make such proceedings available before the grant of the patent.

5. Consistent with paragraph 8, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical product, that Party shall provide that any product produced under such authority shall not be made, used, or sold in its territory other than for purposes related to generating such information, and if the Party permits exportation, the Party shall provide that the product shall only be exported outside its territory for purposes of meeting marketing approval requirements of that Party.

6. (a) Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For purposes of this paragraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than four years from the date of filing of the application in the territory of the Party, or two years after a request for examination of the application, whichever is later. Periods attributable to actions of the patent applicant need not be included in the determination of such delays.

(b) With respect to patents covering pharmaceutical products or their method of use:

(i) each Party shall make available an adjustment of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process related to the first commercial use of the product in that Party; and

(ii) where a Party approves the marketing of a new pharmaceutical product based on evidence of prior approval in another territory, including information on safety and efficacy submitted in connection with that approval, the Party shall make available an adjustment of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term in the Party as a result of the marketing approval process in the other territory and in the Party.

(c) For purposes of this paragraph, effective patent term means the period from the date of approval of the product until the original expiration date of the patent.

7. When a Party provides for the grant of a patent on the basis of a patent granted in another territory, that Party, at the request of the patent owner, shall adjust the term of a patent granted under such procedure by a period equal to the period of the adjustment, if any, provided in respect of the patent granted in the other territory.

8. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step (11) if the public disclosure:

(a) was made or authorized by, or derived from, the patent applicant; and (b) occurred within 12 months prior to the date of filing of the application in the territory of the Party.

9. Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and



observations in connection with their applications.

10. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date.

11. Each Party shall provide that a claimed invention:

(a) is sufficiently supported by its disclosure if the disclosure reasonably conveys to a person skilled in the art that the applicant was in possession of the claimed invention as of the filing date; and

(b) is industrially applicable if it has a specific, substantial, and credible utility.

(11) For purposes of this Article, "inventive step" shall be treated as synonymous with "non-obvious."

## **Article 15.9. MEASURES RELATED TO CERTAIN REGULATED PRODUCTS**

1. (a) If a Party requires or permits, as a condition of granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of information concerning safety or efficacy of the product, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the Party, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the marketing approval; or

(ii) evidence of the marketing approval, for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval in the territory of the Party.

(b) If a Party requires or permits, in connection with granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval in the other territory, the Party shall not, without the consent of a person that previously submitted the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the prior marketing approval in the other territory; or

(ii) evidence of prior marketing approval in the other territory, for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval of the new product in the territory of the Party.

(c) For purposes of this Article, a new pharmaceutical product is one that does not contain a chemical entity that has been previously approved in the territory of the Party for use in a pharmaceutical product and a new agricultural chemical product is one that contains a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

2. (a) If a Party requires or permits, as a condition of granting marketing approval for a pharmaceutical product that includes a chemical entity that has been previously approved for marketing in another pharmaceutical product, the submission of new clinical information that is essential to the approval of a pharmaceutical product, other than information related to bioequivalency, the Party shall not, without the consent of a person that previously submitted such new clinical information to obtain marketing approval in the territory of the Party, authorize another to market a same or a similar product based on:

(i) the new clinical information submitted in support of the marketing approval; or

(ii) evidence of the marketing approval based on the new clinical information, for at least three years from the date of marketing approval in the territory of the Party.

(b) If a Party requires or permits, in connection with granting marketing approval for a pharmaceutical product of the type specified in subparagraph (a), the submission of evidence concerning new clinical information for a product that was previously approved based on that new clinical information in another territory, other than evidence of information related to bioequivalency, such as evidence of prior marketing approval based on the new clinical information, the Party shall not, without the consent of the person that previously submitted such new clinical information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the new clinical information submitted in support of the prior marketing approval in the other territory; or

(ii) evidence of prior marketing approval based on the new Clinical information in the other territory, for at least three years from the date of marketing approval based on the new clinical information in the territory of the Party.

(c) If a Party requires or permits, as a condition of granting marketing approval, for a new use, for an agricultural chemical product that has been previously approved in the territory of the Party, the submission of safety or efficacy information, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the territory of the Party, authorize another to market a same or similar product for that use based on:

(i) the submitted safety or efficacy information; or

(ii) evidence of the marketing approval for that use, for at least ten years from the date of the original marketing approval of the agricultural chemical product in the territory of the Party.

(d) If a Party requires or permits, in connection with granting marketing approval, for a new use, for an agricultural chemical product that has been previously approved in the territory of the Party, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory for that new use, such as evidence of prior marketing approval for that new use, the Party shall not, without the consent of the

person that previously submitted the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the prior marketing approval for that use in the other territory; or

(ii) evidence of prior marketing approval in another territory for that new use, for at least ten years from the date of the original marketing approval granted in the territory of the Party.

3. When a product is subject to a system of marketing approval pursuant to paragraphs 1 or 2 and is also covered by a patent in the territory of that Party, the Party shall not alter the term of protection that it provides pursuant to paragraphs 1 and 2 in the event that the patent protection terminates on a date earlier than the end of the term of protection specified in paragraphs 1 and 2.

4. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on that information or on evidence of safety or efficacy information of a product that was previously approved, such as evidence of prior marketing approval in the territory of the Party or in another territory, that Party shall:

(a) implement measures in its marketing approval process to prevent such other persons from marketing a product covered by a patent claiming the product or its approved method of use during the term of that patent without the consent or acquiescence of the patent owner; and

(b) provide that the patent owner shall be notified of the identity of any such other person who requests marketing approval to enter the market during the term of a patent notified to the approving authority as covering that product.

## **Article 15.10. ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

### General Obligations

1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights shall be in writing and shall state any relevant findings of fact and the reasoning or the legal basis on which the decisions or rulings are based. Each Party shall also provide that such decisions or rulings shall be published (12) or, where publication is not practicable, otherwise made available to the public, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

2. Each Party shall publicize information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal systems, including any statistical information that the Party may collect for such purposes.

3. The Parties understand that a decision that a Party makes on the distribution of enforcement resources shall not excuse that Party from complying with this Chapter.

4. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner is the designated right holder in such

work, performance, or phonogram. Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter.

#### Civil and Administrative Procedures and Remedies

5. Each Party shall make available to right holders (13) civil judicial procedures concerning the enforcement of any intellectual property right.

6. Each Party shall provide that:

(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; and

(ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement and that are not taken into account in computing the amount of the damages referred to in clause (i); and

(b) in determining damages for infringement of intellectual property rights, its judicial authorities shall consider, inter alia, the value of the infringed-on good or service, measured by the suggested retail price or other legitimate measure of value submitted by the right holder.

7. In civil judicial proceedings, each Party shall, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark counterfeiting, establish or maintain pre-established damages, which shall be available on the election of the right holder. Pre-established damages shall be in an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement. In civil judicial proceedings concerning patent infringement, each Party shall provide that its judicial authorities shall have the authority to increase damages to an amount that is up to three times the amount of the injury found or assessed. (14)

8. Each Party shall provide that its judicial authorities, except in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning copyright or related rights infringement and trademark infringement, that the prevailing party shall be awarded payment of court costs or fees and reasonable attorney's fees by the losing party. Further, each Party shall provide that its judicial authorities, at least in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning patent infringement, that the prevailing party shall be awarded payment of reasonable attorney's fees by the losing party.

9. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, any related materials and implements, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

10. Each Party shall provide that:

(a) in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional circumstances;

(b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of the pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements; and

(c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

11. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution, and to provide this information to the right holder.

12. Each Party shall provide that its judicial authorities shall have the authority to:

(a) fine or imprison, in appropriate cases, a party to a litigation who fails to abide by valid orders issued by such authorities; and

(b) impose sanctions on parties to a litigation, their counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders regarding the protection of confidential information produced or exchanged in a proceeding.

13. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures conform to principles equivalent in substance to those set out in this Chapter.

14. In civil judicial proceedings concerning the acts described in paragraphs 7 and 8 of Article 15.4, each Party shall provide that its judicial authorities shall have the authority to order or award at least:

(a) provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;

(b) the opportunity for the right holder to elect between actual damages it suffered (plus any profits attributable to the prohibited activity not taken into account in computing those damages) or pre-established damages;

(c) payment to the prevailing right holder at the conclusion of civil judicial proceedings of court costs and fees, and reasonable attorney's fees, by the party engaged in the prohibited conduct; and

(d) destruction of devices and products found to be involved in the prohibited activity. Neither Party may make damages available against a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity that sustains the burden of proving that it was not aware and had no reason to believe that its acts constituted a prohibited activity.

15. In civil judicial proceedings concerning the enforcement of intellectual property rights, each Party shall provide that its judicial authorities shall have the authority to order a party to desist from an infringement, in order, inter alia, to prevent, immediately after they clear customs, the entry into the channels of commerce in the jurisdiction of those authorities of imported goods that involve the infringement of an intellectual property right, or to prevent their exportation.

16. In the event that a Party's judicial or other authorities appoint technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties to the litigation bear the costs of such experts, the Party should seek to ensure that such costs are closely related, inter alia, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

#### Provisional Measures

17. Parties shall act on requests for relief *inaudita altera parte* expeditiously and shall, except in exceptional cases, generally execute such requests within ten days.

18. Each Party shall provide that its judicial authorities have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

19. In proceedings concerning the grant of provisional measures in relation to enforcement of a patent, each Party shall provide for a rebuttable presumption that the patent is valid.

#### Special Requirements Related to Border Measures

20. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods, (15) into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures. Each Party shall provide that the application to suspend the release of goods shall remain in force for a period of not less than one year from the date of application, or the period that the good is protected by copyright or the relevant trademark registration, whichever is shorter.

21. Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that such security may be in the form of a bond conditioned to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension

of the release of goods in the event the competent authorities determine that the article is not an infringing good.

22. Where its competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant its competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

23. Each Party shall provide that its competent authorities may initiate border measures ex officio, with respect to imported, exported, or in-transit merchandise, (16) or merchandise in free trade zones, suspected of being counterfeit or confusingly similar trademark goods, or pirated copyright goods, without the need for a formal complaint from a private party or right holder.

24. Each Party shall provide that goods that have been determined to be pirated or counterfeit by its competent authorities shall be destroyed, except in exceptional circumstances. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized, except in exceptional circumstances, to permit the exportation of counterfeit or pirated goods or to permit such goods to be subject to other customs procedures.

(12) A Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

(13) For purposes of this Article, "right holder" includes exclusive licensees as well as federations and associations having the legal standing and authority to assert such rights; "exclusive licensee" includes the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

(14) Neither Party shall be required to apply this paragraph to actions for infringement against a Party or a third party acting with the authorization or consent of a Party.

(15) For purposes of paragraphs 20 through 25:

(a) counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and

(b) pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

(16) For purposes of paragraph 23, in-transit merchandise means goods under "Customs transit" and goods "transshipped", as defined in the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention).

(17) For greater certainty, "financial gain" for purposes of this paragraph includes the receipt or expectation of anything of value.

25. Where an application fee or merchandise storage fee is assessed in connection with border measures to enforce an intellectual property right, each Party shall provide that such fee shall not be set at an amount that unreasonably deters recourse to these measures.

#### Criminal Procedures and Remedies

26. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. Willful copyright or related rights piracy on a commercial scale includes:

(a) significant willful copyright or related rights infringements that have no direct or indirect motivation of financial gain; and

(b) willful infringements for purposes of commercial advantage or private financial gain.(17)

Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities subject to criminal penalties at least to the same extent as the trafficking or distribution of such goods in domestic commerce. (18)

27. Specifically, each Party shall provide:

(a) remedies that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the infringer's monetary incentive. Each Party shall further establish policies or guidelines that encourage judicial authorities to impose those remedies at levels sufficient to provide a deterrent to future infringements;

(b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements used in the commission of the offense, any assets traceable to the infringing activity, and any documentary evidence relevant to the offense. Each Party shall provide that such orders need not individually identify the items that are subject to seizure, so long as they fall within general categories specified in the order;

(c) that its judicial authorities shall have the authority, among other measures, to order the forfeiture of any assets traceable to the infringing activity and shall, except in exceptional cases, order the forfeiture and destruction of all counterfeit or pirated goods, and, at least with respect to willful copyright or related rights piracy, order the forfeiture and destruction of materials and implements that have been used in the creation of infringing goods. Each Party shall further provide that such forfeiture and destruction shall occur without compensation of any kind to the defendant;

(d) that, in criminal cases, its judicial or other competent authorities shall keep an inventory of goods and other material proposed to be destroyed, and shall have the authority temporarily to exempt such materials from the destruction order to facilitate the preservation of evidence upon notice by the right holder that it wishes to bring a civil or administrative case for damages; and

(e) that its authorities may initiate legal action ex officio with respect to the offenses described in this Chapter, without the need for a formal complaint by a private party or right holder.

28. Each Party shall also provide for criminal procedures and penalties to be applied in the following cases, even absent willful trademark counterfeiting or copyright piracy:

(a) knowing trafficking in counterfeit labels affixed or designed to be affixed to: a phonogram, a copy of a computer program, documentation or packaging for a computer program, or a copy of a motion picture or other audiovisual work; and

(b) knowing trafficking in counterfeit documentation or packaging for a computer program. Liability for Service Providers and Limitations

29. For the purpose of providing enforcement procedures that permit effective action against any act of copyright (19)infringement covered by this Chapter, including expeditious remedies to prevent infringements and criminal and civil remedies that constitute a deterrent to further infringements, each Party shall provide, consistent with the framework set out in this Article:

(a) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth in this subparagraph (b). (20)

(i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions, and shall be confined to those functions (21)

(A) transmitting, routing, or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;

(B) caching carried out through an automatic process;

(C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and

(D) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

(ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).

(iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) through (vii).

(iv) With respect to functions referred to in clause (i)(B), the limitations shall be conditioned on the service provider:

(A) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;

(B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available;

(C) not interfering with technology consistent with industry standards accepted in the Party's territory used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

(v) With respect to functions referred to in clauses (i)(C) and (D), the limitations shall be conditioned on the service provider:

(A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

(B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix); and

(C) publicly designating a representative to receive such notifications.

(vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:

(A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(B) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary, provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy, and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice of the court order proceedings referred to in this subparagraph and an opportunity to appear before the judicial authority.

(ix) For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures in its law or in regulations for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.

(xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(xii) For purposes of the function referred to in clause (i)(A), service provider means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, and for purposes of the functions referred to in clauses (i)(B) through (D) service provider means a provider or operator of facilities for online services or network access.

(18) A Party may comply with this obligation in relation to exportation through its measures concerning distribution or trafficking.

(19) For purposes of this paragraph, "copyright" includes related rights.

(20) This subparagraph is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

(21) Either Party may request consultations with the other Party to consider how to address under this paragraph functions of a similar nature that a Party identifies after the date of entry into force of this Agreement.

## **Chapter Sixteen. LABOR**

### **Article 16.1. STATEMENT OF SHARED COMMITMENT**

1. The Parties reaffirm their obligations as members of the International Labor Organization ("ILO") and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998) ("ILO Declaration"). (1) Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 16.7 are recognized and protected by its law.

2. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 16.7 and shall strive to improve those standards in that light.

(1) The Parties recall that paragraph 5 of this ILO Declaration states that labor standards should not be used for protectionist trade purposes.

### **Article 16.2. APPLICATION AND ENFORCEMENT OF LABOR LAWS**

1. (a) Neither Party shall fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priority. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.

2. Each Party recognizes that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces



adherence to the internationally recognized labor rights referred to in Article 16.7 as an encouragement

for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

### **Article 16.3. PROCEDURAL GUARANTEES AND PUBLIC AWARENESS**

1. Each Party shall ensure that persons with a recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent and, to this end, each Party shall provide that:

(a) such proceedings comply with due process of law;

(b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;

(c) the parties to such proceedings are entitled to support or defend their respective positions, including by presenting information or evidence; and

(d) such proceedings do not entail unreasonable fees or time limits or unwarranted delays.

3. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

(a) in writing and state the reasons on which the decisions are based;

(b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

(c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.

4. Each Party shall provide, as appropriate, that parties to such proceedings have the right to seek review and, where warranted, correction of final decisions issued in such proceedings.

5. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

6. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions, or emergency workplace closures.

7. Each Party shall promote public awareness of its labor laws, including by:

(a) ensuring that information related to its labor laws and enforcement and compliance procedures is publicly available; and

(b) encouraging education of the public regarding its labor laws.

8. For greater certainty, decisions by each Party's judicial tribunals, quasi-judicial tribunals, or administrative tribunals, of general, labor, or other specific jurisdiction, as well as related proceedings, shall not be subject to revision or reopened under this Chapter.

### **Article 16.4. INSTITUTIONAL ARRANGEMENTS**

1. The Joint Committee established under Chapter Nineteen (Administration of the Agreement) shall consider issues and review activities related to the operation of this Chapter, including the Labor Cooperation Mechanism established under Article 16.5. The Joint Committee shall, at the request of either Party, establish a Subcommittee on Labor Affairs comprising officials of the labor ministry and other appropriate agencies or ministries of each Party. The Subcommittee shall meet at such times as it deems appropriate to discuss matters related to the operation of this Chapter. Meetings of the Subcommittee shall include, unless the Parties agree otherwise, a session where members of the Subcommittee have an opportunity to meet with the public to discuss matters related to the operation of this Chapter.

2. Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Party and with the public for purposes of implementing this Chapter. Each Party's contact point shall provide for the submission, receipt, and consideration of communications from the public on matters related to this Chapter and shall make such communications available to the other Party and, as appropriate, to the public. Each Party shall review such

communications, as appropriate, in accordance with domestic procedures.

3. Each Party may convene a national labor advisory committee comprising members of its public, including representatives of its labor and business organizations and other persons, to advise it on the implementation of this Chapter.

4. Any formal decision of the Parties concerning the implementation of this Chapter shall be made public, unless the Parties agree otherwise.

5. The Parties shall jointly prepare reports, as appropriate, on matters related to the implementation of this Chapter and shall make such reports public.

## **Article 16.5. LABOR COOPERATION**

Recognizing that cooperation provides enhanced opportunities to promote respect for core labor standards embodied in the ILO Declaration and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour ("ILO Convention 182"), and to further advance other common commitments regarding labor matters, the Parties hereby establish a Labor Cooperation Mechanism, as set out in Annex 16-A.

## **Article 16.6. LABOR CONSULTATIONS**

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the other Party's contact point. Unless the Parties agree otherwise, consultations shall commence within 30 days after a Party delivers a request for consultations to the other Party's contact point designated pursuant to Article 16.4.2.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate.

3. If the consultations fail to resolve the matter, either Party may request that the Subcommittee on Labor Affairs be convened to consider the matter. The Subcommittee shall convene within 30 days after a Party delivers a request to convene the Subcommittee to the other Party's contact point designated pursuant to Article 16.4.2, unless the Parties agree otherwise. If the Joint Committee has not established the Subcommittee as of the date a Party delivers a request, it shall do so during the 30-day period described in this paragraph. The Subcommittee shall endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or non-governmental experts and having recourse to such procedures as good offices, conciliation, or mediation.

4. If a Party considers that the other Party has failed to carry out its obligations under Article 16.2.1(a), the Party may request consultations under paragraph 1 or pursuant to Article 20.5 (Consultations).

(a) If a Party requests consultations pursuant to Article 20.5 (Consultations) at a time when the Parties are engaged in consultations on the same matter under paragraph 1 or the Subcommittee is endeavoring to resolve the matter under paragraph 3, the Parties shall discontinue their efforts to resolve the matter under this Article. Once consultations have begun under Article 20.5 (Consultations), no consultations on the same matter may be entered into under this Article.

(b) If a Party requests consultations pursuant to Article 20.5 (Consultations) more than 60 days after delivery of a request for consultations under paragraph 1, the Parties may agree at any time to refer the matter to the Joint Committee pursuant to Article 20.6 (Referral to the Joint Committee).

5. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 16.2.1(a).

## **Article 16.7. DEFINITIONS**

For purposes of this Chapter:

internationally recognized labor rights means:

(a) the right of association;

(b) the right to organize and bargain collectively;

(c) a prohibition on the use of any form of forced or compulsory labor;

(d) labor protections for children and young people, including a minimum age for employment of children and the prohibition and elimination of the worst forms of child labor; and

(e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; and

labor law means:

(a) for the United States, an act of Congress or a regulation promulgated pursuant to an act of Congress that is directly related to internationally recognized labor rights and is enforceable by action of the federal government; and

(b) for Oman, a Sultani Decree or Decision, or a regulation, ministerial decision, local order, local circular, or other legislation promulgated pursuant to a Sultani Decree or Decision that is directly related to internationally recognized labor rights.

## **Chapter Seventeen. ENVIRONMENT**

### **Article 17.1. LEVELS OF PROTECTION**

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall ensure that those laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve those laws and policies.

### **Article 17.2. APPLICATION AND ENFORCEMENT OF ENVIRONMENTAL LAWS**

1. (a) Neither Party shall fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priority. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.

2. Each Party recognizes that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

### **Article 17.3. PROCEDURAL MATTERS**

1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to sanction or remedy violations of its environmental laws.

(a) Such proceedings shall be fair, equitable, and transparent, and, to this end, shall comply with due process of law and be open to the public except where the administration of justice otherwise requires.

(b) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:

(i) take into consideration the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and

(ii) may include compliance agreements, penalties, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.

2. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that the competent authorities give such requests due consideration in accordance with its law.

3. Each Party shall ensure that persons with a recognized interest under its law in a particular matter have appropriate access to the proceedings referred to in paragraph 1.

4. Each Party shall provide appropriate and effective access to remedies, in accordance with its law, which may include rights

such as:

(a) the right to sue another person under that Party's jurisdiction for damages under that Party's environmental laws;

(b) the right to seek sanctions or remedies such as monetary penalties, emergency closures, or orders to mitigate the consequences of violations of its environmental laws;

(c) the right to request the competent authorities to take appropriate action to enforce the Party's environmental laws in order to protect the environment or to avoid environmental harm; or

(d) the right to seek injunctions where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person under that Party's jurisdiction contrary to that Party's environmental laws or from tortious conduct that harms human health or the environment.

## **Article 17.4. VOLUNTARY MECHANISMS TO ENHANCE ENVIRONMENTAL PERFORMANCE**

1. The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of high levels of environmental protection, complementing the procedures set forth in Article 17.3. As appropriate and in accordance with its law, each Party shall encourage the development of such incentives and voluntary mechanisms, which may include:

(a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:

(i) partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific organizations;

(ii) voluntary guidelines for environmental performance; or

(iii) sharing of information and expertise among government agencies, interested parties, and the public, concerning: methods for achieving high levels of environmental protection; voluntary environmental auditing and reporting; or ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or

(b) incentives, including market-based mechanisms where appropriate, to encourage conservation, restoration, enhancement, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for exchanging or trading permits, credits, or other instruments to help achieve environmental goals efficiently.

2. As appropriate, and in accordance with its law, each Party shall encourage:

(a) the development and improvement of performance goals and standards used in measuring environmental performance; and

(b) flexible means to achieve such goals and meet such standards, including through mechanisms identified in paragraph 1.

## **Article 17.5. INSTITUTIONAL ARRANGEMENTS**

1. In addition to discussions of matters related to the operation of this Chapter that may take place in the Joint Committee established under Chapter Nineteen (Administration of the Agreement), the Joint Committee shall, at the request of either Party, establish a Subcommittee on Environmental Affairs comprising government officials of each Party to discuss matters related to the operation of this Chapter. Meetings of the Subcommittee shall include, unless the Parties agree otherwise, a session where members of the Subcommittee have an opportunity to meet with the public to discuss matters related to the operation of this Chapter.

2. The Parties, when they consider appropriate, shall jointly prepare reports on matters related to the implementation of this Chapter, and shall make such reports public.

3. Any formal decision of the Parties concerning the implementation of this Chapter shall be made public, unless the Parties agree otherwise.

## **Article 17.6. OPPORTUNITIES FOR PUBLIC PARTICIPATION**

1. Recognizing that opportunities for public participation can facilitate the sharing of best practices and the development of

innovative approaches to issues of interest to the public, each Party shall develop or maintain procedures for dialogue with its public concerning the implementation of this Chapter, including opportunities for its public to:

(a) suggest matters to be discussed at the meetings of the Joint Committee or, if a Subcommittee on Environmental Affairs has been established pursuant to Article 17.5, meetings of the Subcommittee; and

(b) provide, on an ongoing basis, views, recommendations, or advice on matters related to the implementation of this Chapter. Each Party shall make these views, recommendations, or advice available to the other Party and the public.

2. Each Party may convene, or consult with an existing, national advisory committee comprising representatives of both its environmental and business organizations and other members of its public, to advise it on the implementation of this Chapter, as appropriate.

3. Each Party shall make best efforts to respond favorably to requests for discussions by persons in its territory regarding its implementation of this Chapter.

4. Each Party shall take into account, as appropriate, public comments and recommendations it receives regarding cooperative environmental activities the Parties undertake pursuant to the United States - Oman Memorandum of Understanding on Environmental Cooperation.

## **Article 17.7. ENVIRONMENTAL COOPERATION**

1. The Parties recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening bilateral trade and investment relations. The Parties are committed to undertaking cooperative environmental activities pursuant to a United States - Oman Memorandum of Understanding on Environmental Cooperation developed by the Parties, and in other fora.

2. Each Party shall seek opportunities for its citizens to participate in the development and implementation of cooperative environmental activities, such as through the use of public-private partnerships.

3. The Parties also recognize the ongoing importance of current and future environmental cooperation that may be undertaken outside this Agreement.

4. Each Party shall, as it deems appropriate, share information with the other Party and the public regarding its experience in assessing and taking into account the positive and negative environmental effects of trade agreements and policies.

## **Article 17.8. ENVIRONMENTAL CONSULTATIONS**

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point designated by the other Party for this purpose. Unless the Parties agree otherwise, consultations shall commence within 30 days after a Party delivers a request.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate.

3. If the consultations fail to resolve the matter, either Party may request that the Subcommittee on Environmental Affairs be convened to consider the matter. The Subcommittee shall convene within 30 days after a Party delivers a written request to the other Party's contact point designated pursuant to paragraph 1, unless the Parties agree otherwise. If the Joint Committee has not established the Subcommittee as of the date a Party delivers a request, it shall do so during the 30-day period described in this paragraph. The Subcommittee shall endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or non-governmental experts and having recourse to such procedures as good offices, conciliation, or mediation.

4. If a Party considers that the other Party has failed to carry out its obligations under paragraph 1(a) of Article 17.2, the Party may request consultations under paragraph 1 or pursuant to Article 20.5 (Consultations).

(a) If a Party requests consultations pursuant to Article 20.5 (Consultations) at a time when the Parties are engaged in consultations on the same matter under paragraph 1 or the Subcommittee is endeavoring to resolve the matter under paragraph 3, the Parties shall discontinue their efforts to resolve the matter under this Article. Once consultations have begun under Article 20.5 (Consultations), no consultations on the same matter may be entered into under this Article.

(b) If a Party requests consultations pursuant to Article 20.5 (Consultations) more than 60 days after delivery of a request for consultations under paragraph 1, the Parties may agree at any time to refer the matter to the Joint Committee pursuant to

Article 20.6 (Referral to the Joint Committee).

5. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than paragraph 1(a) of Article 17.2.

## **Article 17.9. RELATIONSHIP TO ENVIRONMENTAL AGREEMENTS**

1. The Parties recognize that the multilateral environmental agreements to which they are both party play an important role, globally and domestically, in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements.

2. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of the multilateral environmental agreements to which they are both party and the international trade agreements to which they are both party. To this end, the Parties shall consult, as appropriate, with respect to negotiations on environmental issues of mutual interest.

## **Article 17.10. DEFINITIONS**

for Purposes of this Chapter:

environmental law means any law of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas,

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health; and

law means:

(a) for the United States, a statute that is an act of Congress or a regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal government.

(b) for Oman, a Sultani Decree or Decision, or a regulation, ministerial decision, local order, local circular, or other legislation promulgated pursuant to a Sultani Decree or Decision.

## **Chapter Eighteen. TRANSPARENCY**

### **Article 18.1. PUBLICATION**

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall: (a) publish in advance any such measures that it proposes to adopt; and

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

### **Article 18.2. NOTIFICATION AND PROVISION OF INFORMATION**

On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any proposed or actual measure, regardless of whether the other Party has been previously notified of that measure.

### **Article 18.3. ADMINISTRATIVE PROCEEDINGS**

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure, in its administrative proceedings applying measures referred to in Article 18.1 to particular persons, goods, or services of the other Party in specific cases, that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with the Party's procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of 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 law.

#### **Article 18.4. REVIEW AND APPEAL**

1. Each Party shall establish or maintain judicial, quasi-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 Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in such tribunals or procedures, the parties to the proceeding are provided with the right to:

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

(b) a decision based on the evidence and submissions of record or, where required by law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

#### **Article 18.5. ANTI-CORRUPTION**

1. the Parties Reaffirm Their Resolve to Eliminate Bribery and Corruption In International Trade and Investment.

2. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

(a) a public official of the Party or a person who performs public functions for the Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(b) any person subject to the jurisdiction of the Party intentionally to offer or grant, directly or indirectly, to a public official of the Party or a person who performs public functions for the Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(c) any person subject to the jurisdiction of the Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

(d) any person subject to the jurisdiction of the Party to aid or abet, or to conspire in, the commission of any of the offenses described in subparagraphs (a) through (c).

3. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 2.

4. Each Party shall strive to adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery described in paragraph 2.

5. The Parties recognize the importance of regional and multilateral initiatives to eliminate bribery and corruption in international trade and investment. The Parties shall work jointly to encourage and support appropriate initiatives in relevant international fora.

## **Article 18.6. DEFINITIONS**

For purposes of this Chapter:

act or refrain from acting in relation to the performance of official duties includes any use of the official's position, whether or not within the official's authorized competence;

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice;

foreign official means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as procurement, at the central level of government; and

public official means any official or employee of a Party at the central level of government, whether appointed or elected.

## **Chapter Nineteen. ADMINISTRATION OF THE AGREEMENT**

### **Article 19.1. CONTACT POINTS**

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

2. On request of the other Party, a Party's contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the other Party.

### **Article 19.2. JOINT COMMITTEE**

1. The Parties hereby establish a Joint Committee to supervise the implementation of this Agreement and to review the trade relationship between the Parties.

(a) The Joint Committee shall comprise government officials of each Party and shall be co-chaired by

(i) the United States Trade Representative and

(ii) Oman's Minister of Commerce and Industry, or their designees.

(b) The Joint Committee may establish and delegate responsibilities to ad hoc and standing subcommittees or working groups and seek the advice of non-governmental persons.

2. The Joint Committee shall:

(a) review the general functioning of this Agreement;

(b) review and consider specific matters related to the operation and implementation of this Agreement in the light of its objectives;

(c) facilitate the prevention and settlement of disputes arising under this Agreement, including through consultations pursuant to Chapter Twenty (Dispute Settlement);

(d) consider and adopt any amendment or other modification to this Agreement, subject to completion of necessary approval procedures by each Party;

(e) consider ways to further enhance trade relations between the Parties and to promote the objectives of this Agreement, including through cooperation and assistance; and



(f) take such other action as the Parties may agree.

3. The Joint Committee may:

(a) establish its own rules of procedure; and

(b) issue interpretations of the provisions of this Agreement.

4. Unless the Parties agree otherwise, the Joint Committee shall convene

(a) in regular session every year, with such sessions to be held alternately in the territory of each Party; and

(b) in special session within 30 days of the request of a Party, with such special sessions to be held in the territory of the other Party or at such location as the Parties may agree.

5. The Parties recognize the importance of transparency and openness in implementing this Agreement, including considering the views of interested parties and other members of the public.

6. Each Party shall treat any confidential information exchanged in relation to a meeting of the Joint Committee on the same basis as the Party providing the information.

## **Chapter Twenty. CHAPTER TWENTY DISPUTE SETTLEMENT**

### **Article 20.1. COOPERATION**

The Parties shall endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

### **Article 20.2. SCOPE OF APPLICATION**

Except as otherwise provided in this Agreement or as the Parties agree otherwise, this Chapter shall apply with respect to the prevention or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that:

(a) a measure of the other Party is inconsistent with its obligations under this Agreement;

(b) the other Party has otherwise failed to carry out its obligations under this Agreement; or

(c) a benefit the Party could reasonably have expected to accrue to it under Chapter Two (National Treatment and Market Access for Goods), Chapter Four (Rules of Origin), Chapter Nine (Government Procurement), Chapter Eleven (Cross-Border Trade in Services), or Chapter Fifteen (Intellectual Property Rights) is being nullified or impaired as a result of a measure, whether or not the measure conflicts with the provisions of this Agreement, except that neither Party may invoke this subparagraph with respect to a benefit under Chapter Eleven (Cross-Border Trade in Services) or Chapter Fifteen (Intellectual Property Rights) if the measure is subject to an exception under Article 21.1 (General Exceptions).

### **Article 20.3. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS**

Each Party shall designate an office that shall be responsible for providing administrative assistance to panels established under Article 20.7. Each Party shall be responsible for the operation and costs of its designated office and shall notify the other Party of its location.

### **Article 20.4. CHOICE OF FORUM**

1. Where a Dispute Regarding Any Matter Arises Under this Agreement and Under the WTO Agreement, or Any other Agreement to Which Both Parties Are Party, the Complaining Party May Select the Forum In Which to Settle the dispute.

2. The complaining Party shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.

3. Once the complaining Party has selected a particular forum, the forum selected shall be used to the exclusion of other possible fora.

4. For the purposes of this paragraph, a Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel.

## **Article 20.5. CONSULTATIONS**

1. Either Party may request consultations with the other Party with respect to any matter described in Article 20.2 by delivering written notification to the other Party. If a Party requests consultations, the other Party shall reply promptly to the request for consultations and enter into consultations in good faith.

2. Each Party shall:

(a) provide sufficient information in the consultations to enable a full examination of how the matter subject to consultations might affect the operation of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

3. Promptly after requesting or receiving a request for consultations pursuant to this Article, each Party shall seek the views of interested parties and other members of the public on the matter in order to draw on a broad range of perspectives.

## **Article 20.6. REFERRAL TO THE JOINT COMMITTEE**

If the consultations fail to resolve a matter within 60 days of the delivery of a Party's request for consultations under Article 20.5, 20 days where the matter concerns perishable goods, or such other period as the Parties may agree, either Party may refer the matter to the Joint Committee by delivering written notification to the other Party. The Joint Committee shall endeavor to resolve the matter.

## **Article 20.7. ESTABLISHMENT OF PANEL**

1. If the Joint Committee has not resolved a matter within 60 days after delivery of the notification described in Article 20.6, 30 days where the matter concerns perishable goods, or such other period as the Parties may agree, the complaining Party may refer the matter to a dispute settlement panel by delivering written notification to the other Party.

2. Neither Party may refer a matter concerning a proposed measure to a dispute settlement panel. 3. Unless the Parties agree otherwise: (a) The panel shall have three members.

(b) Each Party shall appoint one panelist, in consultation with the other Party, within 30 days after the matter has been referred to a panel.

(c) The Parties shall endeavor to agree on a third panelist as chair within 30 days after the second panelist has been appointed. If the Parties are unable to agree on the chair within this period, the Party chosen by lot shall select within five days as chair an individual who is not a national of that Party.

(d) The date of establishment of the panel shall be the date on which the chair is appointed.

4. The panelists chosen pursuant to paragraph 3 shall:

(a) be chosen strictly on the basis of objectivity, reliability, and sound judgment and have expertise or experience in law, international trade, or the resolution of disputes arising under international trade agreements;

(b) be independent of, and not be affiliated with or take instructions from, either Party; and

(c) comply with a code of conduct to be established by the Joint Committee.

In addition, in disputes related to a Party's implementation of Chapter Sixteen (Labor), Chapter Seventeen (Environment), and such other chapters as the Parties may agree, panelists shall have expertise or experience relevant to the subject matter that is under dispute.

5. Panel hearings shall be held at a location determined in accordance with the model rules of procedure.

## **Article 20.8. RULES OF PROCEDURE**

1. The Parties shall establish by the date of entry into force of this Agreement model rules of procedure, which shall ensure:

- (a) a right to at least one hearing before the panel and that, subject to subparagraph (f), such hearings shall be open to the public;
- (b) an opportunity for each Party to provide initial and rebuttal submissions;
- (c) that each Party's written submissions, written versions of its oral statement, and written responses to a request or questions from the panel shall be public, subject to subparagraph (f);
- (d) that the panel shall consider requests from nongovernmental entities located in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties;
- (e) a reasonable opportunity for each Party to submit comments on the initial report presented pursuant to Article 20.9.1; and
- (f) the protection of confidential information.

2. Unless the Parties agree otherwise, the panel shall follow the model rules of procedure and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the model rules.

3. On request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

### **Article 20.9. PANEL REPORT**

1. Unless the Parties agree otherwise, the panel shall, within 180 days after the chair is appointed, present to the Parties an initial report containing findings of fact, and its determination as to whether:

- (a) the measure at issue is inconsistent with the obligations of this Agreement;
- (b) a Party has otherwise failed to carry out its obligations under this Agreement; or
- (c) the measure at issue is causing a nullification or impairment in the sense of Article 20.2(c); as well as any other determination requested by the Parties with regard to the dispute.

2. The panel shall base its report on the relevant provisions of the Agreement and the submissions and arguments of the Parties. The panel may, at the request of the Parties, make recommendations for the resolution of the dispute.

3. After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

4. The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties agree otherwise. The Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.

### **Article 20.10. IMPLEMENTATION OF THE FINAL REPORT**

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. If, in its final report, the panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Article 20.2(c), the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

### **Article 20.11. NON-IMPLEMENTATION**

1. If a panel has made a determination of the type described in Article 20.10.2, and the Parties are unable to reach agreement on a resolution pursuant to Article 20.10.1 within 45 days of receiving the final report, or such other period as the Parties agree, the Party complained against shall enter into negotiations with the other Party with a view to developing mutually acceptable compensation.

2. If the Parties:

- (a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or

(b) have agreed on compensation or on a resolution pursuant to Article 20.10.1 and the complaining Party considers that the other Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the other Party that it intends to suspend the application to the other Party of benefits of equivalent effect. The notice shall specify the level of

benefits that the Party proposes to suspend. Subject to paragraph 5, the complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:

(a) the level of benefits that the other Party has proposed to be suspended is manifestly excessive; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the other Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the Parties within 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the other Party that it will pay an annual monetary assessment. The Parties shall consult, beginning no later than ten days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment, in U.S. dollars, shall be equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

6. Unless the Joint Committee decides otherwise, a monetary assessment shall be paid to the complaining Party in U.S. currency, or in an equivalent amount of Omani currency, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Joint Committee may decide that an assessment shall be paid into a fund established by the Joint Committee and expended at the direction of the Joint Committee for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting a Party in carrying out its obligations under the Agreement.

7. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.

8. This Article shall not apply where a panel has made a determination with respect to the application and enforcement of labor or environmental laws described in Article 20.12.1.

## **Article 20.12. NON-IMPLEMENTATION IN CERTAIN DISPUTES**

1. If, in its final report, a panel determines that a Party has not conformed with its obligations under Article 16.2.1(a) (Application and Enforcement of Labor Laws) or Article 17.2.1(a) (Application and Enforcement of Environmental Laws), and the Parties:

(a) are unable to reach agreement on a resolution pursuant to Article 20.10.1 within 45 days of receiving the final report; or

(b) have agreed on a resolution pursuant to Article 20.10.1 and the complaining Party considers that the other Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the other Party. The complaining Party shall deliver its request in writing to the other Party. The panel shall reconvene as soon as possible after delivery of the request.

2. The panel shall determine the amount of the monetary assessment in U.S. dollars within 90 days after it reconvenes under paragraph 1. In determining the amount of the assessment, the panel shall take into account:

- (a) the bilateral trade effects of the Party's failure to effectively enforce the relevant law;
- (b) the pervasiveness and duration of the Party's failure to effectively enforce the relevant law;
- (c) the reasons for the Party's failure to effectively enforce the relevant law;
- (d) the level of enforcement that could reasonably be expected of the Party given its resource constraints;
- (e) the efforts made by the Party to begin remedying the non-enforcement after the final report of the panel; and
- (f) any other relevant factors.

The amount of the assessment shall not exceed 15 million U.S. dollars annually, adjusted for inflation as specified in Annex 20-A.

3. On the date on which the panel determines the amount of the monetary assessment under paragraph 2, or at any other time thereafter, the complaining Party may provide notice in writing to the Party complained against demanding payment of the monetary assessment. The monetary assessment shall be payable in U.S. currency, or in an equivalent amount of Omani currency, in equal, quarterly installments beginning 60 days after the complaining Party provides such notice. Each of the first four quarterly instalments shall be equal to one quarter of the monetary assessment determined by the panel under Article 20.12.2. The fifth quarterly instalment and subsequent quarterly instalments shall be adjusted for inflation as specified in Annex 20-A.

4. Assessments shall be paid into a fund established by the Joint Committee and shall be expended at the direction of the Joint Committee for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental law enforcement, as the case may be, in the territory of the Party complained against, consistent with its law. In deciding how to expend monies paid into the fund, the Joint Committee shall consider the views of interested persons in each Party's territory.

5. If the Party complained against fails to pay a monetary assessment, and if the Party has created and funded an escrow account to ensure payment of any assessments against it, the other Party shall, before having recourse to any other measure, seek to obtain the funds from the account.

6. If the complaining Party cannot obtain the funds from the other Party's escrow account within 30 days of the date on which payment is due, or if the other Party has not created an escrow account, the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

### **Article 20.13. COMPLIANCE REVIEW**

1. Without prejudice to the procedures set out in Article 20.11.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the other Party. The panel shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 20.11 or 20.12 and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 20.11.5 or that has been imposed on it under Article 20.12.

### **Article 20.14. FIVE-YEAR REVIEW**

The Joint Committee shall review the operation and effectiveness of Articles 20.11 and 20.12 not later than five years after the Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been imposed, as the case may be, in five proceedings initiated under this Chapter, whichever occurs first.

### **Article 20.15. PRIVATE RIGHTS**

Neither Party may provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

## **Chapter Twenty One. EXCEPTIONS**

### **Article 21.1. GENERAL EXCEPTIONS**

1. For purposes of Chapters Two through Seven (National Treatment and Market Access for Goods, Textiles and Apparel, Rules of Origin, Customs Administration, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), and Fourteen (Electronic Commerce), (1) Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal, or plant life or health.

(1) This Article is without prejudice to whether digital products should be classified as goods or services.

### **Article 21.2. ESSENTIAL SECURITY**

Nothing In this Agreement Shall Be Construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security or the protection of its own essential security interests.

### **Article 21.3. TAXATION**

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. (a) Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

(b) In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Notwithstanding paragraph 2:

(a) Article 2.2 (National Treatment and Market Access for Goods- National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994; and

(b) Article 2.10 (National Treatment and Market Access for Goods- Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article 11.2 (Cross-Border Trade in Services- National Treatment), Article 12.2 (Financial Services- National Treatment), and Article 12.5 (Financial Services - Cross-Border Trade) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and

(b) Articles 10.3 (Investment- National Treatment) and 10.4 (Investment- Most-Favored-Nation Treatment), Articles 11.2 (Cross-Border Trade in Services - National Treatment) and 11.3 (Cross - Border Trade in Services - Most-Favored-Nation Treatment), and Articles 12.2 (Financial Services- National Treatment) and 12.3 (Financial Services - Most-Favored-Nation

Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers;

except that nothing in those Articles shall apply:

(c) any most-favored-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax convention;

(d) to a non-conforming provision of any existing taxation measure; (e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of GATS); or

(h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust, fund, or other arrangement to provide pension or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, paragraphs 2, 3, and 4 of Article 10.8 (Investment -Performance Requirements) shall apply to taxation measures.

6. (a) Article 10.15 (Investment- Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or an investment authorization.

(b) Article 10.6 (Investment - Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 10.6 (Investment- Expropriation and Compensation) as the basis for a claim where it has been determined pursuant to this subparagraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.6 (Investment- Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities, at the time that it gives its notice of intent under Article 10.15.4 (Investment - Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of 180 days of such referral, the investor may submit its claim to arbitration under Article 10.15 (Investment- Submission of a Claim to Arbitration).

(c) For purposes of this paragraph, competent authorities means:

(i) in the case of Oman, the Minister of National Economy; and

(ii) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy).

7. For purposes of this Article, taxes and taxation measures do not include:

(a) a customs duty; or

(b) the measures listed in exceptions (b) and (c) of the definition of customs duty.

## **Article 21.4. DISCLOSURE OF INFORMATION**

Nothing in this Agreement shall be construed as requiring a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

## **Chapter Twenty- Two. FINAL PROVISIONS**

### **Article 22.1. ANNEXES**

the Annexes to this Agreement Constitute an Integral Part of this Agreement.

### **Article 22.2. AMENDMENTS**

The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties complete any necessary approval procedures, on such date as the Parties may agree.

### **Article 22.3. AMENDMENT OF THE WTO AGREEMENT**

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult to consider amending the relevant provision of this Agreement, as appropriate, in accordance with Article 22.2.

### **Article 22.4. EXPANSION OF THE FREE TRADE AREA**

1. Any country or group of countries may agree to become a Party to this Agreement, subject to such terms and conditions as may be agreed between such country or countries and the Parties and following approval in accordance with the applicable legal requirements and procedures of each country.

2. This Agreement shall not apply as between any Party and any country or group of countries if, at the time of the agreement described in paragraph 1, one of them does not consent to such application.

### **Article 22.5. ENTRY INTO FORCE AND TERMINATION**

1. This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures or such other date as the Parties may agree.

2. Either Party may terminate this Agreement on 180-days written notice to the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement in duplicate, in the English and Arabic languages. In the event of a discrepancy between the texts, the English language text shall prevail.

DONE at Washington, D.C., this 19th day of January, 2006

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE SULTANATE OF OMAN: