

# Agreement between Japan and Mongolia for an Economic Partnership

Preamble

Japan and Mongolia,

Conscious of their warm relationship and strong economic and political ties that have developed through growing trade and investment and mutually beneficial cooperation between the Parties;

Realizing that a dynamic and rapidly changing global environment brought about by globalization and closer integration among economies in the world presents many new economic challenges and opportunities to the Parties;

Recognizing that the economies of the Parties are endowed with conditions to complement each other and that this complementarity should contribute to further promoting the sustainable economic development in the Parties, by making use of their respective economic strengths through bilateral trade and investment activities;

Realizing the differences between the Parties in terms of their level of economic development; Seeking to create a clearly established and secured trade and investment framework through mutually advantageous rules to govern trade and investment between the Parties;

Further seeking to enhance the competitiveness and supply capacity of the economies of the Parties, make their markets more efficient and vibrant, ensure predictable commercial environment for further expansion of trade and investment between them, and contribute to further economic efficiency and growth of the Parties;

Noting the important roles of private sectors for further enhancing commercial and economic relations between the Parties and believing that this Agreement will create new trade and investment opportunities for such private sectors;

Believing that the implementation of this Agreement will contribute to creating new and better employment opportunities through human resource development and thus will improve living standard, including consumer welfares, of the peoples of the Parties;

Reaffirming the view that this Agreement will not only contribute to strengthening the existing political and economic ties between the Parties but also become one of the significant steps in building Japan-Mongolia "Strategic Partnership";

Recalling Article XXIV of the GATT 1994 and Article V of the GATS;

Convinced that this Agreement would open a new era for the relationship between the Parties; and Determined to establish a legal framework for strengthening the economic partnership between the Parties;

HAVE AGREED as follows:

## Chapter 1. General Provisions

### Article 1.1. Objective

The objective of this Agreement is to create a new economic dynamism between the Parties by means of the following, taking into account the stage of development and economic needs of the Parties:

- (a) liberalizing and facilitating trade in goods and services between the Parties;
- (b) facilitating movement of natural persons between the Parties;
- (c) increasing investment opportunities and strengthening protection for investments and investment activities in the Parties;
- (d) enhancing protection of intellectual property;
- (e) promoting cooperation and coordination for the effective enforcement of competition laws in each Party; (f) establishing a framework for further reinforcing, broadening and deepening bilateral cooperation in all fields relevant to trade and investment and improvement of the business environment; and
- (g) creating effective procedures for the implementation and operation of this Agreement and for the prevention and resolution of disputes.

## Article 1.2. General Definitions

For the purposes of this Agreement, unless otherwise specified:

- (a) the term "Agreement on Customs Valuation" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;
- (b) the term "Area" means:
  - (i) for Japan, the territory of Japan, and the exclusive economic zone and the continental shelf with respect to which Japan exercises sovereign rights or jurisdiction in accordance with international law; and
  - (ii) for Mongolia, the territory of Mongolia; Note: Nothing in this subparagraph shall affect the rights and obligations of the Parties under international law, including those under the UNCLOS.
- (c) the term "commercial presence" means any type of business or professional establishment, including through:
  - (i) the constitution, acquisition or maintenance of a juridical person; or
  - (ii) the creation or maintenance of a branch or a representative office, within the Area of a Party for the purposes of supplying a service;
- (d) the term "customs authority" means the authority that, according to the legislation of each Party or a non-Party, is responsible for the administration and enforcement of customs laws and regulations:
  - (i) for Japan, the Ministry of Finance, or its successor; and
  - (ii) for Mongolia, the Customs General Administration, or its successor;
- (e) the term "days" means calendar days, including weekends and holidays;
- (f) the term "enterprise" means any juridical person or any other entity duly constituted or organized under the applicable laws and regulations, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organization or company;
- (g) the term "enterprise of a Party" means an enterprise constituted or organized under the applicable laws and regulations of that Party;
- (h) the term "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement; (i) the term "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. For the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;
- (j) the term "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, and adopted and implemented by the Parties in their respective laws;
- (k) the term "investment" means every kind of asset owned or controlled, directly or indirectly, by an investor, including:
  - (i) an enterprise and a branch of an enterprise;
  - (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom; (iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
  - (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
  - (v) claims to money and to any performance under contract having a financial value;
  - (vi) intellectual property; Note: Intellectual property means that set out in Article 12.2.
  - (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations and permits, including, but not limited to, those for the supply of financial services, the supply of telecommunications services, the production of nuclear energy and the exploration and exploitation of natural resources; and
  - (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges; Note: An investment includes the amount yielded by an investment, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as an investment.
- (l) the term "investor of a Party" means:
  - (i) a natural person who is a national of a Party under the law of the Party; or
  - (ii) an enterprise of that Party, that seeks to make, is making or has made investments in the Area of the other Party;
- (m) the term "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether private or government owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (n) a juridical person is:
  - (i) "owned" by persons if more than 50 percent of the equity interest in it is beneficially owned by the persons; and
  - (ii) "controlled" by persons if the persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (o) the term "originating good" means a good which qualifies as an originating good under the provisions of Chapter 3;
- (p) the term "Parties" means Japan and Mongolia and the term "Party" means either Japan or Mongolia;
- (q) the term "person" means a natural person or an enterprise/juridical person, as the case may be;
- (r) the term "service supplier" means any person that supplies or seeks to supply a service; Note: Where the service is not supplied or sought to be supplied directly by a juridical person but through other forms of commercial presence such as a

branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers under Chapter 7. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the Area of a Party where the service is supplied or sought to be supplied.

(s) the term "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement;

(t) the term "state enterprise" means a juridical person owned or controlled by a Party;

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

(v) the term "UNCLOS" means the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982; and

(w) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

### **Article 1.3. Transparency**

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations and judicial decisions of general application as well as international agreements to which the Party is a party, with respect to any matter covered by this Agreement.
2. Each Party shall make easily available to the public the names and addresses of the competent authorities responsible for the laws and regulations referred to in paragraph 1.
3. Each Party shall, upon request of the other Party, within a reasonable period of time, respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1, in the English language to the extent possible.
4. When introducing or changing its laws or regulations that significantly affect the implementation and operation of this Agreement, each Party shall endeavor to provide, except in emergency situations and to the extent covered by its domestic laws, a reasonable interval between the time when such laws or regulations are published or made publicly available and the time when they enter into force.

### **Article 1.4. Public Comment Procedures**

Each Party shall, in accordance with its laws and regulations and to the extent practicable, maintain public comment procedures with respect to any matter covered by this Agreement.

### **Article 1.5. Administrative Procedures**

1. Upon receiving an application submitted by a person who seeks an administrative decision which pertains to or affects the implementation and operation of this Agreement, the competent authorities of a Party shall, in accordance with the laws and regulations of the Party:
  - (a) inform the applicant of the decision within a reasonable period of time after the submission of the application considered complete in accordance with the laws and regulations of the Party, taking into account the established standard period of time referred to in paragraph 3; and
  - (b) provide, within a reasonable period of time, information concerning the status of the application, upon request of the applicant.
2. The competent authorities of a Party shall, in accordance with the laws and regulations of the Party, establish criteria for reviewing the application referred to in paragraph 1. The competent authorities shall make such criteria:
  - (a) as specific as possible; and
  - (b) publicly available except when it would extraordinarily raise administrative difficulties for the Party.
3. For the purposes of reviewing the applications referred to in paragraph 1, the competent authorities of a Party shall, in accordance with the laws and regulations of the Party:
  - (a) endeavor to establish standard periods of time between the receipt of the applications and the administrative decisions taken in response to the applications; and
  - (b) make publicly available such periods of time, if established.
4. The competent authorities of a Party shall endeavor to, in accordance with the laws and regulations of the Party, prior to any final decision which imposes obligations on or restricts legal rights of a person, provide that person with:
  - (a) a reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure will be based, and the facts which may be a cause of taking such measure; and
  - (b) a reasonable opportunity to present facts and arguments in support of position of such person, provided that time, nature of the measure and public interest permit.

## **Article 1.6. Review and Appeal**

1. Each Party shall maintain courts or procedures for the purpose of prompt review and, where warranted, correction of administrative actions regarding matters covered by this Agreement. Such courts or procedures shall be impartial and independent of the authorities entrusted with the administrative enforcement of such actions.
2. Each Party shall ensure that the parties in any such courts or procedures are provided with the right to:
  - (a) a reasonable opportunity to support or defend their respective positions; and
  - (b) a decision based on the evidence and submissions of record.
3. Each Party shall ensure, subject to appeal or further review as provided in its laws and regulations, that such decision is implemented by the relevant authorities with respect to the administrative action at issue.

## **Article 1.7. Measures Against Corruption**

Each Party shall, in accordance with its laws and regulations, take appropriate measures to prevent and combat corruption of its public officials regarding matters covered by this Agreement.

## **Article 1.8. Confidential Information**

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

## **Article 1.9. Taxation**

1. Unless otherwise provided for in this Agreement, the provisions of this Agreement shall not apply to any taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.
3. Articles 1.3 and 1.8 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

## **Article 1.10. Exceptions**

1. For the purposes of this Agreement except Chapters 7, 8 and 12, Articles XX and XXI of the GATT 1994 are incorporated into and form part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapters 7, 8, 9 and 10, Articles XIV and XIV bis of the GATS are incorporated into and form part of this Agreement, *mutatis mutandis*.
3. The Parties may consult with each other on issues related to the situation where:
  - (a) the export earnings of a Party the economy of which depend on exports of a small number of primary commodities may be seriously reduced by a decline in the sales or the world prices of such commodities; or
  - (b) promoting the establishment of a particular industry of a Party may be required with a view to raising the general standard of living of its people.

Note: For the purposes of this Article, it is understood that subparagraph (b) of Article XX of the GATT 1994 and subparagraph (b) of Article XIV of the GATS include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of the GATT 1994 applies to measures related to the conservation of living and non-living exhaustible natural resources.

## **Article 1.11. Relation to other Agreements**

1. The Parties reaffirm their rights and obligations under the WTO Agreement or any other agreements to which both Parties are party.
2. In the event of any inconsistency between this Agreement and the WTO Agreement, the WTO Agreement shall prevail to the extent of the inconsistency.
3. In the event of any inconsistency between this Agreement and any agreement other than the WTO Agreement to which both Parties are party, the Parties shall immediately consult with each other with a view to

finding a mutually satisfactory solution, taking into consideration general principles of international law.

## **Article 1.12. Implementing Agreement**

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

## **Article 1.13. Joint Committee**

1. The Parties hereby establish a Joint Committee under this Agreement.
2. The functions of the Joint Committee shall be:
  - (a) reviewing and monitoring the implementation and operation of this Agreement and, when necessary, making appropriate recommendations to the Parties;
  - (b) considering and recommending to the Parties any amendments to this Agreement;
  - (c) supervising and coordinating the work of all Sub- Committees established under this Agreement;
  - (d) adopting:
    - (i) the Operational Procedures for Trade in Goods and the Operational Procedures for Rules of Origin referred to in Article 2.20 and Article 3.26, respectively; and
    - (ii) any necessary decisions; and
  - (e) carrying out other functions as the Parties may agree.
3. The Joint Committee:
  - (a) shall be composed of representatives of the Governments of the Parties;
  - (b) may establish other Sub-Committees than those provided for in Article 1.14; and
  - (c) may delegate its responsibilities to Sub- Committees.
4. The Joint Committee shall establish its rules and procedures. 5. The Joint Committee shall hold the first meeting on the date of entry into force of this Agreement, and thereafter, meet at such times and venues or by means, as may be agreed by the Parties.

## **Article 1.14. Sub-committees**

1. The following Sub-Committees shall be established on the date of entry into force of this Agreement:
  - (a) Sub-Committee on Trade in Goods, as provided for in Article 2.19;
  - (b) Sub-Committee on Rules of Origin, as provided for in Article 3.25;
  - (c) Sub-Committee on Customs Procedures and Trade Facilitation, as provided for in Article 4.8;
  - (d) Sub-Committee on Sanitary and Phytosanitary Measures, as provided for in Article 5.6;
  - (e) Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures, as provided for in Article 6.9;
  - (f) Sub-Committee on Trade in Services, as provided for in Article 7.16;
  - (g) Sub-Committee on Movement of Natural Persons, as provided for in Article 8.6;
  - (h) Sub-Committee on Electronic Commerce, as provided for in Article 9.13;
  - (i) Sub-Committee on Investment, as provided for in Article 10.18;
  - (j) Sub-Committee on Intellectual Property, as provided for in Article 12.18;
  - (k) Sub-Committee on Government Procurement, as provided for in Article 13.5;
  - (l) Sub-Committee on Improvement of the Business Environment, as provided for in Article 14.2; and
  - (m) Sub-Committee on Cooperation, as provided for in Article 15.4.
2. The Sub-Committees shall carry out the functions specified in the corresponding Articles referred to in paragraph 1.

## **Article 1.15. Communications**

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

# **Chapter 2. Trade In Goods**

## **Article 2.1. Definitions**

For the purposes of this Chapter:

- (a) the term "Agreement on Agriculture" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;
- (b) the term "Agreement on Anti-Dumping" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;
- (c) the term "Agreement on Safeguards" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;
- (d) the term "Agreement on Subsidies and Countervailing Measures" means the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement;
- (e) the term "bilateral safeguard measure" means a bilateral safeguard measure provided for in paragraph 2 of Article 2.8;
- (f) the term "customs duty" means any customs or import duty imposed in connection with the importation of a good, but does not include any:
  - (i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article II and paragraph 2 of Article III of the GATT 1994;
  - (ii) anti-dumping or countervailing duty applied pursuant to a Party's law and applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Anti-Dumping and the Agreement on Subsidies and Countervailing Measures; or
  - (iii) fees or other charges commensurate with the cost of services rendered;
- (g) the term "customs value of goods" means the value of goods for the purposes of levying ad valorem customs duties on imported goods;
- (h) the term "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;
- (i) the term "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in paragraph 1 of Article 2.13;
- (j) the term "serious injury" means a significant overall impairment in the position of a domestic industry; and (k) the term "threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

## **Article 2.2. Classification of Goods**

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

## **Article 2.3. National Treatment**

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, and to this end Article III of the GATT 1994 is incorporated into and forms part of this Agreement, mutatis mutandi.

## **Article 2.4. Elimination or Reduction of Customs Duties**

1. Unless otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods of the other Party in accordance with its Schedule in Annex 1.
2. Upon request of either Party, the Parties shall negotiate on issues such as improving market access for originating goods designated for negotiation in the Schedules in Annex 1, in accordance with the terms and conditions set out in such Schedules.
3. In accordance with subparagraph 1(b) of Article II of the GATT 1994, the goods traded between the Parties shall be exempt from other duties or charges of any kind imposed on or in connection with the importation.
4. Nothing in this Article shall prevent a Party from imposing, at any time, a charge equivalent to an internal tax, any anti-dumping or countervailing duty, or fees or other charges referred to in subparagraphs (f)(i) through (iii) of Article 2.1, respectively, on the importation of any good of the other Party.
5. If, as a result of the elimination or reduction of its customs duty on a particular good on a most-favored-nation basis, the most-favored-nation applied rate for the good becomes equal to, or lower than, the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall notify the other Party of such elimination or reduction without delay.
6. In cases where its most-favored-nation applied rate of customs duty on a particular good becomes lower than the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall apply the lower rate with respect to that originating good.

## **Article 2.5. Customs Valuation**

For the purposes of determining the customs value of goods traded between the Parties, the provisions of Part I of the Agreement on Customs Valuation shall apply mutatis mutandi.

## **Article 2.6. Export Subsidies**

Neither Party shall introduce or maintain any export subsidies, which are inconsistent with its obligations under the WTO Agreement, on any agricultural good, which is listed in Annex 1 to the Agreement on Agriculture.

## **Article 2.7. Import and Export Restrictions**

1. Neither Party shall introduce or maintain any prohibition or restriction other than customs duties on the importation of any good of the other Party or on the exportation or sale for export of any good destined to the other Party, which is inconsistent with its obligations under the relevant provisions of the WTO Agreement.

2. In the case that a Party introduces a prohibition or restriction other than customs duties taken consistently with the provisions of the WTO Agreement with respect to the importation from, or the exportation to, the other Party of a good upon which the Parties agree, the former Party shall make available, and endeavor to notify, relevant information to the other Party, prior to the introduction of such prohibition or restriction, or as soon as possible thereafter, in a manner consistent with the laws and regulations of the former Party. This paragraph shall apply unless the sharing of such information is considered by the former Party as prejudicial to public interest.

Note: A Party may comply with this paragraph by providing the relevant information to the other Party through the relevant procedures under the WTO Agreement. Safeguard Measures

## **Article 2.8. Application of Bilateral Safeguard Measures**

1. Subject to the provisions of this Section, a Party may apply a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury to its domestic industry and to facilitate adjustment thereof, if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 2.4, is being imported into the former Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of that originating good constitute cause of serious injury, or threat of serious injury, to a domestic industry of the former Party.

2. A Party may, as a bilateral safeguard measure:

(a) suspend the further reduction of any rate of customs duty on the originating good provided for in this Chapter; or

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

(i) the most-favored-nation applied rate of customs duty in effect on the day when the bilateral safeguard measure is applied; and

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

## **Article 2.9. Conditions and Limitations**

1. No bilateral safeguard measure shall be maintained except to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such period of time shall not exceed a period of three years. However, in highly exceptional circumstances, a bilateral safeguard measure may be extended, provided that the total duration of the bilateral safeguard measure, including such extensions, shall not exceed six years. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party maintaining the bilateral safeguard measure shall progressively liberalize the bilateral safeguard measure at regular intervals during the period of application.

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

3. Upon the termination of a bilateral safeguard measure, the rate of customs duty for the originating good subject to the measure shall be the rate which would have been in effect if the bilateral safeguard measure had never been applied.

4. A bilateral safeguard measure shall not be applied against an originating good of the exporting Party as long as its share of imports of the good concerned in the importing Party does not exceed three percent.

5. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures relating to bilateral safeguard measures.

## **Article 2.10. Investigation**

1. A Party may apply a bilateral safeguard measure only after an investigation has been carried out by the competent

authorities of that Party in accordance with the same procedures as those provided for in Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards.

2. The investigation referred to in paragraph 1 shall, except in special circumstances, be completed within one year, and in no case more than 18 months, following its date of initiation.

## **Article 2.11. Notification and Consultations**

1. A Party shall immediately make a written notice to the other Party upon:

- (a) initiating an investigation referred to in paragraph 1 of Article 2.10 related to serious injury, or threat of serious injury, and the reasons therefor; and
- (b) taking a decision to apply or extend a bilateral safeguard measure.

2. The Party making the written notice referred to in paragraph 1 shall provide the other Party with all pertinent information, which shall include:

- (a) in the written notice referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation and its subheading under the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and (b) in the written notice referred to in subparagraph 1(b), evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed bilateral safeguard measure and its subheading under the Harmonized System, a precise description of the proposed bilateral safeguard measure, and the proposed date of the introduction and expected duration of the bilateral safeguard measure.

3. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in paragraph 1 of Article 2.10, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in Article 2.12.

## **Article 2.12. Compensation**

1. A Party proposing to apply or extend a bilateral safeguard measure may agree on adequate means of trade compensation in the form of concessions of customs duties whose value is substantially equivalent to that of the additional customs duties expected to result from the bilateral safeguard measure.

2. If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations in accordance with paragraph 3 of Article 2.11, the Party to whose originating good the bilateral safeguard measure is applied shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.

## **Article 2.13. Provisional Bilateral Safeguard Measures**

1. In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may apply a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 2(a) or 2(b) of Article 2.8, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party have caused or are threatening to cause serious injury to a domestic industry of the former Party.

2. A Party shall make a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is applied.

3. The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of Article 2.10 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in paragraph 1 of Article 2.9. 4. Paragraphs 3 through 5 of Article 2.9 shall apply, *mutatis mutandi*, to a provisional bilateral safeguard measure. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in paragraph 1 of Article 2.10 does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

## **Article 2.14. Relation to Safeguard Measures Under the Wto Agreement**

1. Nothing in this Section shall prevent a Party from applying a safeguard measure to an originating good of the other Party in accordance with:

- (a) Article XIX of the GATT 1994 and the Agreement on Safeguards; or



(b) Article 5 of the Agreement on Agriculture.

2. A Party applying a safeguard measure to the importation of an originating good of the other Party in accordance with Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, shall not apply at the same time a bilateral safeguard measure under this Section to that importation.

3. In the case that a Party has applied a bilateral safeguard measure under this Section to the importation of an originating good of the other Party prior to the application of a safeguard measure in accordance with Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, the duration of the latter safeguard measure shall be counted as a part of the total duration of the bilateral safeguard measure. The Party may resume the application of the bilateral safeguard measure to that importation upon the termination of the latter safeguard measure up to the remaining period of the bilateral safeguard measure.

## **Article 2.15. Communications**

A written notice referred to in paragraph 1 of Article 2.11 and paragraph 2 of Article 2.13 and any other communication between the Parties in accordance with this Section shall be made in the English language.

## **Article 2.16. Review**

The Parties shall review the provisions of this Section, if necessary, 10 years after the date of entry into force of this Agreement. Other Provisions

## **Article 2.17. Anti-dumping and Countervailing Measures**

Nothing in this Chapter shall be construed to prevent a Party from taking any measure in accordance with the provisions of Article VI of the GATT 1994, the Agreement on Anti-Dumping and the Agreement on Subsidies and Countervailing Measures.

## **Article 2.18. Measures to Safeguard the Balance of Payments**

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

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

## **Article 2.19. Sub-committee on Trade In Goods**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Trade in Goods (hereinafter referred to in this Article as "the Sub-Committee"). 2. The functions of the Sub-Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) considering any other matter related to this Chapter as the Parties may agree;
- (c) reviewing and making appropriate recommendations, as necessary, to the Joint Committee on the Operational Procedures for Trade in Goods referred to in Article 2.20;
- (d) reporting the findings of the Sub-Committee to the Joint Committee; and
- (e) carrying out other functions as may be delegated by the Joint Committee.

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

4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

## **Article 2.20. Operational Procedures for Trade In Goods**

Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures for Trade in Goods that provide detailed regulations pursuant to which the relevant authorities of the Parties shall implement their functions under this Chapter.

## **Article 2.21. Cooperation with Respect to Exports**

The Parties shall, in accordance with the provisions of Chapter 15, cooperate with each other in the field of used four-

wheeled motor vehicles exported from the exporting Party.

## Chapter 3. Rules of Origin

### Article 3.1. Definitions

For the purposes of this Chapter:

- (a) the term "competent governmental authority" means the authority that, according to the legislation of each Party, is responsible for the issuing of a Certificate of Origin or for the designation of certification entities or bodies;
- (b) the term "exporter" means a person located in an exporting Party who exports a good from the exporting Party;
- (c) the term "factory ships of the Party" or "vessels of the Party" respectively means factory ships or vessels: (i) which are registered in the Party;  
(ii) which sail under the flag of the Party; and  
(iii) which meet one of the following conditions:
  - (A) they are at least 50 percent owned by nationals of the Parties; or
  - (B) they are owned by a juridical person which has its head office and its principal place of business in either Party and which does not own any vessel or ship registered in a non-Party;
- (d) the term "fungible originating goods of a Party" or "fungible originating materials of a Party" respectively means originating goods or materials of a Party that are interchangeable for commercial purposes, whose properties are essentially identical;
- (e) the term "Generally Accepted Accounting Principles" means the recognized consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;
- (f) the term "importer" means a person who imports a good into the importing Party;
- (g) the term "indirect materials" means goods used in the production, testing or inspection of another good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:
  - (i) fuel and energy;
  - (ii) tools, dies and molds;
  - (iii) spare parts and goods used in the maintenance of equipment and buildings;
  - (iv) lubricants, greases, compounding materials and other goods used in production or used to operate equipment and buildings;
  - (v) gloves, glasses, footwear, clothing, safety equipment and supplies;
  - (vi) equipment, devices and supplies used for testing or inspecting the good;
  - (vii) catalysts and solvents; and
  - (viii) any other goods that are not incorporated into another good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;
- (h) the term "material" means a good that is used in the production of another good;
- (i) the term "non-originating material" means a material which does not qualify as originating under this Chapter;
- (j) the term "originating material" means a material which qualifies as originating under this Chapter;
- (k) the term "packing materials and containers for transportation and shipment" means goods that are used to protect a good during transportation, other than packaging materials and containers for retail sale referred to in Article 3.13;
- (l) the term "preferential tariff treatment" means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 2.4;
- (m) the term "producer" means a person who engages in the production of goods or materials; and
- (n) the term "production" means a method of obtaining goods including manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

### Article 3.2. Originating Goods

Unless otherwise provided for in this Chapter, a good shall qualify as an originating good of a Party where:

- (a) the good is wholly obtained or produced entirely in the Party, as defined in Article 3.3;
- (b) the good is produced entirely in the Party exclusively from originating materials of the Party; or
- (c) the good satisfies the product specific rules (change in tariff classification, qualifying value content or specific manufacturing or processing operation) set out in Annex 2, as well as all other applicable requirements of this Chapter, when the good is produced entirely in the Party using non-originating materials.

### Article 3.3. Wholly Obtained Goods

For the purposes of subparagraph (a) of Article 3.2, the following goods shall be considered as being wholly obtained or produced entirely in a Party:

- (a) live animals born and raised in the Party;
- (b) animals obtained by hunting, trapping, fishing, gathering or capturing in the Party;
- (c) goods obtained from live animals in the Party;
- (d) plants and plant products harvested, picked or gathered in the Party;
- (e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken in the Party;
- (f) goods of sea-fishing and other goods taken by vessels of the Party from the sea outside the territorial seas of the Parties;
- (g) goods produced on board factory ships of the Party outside the territorial seas of the Parties from the goods referred to in subparagraph (f);
- (h) goods taken from the seabed or subsoil thereof outside the territorial sea of the Party, provided that the Party has rights to exploit such seabed or subsoil in accordance with the provisions of the UNCLOS;
- (i) articles collected in the Party which can no longer perform their original purpose in the Party nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;
- (j) scrap and waste derived from manufacturing or processing operations or from consumption in the Party and fit only for disposal or for the recovery of raw materials;
- (k) parts or raw materials recovered in the Party from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and
- (l) goods obtained or produced in the Party exclusively from the goods referred to in subparagraphs (a) through (k).

### Article 3.4. Qualifying Value Content

1. For the purposes of subparagraph (c) of Article 3.2, the qualifying value content of a good shall be calculated on the basis of one or the other of the following methods:

(a) Method based on value of non-originating materials ("Build-down method")

F.O.B. – V.N.M.

$$Q.V.C. = \frac{\text{F.O.B.} - \text{V.N.M.}}{\text{F.O.B.}} \times 100$$

(b) Method based on value of originating materials ("Build-up method")

V.O.M. + Direct Labor Cost + Direct Overhead Cost + Profit

$$Q.V.C. = \frac{\text{V.O.M.} + \text{Direct Labor Cost} + \text{Direct Overhead Cost} + \text{Profit}}{\text{F.O.B.}} \times 100$$

Where:

Q.V.C. is the qualifying value content of a good, expressed as a percentage;

F.O.B. is, except as provided for in paragraph 2, the free- on-board value of the good payable by the buyer of the good to the seller of the good, regardless of the mode of shipment, not including any internal excise taxes reduced, exempted or repaid when the good is exported;

V.N.M. is the value of non-originating materials used in the production of the good; and V.O.M. is the value of originating materials used in the production of the good.

Note: For the purposes of calculating the qualifying value content of a good, the Generally Accepted Accounting Principles in the exporting Party shall apply.

2. F.O.B. referred to in paragraph 1 shall be the value:

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

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

3. For the purposes of calculating the qualifying value content of a good in accordance with paragraph 1, the value of material used in the production of the good in a Party:

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

(b) if such value is unknown and cannot be ascertained, shall be the first ascertainable price paid for the material in the

Party, but may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.

4. For the purposes of calculating the qualifying value content of a good to determine whether the good qualifies as an originating good of a Party:

(a) V.N.M. of the good under subparagraph 1(a) shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good; and

(b) V.O.M. of the good under subparagraph 1(b) shall include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

5. For the purposes of subparagraph 2(b) or 3(a), in applying the Agreement on Customs Valuation to determine the value of a good or a material, the Agreement on Customs Valuation shall apply mutatis mutandi to domestic transactions or to the cases where there is no transaction of the good or the material.

### **Article 3.5. Accumulation**

For the purposes of determining whether a good qualifies as an originating good of a Party:

(a) an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered as an originating material of the former Party;

(b) the production in the other Party may be considered as that in the former Party; and

(c) the production carried out at different stages by one or more producers within the Party or in the other Party may be taken into account, when the good is produced using non-originating materials, provided that such good has undergone its last production process in the exporting Party and such production process goes beyond the operations provided for in Article 3.7.

### **Article 3.6. De Minimis**

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

2. Paragraph 1 shall not apply to a non-originating material used in the production of a good provided for in Chapters 1 through 24 of the Harmonized System, except where such non-originating material is provided for in a subheading which is different from that of the good for which the origin is being determined under this Article.

### **Article 3.7. Non-qualifying Operations**

1. A good shall not be considered as an originating good of a Party merely by reason of:

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

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

(c) disassembly;

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

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

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

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

2. Paragraph 1 shall prevail over the product specific rules set out in Annex 2.

### **Article 3.8. Consignment Criteria**

1. An originating good of the other Party shall be deemed to meet the consignment criteria when it is transported:

(a) directly from the other Party; or

(b) through one or more non-Parties for the purpose of transit or temporary storage in warehouses in such non-Parties, provided that it does not undergo operations other than unloading, reloading and any other operation to preserve it in good condition.

2. If an originating good of the other Party does not meet the consignment criteria referred to in paragraph 1, the good shall not be considered as an originating good of the other Party.

### **Article 3.9. Unassembled or Disassembled Goods**

1. Where a good satisfies the requirements of the relevant provisions of Articles 3.2 through 3.7 and is imported into a Party from the other Party in an unassembled or disassembled form but is classified as an assembled good in accordance with Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered as an originating good of the other Party.
2. A good assembled in a Party from unassembled or disassembled materials, which were imported into the Party and classified as an assembled good in accordance with Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, shall be considered as an originating good of the Party, provided that the good would have satisfied the applicable requirements of the relevant provisions of Articles 3.2 through 3.7 if each of the non- originating materials among the unassembled or disassembled materials had been imported into the Party separately and not as an unassembled or disassembled form.

### **Article 3.10. Fungible Goods and Materials**

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible originating materials of the Party and fungible non- originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined in accordance with an inventory management method under the Generally Accepted Accounting Principles in the Party.
2. Where fungible originating goods of a Party and fungible non-originating goods are commingled in an inventory and, prior to exportation, do not undergo any production process or any operation in the Party where they were commingled other than unloading, reloading and any other operation to preserve them in good condition, the origin of the good may be determined in accordance with an inventory management method under the Generally Accepted Accounting Principles in the Party.

### **Article 3.11. Indirect Materials**

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

### **Article 3.12. Accessories, Spare Parts and Tools**

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

### **Article 3.13. Packaging Materials and Containers for Retail Sale**

1. Packaging materials and containers for retail sale, which are classified with the good in accordance with Rule 5 of the General Rules for the Interpretation of the Harmonized System, shall be disregarded in determining the origin of the good, provided that:
  - (a) the good is wholly obtained or entirely produced as defined in subparagraph (a) of Article 3.2;
  - (b) the good is produced exclusively from originating materials, as defined in subparagraph (b) of Article 3.2; or
  - (c) the good has undergone the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2.
2. If a good is subject to a qualifying value content requirement, the value of packaging materials and containers for retail sale shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

### **Article 3.14. Packing Materials and Containers for Transportation and Shipment**

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

### **Article 3.15. Claim for Preferential Tariff Treatment**

1. The importing Party shall grant preferential tariff treatment in accordance with this Agreement to an originating good of the exporting Party on the basis of a Certificate of Origin.
2. Notwithstanding paragraph 1:
  - (a) the importing Party shall not require a Certificate of Origin from the importer for an importation of an originating good of the exporting Party whose aggregate customs value does not exceed 1,500 United States dollars or its equivalent amount in the importing Party's currency, or such higher amount as may be established by the importing Party, provided that the importation does not form part of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirement for a Certificate of Origin; and
  - (b) the importing Party may waive the requirement for a Certificate of Origin in accordance with its laws and regulations.
3. The importing Party may require, where appropriate, the importer to submit other evidence that the good qualifies as an originating good of the exporting Party.
4. Where an originating good of the exporting Party is imported through one or more non-Parties, the importing Party may require the importer who claims preferential tariff treatment for that good to submit:
  - (a) a copy of the through bill of lading; or
  - (b) a certificate or any other information given by the customs authorities of such non-Parties or other relevant entities, which evidences that the good has not undergone operations other than unloading, reloading and any other operation to preserve it in good condition in those non- Parties.

### **Article 3.16. Certificate of Origin**

1. A Certificate of Origin referred to in paragraph 1 of Article 3.15 shall be issued by the competent governmental authority of the exporting Party upon request having been made by the exporter or its authorized agent. Such Certificate of Origin shall include minimum data specified in Annex 3.
2. For the purposes of this Article, the competent governmental authority of the exporting Party may designate other entities or bodies to be responsible for the issuance of Certificate of Origin, under the authorization given in accordance with the applicable laws and regulations of the exporting Party.
3. Where the competent governmental authority of the exporting Party designates other entities or bodies to carry out the issuance of Certificate of Origin, the exporting Party shall notify in writing the other Party of its designees.
4. For the purposes of this Chapter, upon the entry into force of this Agreement, the Parties shall establish each Party's format of Certificate of Origin in the English language in the Operational Procedures for Rules of Origin referred to in Article 3.26.
5. A Certificate of Origin shall be completed in the English language.
6. A Certificate of Origin shall be in a printed format or such other medium agreed upon by the Parties.
7. An issued Certificate of Origin shall be applicable to a single importation of originating goods of the exporting Party into the importing Party and be valid for 12 months from the date of issuance.
8. Where the exporter of a good is not the producer of the good in the exporting Party, the exporter may request a Certificate of Origin on the basis of:
  - (a) a declaration provided by the exporter to the competent governmental authority or its designees based on the information provided by the producer of the good to that exporter; or
  - (b) a declaration voluntarily provided by the producer of the good directly to the competent governmental authority or its designees by the request of the exporter.
9. A Certificate of Origin shall be issued only after the exporter who requests the Certificate of Origin, or the producer of a good in the exporting Party referred to in subparagraph 8(b), proves to the competent governmental authority of the exporting Party or its designees that the good to be exported qualifies as an originating good of the exporting Party.
10. The competent governmental authority of the exporting Party shall provide the importing Party with specimen signatures and impressions of stamps used in the offices of the competent governmental authority or its designees.
11. Each Party in accordance with its laws and regulations, shall ensure that the competent governmental authority or its designees shall keep a record of issued Certificate of Origin for a period of five years after the date on which the Certificate was issued. Such record includes all supporting documents presented to prove the qualification as an originating good of the exporting Party.
12. The competent governmental authority of the exporting Party shall, when it cancels the decision to issue a Certificate of Origin, promptly notify the cancellation to the exporter to whom the Certificate of Origin has been issued, and to the customs authority of the importing Party, except where the Certificate of Origin has been returned to the competent governmental authority.

## **Article 3.17. Obligations Regarding Exportations**

Each Party shall, in accordance with its laws and regulations, ensure that an exporter to whom a Certificate of Origin has been issued, or the producer of a good in the exporting Party referred to in subparagraph 8(b) of Article 3.16 shall:

- (a) notify in writing the competent governmental authority of the exporting Party or its designees without delay, when such exporter or producer knows that the good for which the Certificate of Origin has been issued does not qualify as an originating good of the exporting Party; and
- (b) keep the records related to the origin of the good for five years after the date on which the Certificate of Origin was issued.

## **Article 3.18. Request for Checking of Certificate of Origin**

1. In order to ensure the proper application of this Chapter, the Parties shall assist each other to check the information related to a Certificate of Origin, in accordance with this Agreement and their respective laws and regulations.
2. For the purposes of determining whether a good imported from the exporting Party under preferential tariff treatment qualifies as an originating good of the exporting Party, the customs authority of the importing Party may request information related to the origin of the good from the competent governmental authority of the exporting Party on the basis of a Certificate of Origin.
3. For the purposes of paragraph 2, the competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide the requested information in a period not exceeding four months after the date of receipt of the request. If the customs authority of the importing Party considers necessary, it may require additional information related to the origin of the good. If additional information is requested by the customs authority of the importing Party, the competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide the requested information in a period not exceeding two months after the date of receipt of the request.
4. For the purposes of paragraph 3, the competent governmental authority of the exporting Party may request the exporter to whom the Certificate of Origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 8(b) of Article 3.16, to provide the former with the requested information.

## **Article 3.19. Verification Visit**

1. If the customs authority of the importing Party is not satisfied with the outcome of the request for checking in accordance with Article 3.18, it may request the exporting Party to:
  - (a) collect and provide information related to the origin of a good, and check, for that purpose, the facilities used in the production of the good, through a visit by the competent governmental authority of the exporting Party along with the customs authority of the importing Party to the premises of the exporter to whom the Certificate of Origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 8(b) of Article 3.16; and
  - (b) provide information related to the origin of the good in the possession of the competent governmental authority of the exporting Party or its designee, during or after the visit referred to in subparagraph (a).
2. When requesting the exporting Party to conduct a visit in accordance with paragraph 1, the customs authority of the importing Party shall deliver a written communication with such request to the exporting Party at least 40 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the exporting Party. The competent governmental authority of the exporting Party shall request the written consent of the exporter, or the producer of the good in the exporting Party, whose premises are to be visited.
3. The communication referred to in paragraph 2 shall include:
  - (a) the identity of the customs authority issuing the communication;
  - (b) the name of the exporter, or the producer of the good in the exporting Party, whose premises are requested to be visited;
  - (c) the proposed date and place of the visit;
  - (d) the objective and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the Certificate of Origin; and
  - (e) the names and titles of the officials of the customs authority of the importing Party to be present during the visit.
4. The exporting Party shall respond in writing to the importing Party, within 30 days after the receipt of the communication referred to in paragraph 2, whether it accepts or refuses to conduct the visit requested in accordance with paragraph 1.
5. The competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide within 45 days or any other mutually agreed period after the last day of the visit, to the customs authority of the importing Party the information obtained in accordance with paragraph 1.

## **Article 3.20. Determination of Origin and Preferential Tariff Treatment**

1. The customs authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Chapter.
2. The customs authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment where it receives the notification from the competent governmental authority of the exporting Party to cancel the decision to issue the Certificate of Origin for the good in accordance with paragraph 12 of Article 3.16.
3. The customs authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment, and a written determination thereof shall be sent to the competent governmental authority of the exporting Party where:
  - (a) the competent governmental authority of the exporting Party fails to provide the information within the period referred to in paragraph 3 of Article 3.18 or paragraph 5 of Article 3.19;
  - (b) the exporting Party refuses to conduct a visit, or that Party fails to respond to the communication referred to in paragraph 2 of Article 3.19 within the period referred to in paragraph 4 of Article 3.19; or
  - (c) the information provided to the customs authority of the importing Party in accordance with Article 3.18 or 3.19 is not sufficient to prove that the good qualifies as an originating good of the exporting Party.
4. After carrying out the procedures outlined in Article 3.18 or 3.19 as the case may be, the customs authority of the importing Party shall provide the competent governmental authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination. The competent governmental authority of the exporting Party shall inform such determination by the customs authority of the importing Party to the exporter, or the producer of the good in the exporting Party, whose premises were subject of the visit referred to in Article 3.19.

## **Article 3.21. Confidentiality**

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

## **Article 3.22. Minor Errors**

The customs authority of the importing Party shall disregard minor errors, such as slight discrepancies or omissions, typing errors or protruding from the designated field, provided that these minor errors are not such as to create doubts concerning the accuracy of the information included in the Certificate of Origin.

## **Article 3.23. Penalties and Measures Against False Declaration**

1. Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate penalties or other sanctions against its exporters to whom a Certificate of Origin has been issued and the producers of a good in the exporting Party referred to in subparagraph 8(b) of Article 3.16, for providing false declaration or documents to the competent governmental authority of the exporting Party or its designees prior to the issuance of Certificate of Origin.
2. Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against its exporters to whom a Certificate of Origin has been issued and the producers of a good in the exporting Party referred to in subparagraph 8(b) of Article 3.16, for failing to notify in writing to the competent governmental authority of the exporting Party or its designees without delay after having known, after the issuance of Certificate of Origin, that the good for which the Certificate of Origin has been issued does not qualify as an originating good of the exporting Party. Note: For greater certainty, the exporters to whom a Certificate of Origin has been issued and the producers of a good in the exporting Party referred to in subparagraph 8(b) of Article 3.16 are not subject to the measures referred to in this paragraph, in accordance with the laws and regulations of each Party, provided that they notify in writing to the competent governmental authority of the exporting Party or its designees without delay after having known, after the issuance of Certificate of Origin, that the good for which the Certificate of Origin has been issued does not qualify as an originating good of the exporting Party.



## **Article 3.24. Miscellaneous**

Communications between the importing Party and the exporting Party shall be conducted in the English language.

## **Article 3.25. Sub-committee on Rules of Origin**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "the Sub-Committee"). 2. The functions of the Sub-Committee shall be:

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

- (i) the implementation and operation of this Chapter;
- (ii) any amendments to Annex 2 or 3, proposed by either Party; and
- (iii) the Operational Procedures for Rules of Origin referred to in Article 3.26;

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

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

(d) carrying out other functions as may be delegated by the Joint Committee.

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

4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

## **Article 3.26. Operational Procedures for Rules of Origin**

Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures for Rules of Origin that provide detailed regulations pursuant to which the customs authorities, the competent governmental authorities and other relevant authorities of the Parties shall implement their functions under this Chapter.

# **Chapter 4. Customs Procedures and Trade Facilitation**

## **Article 4.1. Scope and Objectives**

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

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

3. The objectives of this Chapter are to establish a framework to ensure transparency, proper application of customs laws and prompt clearance of goods and to promote cooperation in the field of customs procedures, with a view to facilitating trade in goods between the Parties.

## **Article 4.2. Definition**

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

## **Article 4.3. Transparency**

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

2. When information that has been made available must be revised due to changes in its customs laws, each Party shall make the revised information readily available, whenever possible in advance of the entry into force of the changes, to enable interested persons to take account of them.

3. Upon request of any interested person of the Parties, each Party shall provide, as quickly and accurately as possible, information related to the specific customs matters raised by the interested person and pertaining to its customs laws. Each Party shall supply not only the information specifically requested but also any other pertinent information which it considers the interested person should be made aware of.

4. Each Party shall designate one or more enquiry points to answer reasonable enquiries from any interested person of the Parties concerning customs matters, and shall make publicly available, including through its website, the names and addresses of such enquiry points.

## **Article 4.4. Customs Clearance**

1. The Parties shall apply their respective customs procedures in a predictable, consistent and transparent manner.
2. For prompt customs clearance of goods traded between the Parties, each Party shall:
  - (a) make use of information and communications technology;
  - (b) simplify its customs procedures;
  - (c) harmonize its customs procedures, to the extent possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council; and (d) promote cooperation, where appropriate, between its customs authority and:
    - (i) other national authorities of the Party;
    - (ii) the trading communities of the Party; and
    - (iii) the customs authorities of non-Parties.
3. Each Party shall provide affected parties with easily accessible processes of judicial or administrative review related to the action on the customs matters taken by the Party. Such review shall be independent of the authorities entrusted with the administrative enforcement of such actions and shall be carried out in an impartial and fair manner.

## **Article 4.5. Temporary Admission and Goods In Transit**

1. Each Party shall continue to facilitate the procedures for the temporary admission of goods traded between the Parties in accordance with its laws, regulations and international obligations.
2. Each Party shall continue to facilitate customs clearance of goods in transit from or to the other Party in accordance with paragraph 3 of Article V of the GATT 1994.
3. The Parties shall endeavor to promote, through arrangements such as seminars and courses, the use of A.T.A. carnets in accordance with the international obligations and the facilitation of customs clearance of goods in transit in the Parties or non-Parties.
4. For the purposes of this Article:
  - (a) the term "A.T.A. carnet" shall have the same meaning as in:
    - (i) for Japan, the Customs Convention on A.T.A. Carnet for the Temporary Admission of Goods, done at Brussels on December 6, 1961; and
    - (ii) for Mongolia, the Convention on Temporary Admission, done at Istanbul on June 26, 1990; and
  - (b) the term "temporary admission" means customs procedures under which certain goods may be brought into a customs territory conditionally, relieved totally or partially from the payment of customs duties. Such goods shall be imported for a specific purpose and shall be intended for reexportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

## **Article 4.6. Advance Rulings**

Where a written application is made in accordance with relevant laws, regulations or procedures adopted or maintained by the importing Party and the importing Party has no reasonable grounds to deny the issuance, the importing Party shall endeavor to, prior to the importation of the good, issue a written advance ruling on: (a) the tariff classification; (b) the customs valuation; and (c) the qualification of the good as an originating good of the exporting Party under the provisions of Chapter 3.

## **Article 47. Cooperation and Exchange of Information**

1. The Parties shall cooperate and exchange information with each other in the field of customs procedures, including combating the trafficking of prohibited goods and the importation and exportation of goods suspected of infringing intellectual property rights.
2. Such cooperation and exchange of information shall be implemented as provided for in the Implementing Agreement.
3. Paragraph 2 of Article 1.8 shall not apply to the exchange of information under this Article.

## **Article 4.8. Sub-committee on Customs Procedures and Trade Facilitation**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Customs Procedures and Trade Facilitation (hereinafter referred to in this Article as "the Sub-Committee").
2. The functions of the Sub-Committee shall be:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) identifying areas, related to this Chapter, to be improved for facilitating trade between the Parties;

- (c) reporting the findings of the Sub-Committee to the Joint Committee; and
  - (d) carrying out other functions as may be delegated by the Joint Committee
3. The composition of the Sub-Committee shall be specified in the Implementing Agreement.
  4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

## **Chapter 5. Sanitary and Phytosanitary Measures**

### **Article 5.1. Scope**

This Chapter shall apply to all sanitary and phytosanitary (hereinafter referred to as "SPS") measures of the Parties under the SPS Agreement, that may, directly or indirectly, affect trade in goods between the Parties. Article 5.2 Reaffirmation of Rights and Obligations The Parties reaffirm their rights and obligations related to SPS measures under the SPS Agreement.

### **Article 5.3. Harmonization**

The Parties shall endeavor to cooperate on the matters related to the harmonization of SPS measures, on as wide a basis as possible, as prescribed under Article 3 of the SPS Agreement. Such cooperation shall be conducted without requiring either Party to change its appropriate level of protection of human, animal or plant life or health that the Party has determined in accordance with Article 5 of the SPS Agreement.

### **Article 5.4. Equivalence**

1. An importing Party shall accept an exporting Party's SPS measures as equivalent, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of SPS protection.
2. Each Party shall, upon request of the other Party, enter into consultations with the aim of achieving bilateral arrangements related to recognition of the equivalence of specified SPS measures.

### **Article 5.5. Enquiry Point**

Each Party shall designate an enquiry point to answer all reasonable enquiries from the other Party regarding SPS measures and, where appropriate, to provide the other Party with relevant information.

### **Article 5.6. Sub-committee on Sanitary and Phytosanitary Measures**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on SPS Measures (hereinafter referred to in this Article as "the Sub-Committee"). 2. The functions of the Sub-Committee shall be:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) exchanging information on such matters as change or introduction of SPS-related regulations and standards of the Parties and occurrences of SPS incidents in the Areas of the Parties, which may, directly or indirectly, affect trade in goods between the Parties;
  - (c) undertaking science-based technical consultations to address matters related to harmonization, equivalence, adaptation to regional conditions, and control, inspection and approval procedures as referred to in the SPS Agreement with the objective to achieve mutually acceptable solutions;
  - (d) discussing technical cooperation between the Parties on SPS measures including capacity building, technical assistance and exchange of experts;
  - (e) discussing any other issues related to this Chapter;
  - (f) reporting the findings of the Sub-Committee to the relevant bodies; and
  - (g) carrying out other functions as may be delegated by the Joint Committee.
3. The Sub-Committee shall be composed of representatives of the Governments of the Parties with appropriate participation of relevant experts.
4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

### **Article 5.7. Non-application of Chapter 16**

Chapter 16 shall not apply to this Chapter.

## **Chapter 6. Technical Regulations, Standards and Conformity**

# Assessment Procedures

## Article 6.1. Scope

1. This Chapter shall apply to technical regulations, standards and conformity assessment procedures as defined in the TBT Agreement, that may affect trade in goods between the Parties.
2. This Chapter shall not apply to:
  - (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; or
  - (b) SPS measures as defined in Annex A of the SPS Agreement.

## Article 6.2. Objectives

The objectives of this Chapter are to:

- (a) increase and facilitate trade between the Parties, through the improvement of the implementation of the TBT Agreement;
- (b) ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade; and
- (c) enhance joint cooperation between the Parties.

## Article 6.3. Definitions

For the purposes of this Chapter:

- (a) the term "TBT Agreement" means the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement; and
- (b) the terms and definitions set out in Annex 1 of the TBT Agreement shall apply.

## Article 6.4. Reaffirmation of Rights and Obligations

The Parties reaffirm their rights and obligations related to technical regulations, standards and conformity assessment procedures under the TBT Agreement.

## Article 6.5. International Standards

1. Each Party shall use relevant international standards and guides or recommendations to the extent provided in paragraph 4 of Article 2 and paragraph 4 of Article 5 of the TBT Agreement, as a basis for its technical regulations and conformity assessment procedures.
2. Each Party shall encourage its national standardizing bodies to cooperate with the relevant national standardizing bodies of the other Party in international standardizing activities. Such cooperation may take place in regional and international standardizing bodies of which they are both members.

## Article 6.6. Technical Regulations

1. Upon request of a Party that has an interest in developing a technical regulation similar to a technical regulation of the other Party, such other Party shall provide, to the extent practicable, relevant information, including studies or documents, except for confidential information, on which it has relied in its development.
2. Each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfill the objectives of its own regulations.
3. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, upon request of the other Party, explain the reasons therefor.

## Article 6.7. Acceptance of Results of Conformity Assessment Procedures

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance in a Party of the results of conformity assessment procedures conducted in the other Party. Each Party shall, upon request of the other Party, provide information on the range of such mechanisms used in its Area.
2. Each Party shall ensure, whenever possible, that results of the conformity assessment procedures in the other Party are accepted, even when those procedures differ from its own, provided it is satisfied that the procedures offer an assurance of

conformity with applicable technical regulations or standards equivalent to its own procedures.

3. Where a Party does not accept the results of a conformity assessment procedure conducted in the other Party, it shall, upon request of the other Party and subject to the laws and regulations of that Party, explain the reasons therefor so that corrective action may be taken by the other Party where appropriate.

4. Each Party shall, whenever possible, accredit, designate or recognize conformity assessment bodies in the other Party on terms no less favorable than those it accords to conformity assessment bodies in its Area. If a Party accredits, designates or recognizes a body assessing conformity with a particular technical regulation or standard in its Area and it refuses to accredit, designate or recognize a body in the other Party assessing conformity with that technical regulation or standard, it shall, upon request, explain the reasons therefor.

## **Article 6.8. Enquiry Point**

Each Party shall designate an enquiry point to answer all reasonable enquiries from the other Party regarding technical regulations, standards and conformity assessment procedures and, where appropriate, to provide the other Party with other relevant information which it considers the other Party should be made aware of.

## **Article 6.9. Sub-committee on Technical Regulations, Standards and Conformity Assessment Procedures**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures (hereinafter referred to in this Article as "the Sub-Committee").

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

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) enhancing joint cooperation in the development and improvement of technical regulations, standards and conformity assessment procedures;
- (c) exchanging information on technical regulations, standards and conformity assessment procedures;
- (d) undertaking consultations on issues related to technical regulations, standards and conformity assessment procedures;
- (e) exchanging information on the work in regional and multilateral fora engaged in activities related to technical regulations, standards and conformity assessment procedures;
- (f) discussing technical cooperation between the Parties on matters related to this Chapter;
- (g) discussing any issues including those which may cause disputes between the Parties related to this Chapter with the objective of finding mutually acceptable solutions;
- (h) reporting the findings of the Sub-Committee to the relevant bodies; and
- (i) carrying out other functions as may be delegated by the Joint Committee.

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

4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

5. For the purposes of this Article, the Sub-Committee shall be coordinated by:

- (a) for Japan, the Ministry of Foreign Affairs, or its successor; and
- (b) for Mongolia, the Ministry of Industry, or its successor.

## **Article 6.10. Non-application of Chapter 16**

Chapter 16 shall not apply to this Chapter.

# **Chapter 7. Trade In Services**

## **Article 7.1. Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services.

2. This Chapter shall not apply to:

- (a) cabotage in maritime transport services;
- (b) with respect to air transport services, measures affecting traffic rights, however granted, or measures affecting services directly related to the exercise of traffic rights;
- (c) government procurement;
- (d) subsidies provided by a Party or a state enterprise, including grants, government-supported loans, guarantees and insurance;
- (e) measures pursuant to immigration laws and regulations;

(f) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis; and (g) services supplied in the exercise of governmental authority.

3. Notwithstanding subparagraph 2(b), this Chapter shall apply to measures affecting:

- (a) aircraft repair and maintenance services;
- (b) the selling and marketing of air transport services; and
- (c) computer reservation system services.

4. Annex 4 provides supplementary provisions to this Chapter on financial services, including scope and definitions.

5. Annex 5 provides supplementary provisions to this definitions.

## **Article 7.2. Definitions**

For the purposes of this Chapter:

- (a) the term "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from services and does not include so-called line maintenance;
- (b) the term "computer reservation system services" means services provided by computerized systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations may be made or tickets may be issued;
- (c) the term "existing" means in effect on the date of entry into force of this Agreement;
- (d) the term "juridical person of the other Party" means a juridical person which is either:
  - (i) constituted or otherwise organized under the law of the other Party; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (A) natural persons of the other Party; or
    - (B) juridical persons of the other Party identified under subparagraph (i);
- (e) the term "measure" means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form; Note: The term "measure" shall include taxation measures to the extent covered by the GATS.
- (f) the term "measure adopted or maintained by a Party" means any measure adopted or maintained by:
  - (i) any level of government or authority of a Party; and
  - (ii) non-governmental bodies in the exercise of powers delegated by any level of government or authority of a Party;
- (g) the term "measures by a Party affecting trade in services" includes measures with respect to:
  - (i) the purchase, payment or use of a service;
  - (ii) the access to and use of, in connection with the supply of a service, services which are required by the Party to be offered to the public generally; and
  - (iii) the presence, including commercial presence, of persons of the other Party for the supply of a service in the Area of the former Party;
- (h) the term "monopoly supplier of a service" means any person, public or private, which in the relevant market of the Party, is authorized or established formally or in effect by that Party as the sole supplier of that service;
- (i) the term "natural person of a Party" means a national of a Party under the law of the Party;
- (j) the term "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;
- (k) the term "service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
- (l) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (m) the term "trade in services" means the supply of a service:
  - (i) from the Area of a Party into the Area of the other Party ("cross-border supply mode");
  - (ii) in the Area of a Party to the service consumer of the other Party ("consumption abroad mode");
  - (iii) by a service supplier of a Party, through commercial presence in the Area of the other Party ("commercial presence mode"); or (iv) by a service supplier of a Party, through presence of natural persons of that Party in the Area of the other Party ("presence of natural persons mode"); and
- (n) the term "traffic rights" means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

## **Article 7.3. National Treatment**

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 6, and subject to any conditions and

qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, with respect to all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers.

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

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

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

## **Article 7.4. Most-favored-nation Treatment**

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords to like services and service suppliers of any non-Party.

2. Each Party may maintain measures inconsistent with paragraph 1 provided that such measures are listed in, and meet the conditions of, the List of Most-Favored-Nation Treatment Exemptions in Annex 6.

## **Article 7.5. Market Access**

1. With respect to market access through the modes of supply identified in subparagraph (m) of Article 7.2, a Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex 6. Note: If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (m)(i) of Article 7.2 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (m)(iii) of Article 7.2, it is thereby committed to allow related transfers of capital into its Area.

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

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; Note: This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

## **Article 7.6. Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 7.3 and 7.5, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Annex 6.

## **Article 7.7. Schedule of Specific Commitments**

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 7.3, 7.5 and 7.6. With respect to sectors or sub-sectors where such commitments are undertaken, each Schedule of Specific Commitments in Annex 6 shall specify:

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

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

2. With respect to sectors or sub-sectors where the specific commitments are undertaken and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 1(a) and 1(b), other than those based on measures pursuant to immigration laws and regulations, shall be limited to those based on existing non-conforming measures.

3. Measures inconsistent with both Articles 7.3 and 7.5 shall be inscribed in the column related to Article 7.5. In this case the inscription will be considered to provide a condition or qualification to Article 7.3 as well.

## **Article 7.8. Domestic Regulation**

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Where authorization is required by a Party for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application is considered complete under the laws and regulations of that Party, inform the applicant of the decision concerning the application. Upon request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.

3. With a view to ensuring that any measure adopted or maintained by a Party in any services sector related to the authorization, qualification requirements and procedures, technical standards and licensing requirements of service suppliers of the other Party does not constitute an unnecessary barrier to trade in services, each Party shall ensure that such measure:

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

## **Article 7.9. Recognition**

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

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

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

- (a) nothing in Article 7.4 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the other Party;
- (b) the Party shall accord the other Party an adequate opportunity to negotiate the accession of that other Party to such an agreement or arrangement or to negotiate a comparable one with it between the Parties; and
- (c) where the Party accords such recognition unilaterally, the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met, or licenses or certifications granted in the other Party should also be recognized.

## **Article 7.10. Monopolies and Exclusive Service Suppliers**

1. A Party shall ensure that any monopoly supplier of a service in its Area does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Articles 7.3, 7.4 and 7.5.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights, in an area subject to its Specific Commitments, that Party shall ensure that such a supplier does not abuse its monopoly position to act in the Area of that Party in a manner inconsistent with such commitments under Articles 7.3 and 7.5.

3. If a Party has a reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, the former Party may request the other Party to provide specific information concerning the relevant operations.

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

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

## **Article 7.11. Business Practices**



1. The Parties recognize that certain business practices of service suppliers, other than those falling under Article 7.10, may restrain competition and thereby restrict trade in services.
2. A Party shall, upon request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its laws and regulations and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

## **Article 7.12. Payments and Transfers**

1. Except under the circumstances envisaged in Article 7.13, a Party shall not apply restrictions on international transfers and payments for current transactions related to trade in services.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund. However, a Party shall not impose restrictions on any capital transactions inconsistently with its Specific Commitments regarding such transactions, except under Article 7.13 or upon request of the International Monetary Fund.

## **Article 7.13. Restrictions to Safeguard the Balance of Payments**

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

## **Article 7.14. Transparency**

Each Party shall prepare a non-legally binding list providing all relevant measures affecting the obligations under Articles 7.3, 7.4 and 7.5 in all sectors. The list shall be exchanged with the other Party and made publicly available within five years from the date of entry into force of this Agreement and shall also be subject to future review and revision where necessary or as agreed between the Parties. The list shall include the following elements:

- (a) sector and sub-sector or matter;
- (b) type of inconsistency (i.e. national treatment, most-favored-nation treatment and/or market access);
- (c) legal source or authority of the measure; and
- (d) brief description of the measure.

Note: The list under this Article is made solely for the purposes of transparency, and shall not be construed to affect the rights and obligations of a Party under this Chapter. Any review or revision under this Article is solely for the purposes of updating such list.

## **Article 7.15. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party that is a juridical person of the other Party, where the denying Party establishes that the juridical person is 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 regarding the non- Party that:
    - (i) prohibit transactions with the juridical person; or
    - (ii) would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party that is a juridical person of the other Party, where the denying Party establishes that the juridical person is owned or controlled by persons of a non-Party and has no substantial business activities in the Area of the other Party.

## **Article 7.16. Sub-committee on Trade In Services**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee").

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

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to this Chapter;

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

(d) carrying out other functions as may be delegated by the Joint Committee.

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

4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

## **Article 7.17. Review of Commitments**

1. With the objective of further liberalizing trade in services between the Parties, including the possibility of renegotiating the format of schedules, the Parties shall consider in due course undertaking a review of this Chapter and the Annexes referred to therein on occasions as may be agreed by the Parties.

2. If, after the entry into force of this Agreement, a Party has undertaken further liberalization autonomously in any of the services sectors, sub-sectors or activities, it shall consider in due course requests from the other Party to incorporate such liberalization into this Agreement.

# **Chapter 8. Movement of Natural Persons**

## **Article 8.1. General Principles**

1. This Chapter reflects the preferential trading relationship between the Parties, the desire of the Parties to facilitate entry and temporary stay of natural persons on a mutually beneficial basis and to establish transparent criteria and procedures for entry and temporary stay, and the need to ensure border security and to protect the domestic labor force and permanent employment in each Party.

2. Each Party shall apply its measures related to the provisions of this Chapter in accordance with the general principles referred to in paragraph 1, and, in particular, shall apply those measures expeditiously so as to avoid unduly impairing or delaying trade in goods or services or investment activities under this Agreement.

## **Article 8.2. Scope**

1. This Chapter shall apply to measures affecting the entry and temporary stay of natural persons of a Party who enter the other Party and fall under one of the categories referred to in paragraph 1 of Article 8.4.

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

3. This Chapter shall not prevent a Party from applying measures to regulate the entry and temporary stay of natural persons of the other Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of specific commitments set out in Annex 7.

Note: The sole fact of requiring a visa for natural persons of the other Party and not for those of certain non-Parties shall not be regarded as nullifying or impairing benefits under the terms of specific commitments set out in Annex 7.

## **Article 8.3. Definition**

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

## **Article 8.4. Specific Commitments**

1. Each Party shall set out in Annex 7 the specific commitments it undertakes for:
  - (a) short-term business visitors of the other Party;
  - (b) intra-corporate transferees of the other Party;
  - (c) investors of the other Party;
  - (d) natural persons of the other Party who engage in professional services;
  - (e) natural persons of the other Party who engage in supplying services, which require technology or knowledge at an advanced level on the basis of a contract with public or private organizations in the former Party; and
  - (f) spouse and children accompanying those natural persons set out in subparagraphs (b) through (e).
2. Natural persons covered by the categories referred to in paragraph 1 shall be granted entry and temporary stay in accordance with the terms and conditions set out in Annex 7, provided that the natural persons comply with immigration laws and regulations applicable to entry and temporary stay which are not inconsistent with the provisions of this Chapter.
3. Neither Party shall impose or maintain any limitation on the number of natural persons to be granted entry and temporary stay under paragraph 1.

## **Article 8.5. Requirements and Procedures**

1. Each Party shall publish or otherwise make available to the other Party upon the date of entry into force of this Agreement, with respect to natural persons covered by that Party's specific commitments set out in Annex 7, information on requirements and procedures necessary for an effective application by natural persons of the other Party for the grant of:
  - (a) entry into the former Party;
  - (b) initial temporary stay in the former Party;
  - (c) renewal of temporary stay in the former Party; (d) where applicable, permission to work in the former Party; and
  - (e) change of status of temporary stay in the former Party.
2. Each Party shall endeavor to provide, upon request by a natural person of the other Party, information on requirements and procedures referred to in paragraph 1.
3. Each Party shall endeavor to promptly inform the other Party of the introduction of any new requirements and procedures, or changes in any existing requirements and procedures referred to in paragraph 1 that affect the effective application by natural persons of the other Party for the grant of entry, temporary stay or permission referred to in subparagraphs 1(a) through (e).
4. Each Party shall ensure that fees charged by its competent authorities on application referred to in paragraph 1 do not in themselves represent an unjustifiable impediment to entry and temporary stay of natural persons of the other Party under this Chapter.
5. Each Party shall endeavor, to the maximum extent possible, to take measures to simplify the requirements and to facilitate and expedite the procedures related to the entry and temporary stay of natural persons of the other Party subject to its laws and regulations.

## **Article 8.6. Sub-committee on Movement of Natural Persons**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Movement of Natural Persons (hereinafter referred to in this Article as "the Sub-Committee").
2. The functions of the Sub-Committee shall be:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) considering the development of measures to further facilitate the entry and temporary stay of natural persons on a reciprocal basis;
  - (c) exchanging information on measures affecting entry and temporary stay of natural persons referred to in Annex 7;
  - (d) discussing any issues related to this Chapter as may be agreed upon;
  - (e) reporting the findings of the Sub-Committee to the Joint Committee; and
  - (f) carrying out other functions as may be delegated by the Joint Committee.
3. The Sub-Committee shall be composed of representatives of the Governments of the Parties.
4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

## **Article 8.7. Dispute Settlement**

1. The dispute settlement procedures provided for in Chapter 16 shall not apply to this Chapter unless:
  - (a) the matter involves a pattern of practice; and
  - (b) the natural persons of a Party affected by that matter have exhausted the available domestic administrative remedies of the other Party.
2. The remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has

not been issued by the competent authority of the other Party within one year after the date of the institution of the administrative remedy, and the failure to issue such a determination is not attributable to the delay caused by the natural persons.

## **Chapter 9. Electronic Commerce**

### **Article 9.1. General Provisions**

1. The Parties recognize the economic growth and opportunities provided by electronic commerce, and the importance of avoiding unnecessary barriers to its use and development.
2. The objective of this Chapter is to contribute to creating an environment of trust and confidence in the use of electronic commerce and to promote electronic commerce between the Parties and the wider use of electronic commerce globally.
3. The Parties recognize the principle of technological neutrality in electronic commerce.
4. In the event of any inconsistency between this Chapter and Chapter 2, 7, 10 or 12, the Chapter other than this Chapter shall prevail to the extent of the inconsistency.

### **Article 9.2. Definitions**

For the purposes of this Chapter:

- (a) the term "digital products" means computer programs, text, video, images, sound recordings and other products, that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically;
- (b) the term "electronic certificate" means an electromagnetic record prepared for certifying that matters used to confirm that the user has performed the electronic signature are pertaining to such user;
- (c) the term "electronic signature" means a measure taken with respect to information that can be recorded in an electromagnetic record and which fulfills both of the following requirements:
  - (i) that the measure indicates that such information has been approved by a person who has taken such measure; and
  - (ii) that the measure confirms that such information has not been altered; and
- (d) the term "trade administration documents" means forms that a Party issues or controls and that must be completed by or for an importer or exporter in connection with the importation or exportation of goods.

### **Article 9.3. Customs Duties**

Each Party shall maintain its practice of not imposing customs duties on electronic transmissions between the Parties.

### **Article 9.4. Non-discriminatory Treatment of Digital Products**

1. Neither Party shall adopt or maintain:
  - (a) measures that accord less favorable treatment to digital products of the other Party than it accords to its own like digital products; and
  - (b) measures that accord less favorable treatment to digital products of the other Party than it accords to like digital products of a non-Party.
2. Paragraph 1 shall not apply to:
  - (a) government procurement;
  - (b) subsidies provided by a Party or a state enterprise, including grants, government-supported loans, guarantees and insurance;
  - (c) measures maintained by a Party in accordance with paragraph 2 of Article 7.4;
  - (d) measures adopted or maintained by a Party within the scope of Article 7.3 or 7.5 which are:
    - (i) related to the sectors not committed in its Schedule of Specific Commitments in Annex 6; or
    - (ii) not inconsistent with the terms, limitations, conditions and qualifications agreed and specified in its Schedule of Specific Commitments in Annex 6; and
  - (e) non-conforming measures adopted or maintained by a Party in accordance with Article 10.8.
3. In implementing its obligations under paragraph 1, each Party shall, where necessary, determine in good faith whether a digital product is a digital product of a Party, of the other Party or of a non-Party. Such determination shall be made in a transparent, objective, reasonable and fair manner.
4. Each Party shall, upon request of the other Party, explain how it determines the origin of a digital product where it determines such origin in implementing its obligations under paragraph 1.
5. The Parties shall cooperate in international organizations and fora to foster the development of criteria for the determination of the origin of a digital product, with a view to considering the incorporation of such criteria into this Agreement.

## **Article 9.5. Electronic Signature**

1. Neither Party shall adopt or maintain measures regulating electronic signature that would:
  - (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic signature methods for their transaction; or
  - (b) prevent parties to an electronic transaction from having the opportunity to prove in court that their electronic transactions comply with any legal requirements.
2. Notwithstanding paragraph 1, each Party may require that, for a particular category of electronic transactions, the electronic signatures meet certain performance standards or are based on a specific electronic certificate issued by a supplier of certification services accredited or recognized in accordance with the laws and regulations of the Party, provided that the requirement:
  - (a) serves a legitimate policy objective; and
  - (b) is substantially related to achieving that objective.

## **Article 9.6. Consumer Protection**

1. The Parties recognize the importance of adopting and maintaining transparent and effective consumer protection measures for electronic commerce as well as measures conducive to the development of consumer confidence.
2. The Parties recognize the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection.
3. The Parties shall adopt or maintain measures, in accordance with their respective laws and regulations, to protect the personal data of electronic commerce users.

## **Article 9.7. Unsolicited Commercial E-mail**

Each Party shall endeavor to take appropriate and necessary measures to regulate unsolicited commercial e-mail for advertising purposes.

## **Article 9.8. Paperless Trade Administration**

1. Each Party shall endeavor to make all trade administration documents available to the public in electronic form.
2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such documents.
3. The Parties shall cooperate bilaterally and in international fora to enhance the acceptance of electronic versions of trade administration documents.

## **Article 9.9. Domestic Regulation**

Each Party shall ensure that all its measures affecting electronic commerce are administered in a transparent, objective, reasonable and impartial manner, and are not more burdensome than necessary to meet legitimate policy objectives.

## **Article 9.10. Prohibition on Requirement Concerning the Location of Computing Facilities**

1. Neither Party shall require:
  - (a) a service supplier of the other Party;
  - (b) an investor of the other Party; or
  - (c) an investment of an investor of the other Party in the Area of the former Party, as a condition for conducting its business in the Area of the former Party, to use or locate computing facilities in that Area.
2. Notwithstanding paragraph 1, nothing in this Article shall be construed to prevent a Party from adopting or maintaining measures affecting the use or location of computing facilities necessary to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

## **Article 9.11. Source Code**

1. Neither Party shall require the transfer of, or access to, source code of software owned by a person of the other Party, as

a condition of the import, distribution, sale or use of such software, or of products containing such software, in its Area.

2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software, and does not include software used for critical infrastructure.

## **Article 9.12. Cooperation**

1. The Parties shall, where appropriate, cooperate bilaterally and participate actively in regional and multilateral fora to promote the development of electronic commerce.
2. The Parties shall, where appropriate, share information and experiences, including on related laws, regulations and best practices with respect to electronic commerce, related to, LQWHUDOLD, consumer confidence, cyber-security, combatting unsolicited commercial e-mail, intellectual property, electronic government and personal data protection.
3. The Parties shall cooperate to overcome obstacles encountered by small and medium enterprises in the use of electronic commerce.
4. Each Party shall encourage, through existing means available to it, the activities of non-profit organizations in that Party aimed at promoting electronic commerce, including the exchange of information and views.
5. The Parties recognize the importance of working to maintain cross-border flows of information as an essential element for a vibrant electronic commerce environment.
6. The Parties recognize the importance of further enhancement of trade in digital products.

## **Article 9.13. Sub-committee on Electronic Commerce**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Electronic Commerce (hereinafter referred to in this Article as "the Sub-Committee").
2. The functions of the Sub-Committee shall be:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) discussing any issues related to this Chapter including, where appropriate, the possible review of Article 9.4;
  - (c) seeking new opportunities to further enhance trade in digital products;
  - (d) reporting the findings of the Sub-Committee to the Joint Committee; and
  - (e) carrying out other functions as may be delegated by the Joint Committee.
3. The Sub-Committee shall be composed of representatives of the Governments of the Parties.
4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

# **Chapter 10. Investment**

## **Article 10.1. Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party related to:
  - (a) investors of the other Party;
  - (b) investments of investors of the other Party in the Area of the former Party; and
  - (c) with respect to Articles 10.7 and 10.17, all investments in the Area of the former Party.

Note 1: For greater certainty, this Chapter shall also apply to measures adopted or maintained by a Party related to investments made by investors of the other Party in the Area of the former Party prior to the entry into force of this Agreement.

Note 2: For greater certainty, this Chapter shall not apply to claims arising out of events which occurred prior to the entry into force of this Agreement.

2. In the event of any inconsistency between this Chapter and Chapter 7:
  - (a) with respect to matters covered by Articles 10.3, 10.4 and 10.7, Chapter 7 shall prevail to the extent of the inconsistency; and
  - (b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of the inconsistency.
3. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.

## **Article 10.2. Definitions**

For the purposes of this Chapter:

- (a) the term "Bilateral Investment Agreement" means the Agreement between Japan and Mongolia concerning the Promotion and Protection of Investment signed at Tokyo on February 15, 2001;

(b) an enterprise is:

(i) "owned" by an investor if more than 50 percent of the equity interest in it is owned by the investor; and

(ii) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;

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

(d) the term "freely usable currency" means freely usable currency as defined under the Articles of Agreement of the International Monetary Fund;

(e) the term "investment activities" means establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of an investment; and

(f) the term "measure" means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form.

### **Article 10.3. National Treatment**

1. Each Party shall in its Area accord to investors of the other Party and to their investments treatment no less favorable than the treatment it accords in like circumstances to its own investors and to their investments with respect to investment activities.

2. Paragraph 1 shall not be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investment activities of investors of the other Party in its Area, provided that such special formalities do not impair the substance of the rights of such investors under this Chapter.

### **Article 10.4. Most-favored-nation Treatment**

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

### **Article 10.5. General Treatment**

1. Each Party shall in its Area accord to investments of investors of the other Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Note 1: This paragraph prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this paragraph.

Note 2: "Fair and equitable treatment" includes the obligation of the Party not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process of law.

2. Each Party shall observe any written obligation it may have entered into with respect to a specific investment by an investor of the other Party, which the investor could have relied on at the time of establishment, acquisition or expansion of such investment.

3. This Article shall apply to taxation measures.

### **Article 10.6. Access to the Courts**

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

2. This Article shall apply to taxation measures.

### **Article 10.7. Prohibition of Performance Requirements**

1. Neither Party shall impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with investment activities of an investor of a Party or of a non-Party in its Area to: (a) export a given level or percentage of goods or services;

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

- (c) purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from persons in its Area;
- (d) 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 an investment of the investor;
- (e) restrict sales of goods or services in its Area that an investment of the investor produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) restrict the exportation or sale for export;
- (g) appoint, as executives, managers or members of boards of directors, individuals of any particular nationality;
- (h) locate the headquarters of that investor for a specific region or the world market in its Area;
- (i) hire a given number or percentage of its nationals;
- (j) supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or the world market, exclusively from the Area of the former Party; or
- (k) adopt:
  - (i) given rate or amount of royalty under a license contract; or
  - (ii) a given duration of the term of a license contract, with respect to any license contract freely entered into between the investor and a person in its Area, whether it has been entered into or not, provided that the requirement is imposed or the commitment or undertaking is enforced by an exercise of governmental authority of the Party.

Note: A "license contract" referred to in this subparagraph means any license contract concerning transfer of technology, a production process, or other proprietary knowledge.

2. Neither Party shall condition the receipt or continued receipt of an advantage, in connection with investment activities of an investor of a Party or of a non-Party in its Area, on compliance with any of the following requirements to:

- (a) achieve a given level or percentage of domestic content;
- (b) purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from persons in its Area;
- (c) 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 an investment of the investor;
- (d) restrict sales of goods or services in its Area that an investment of the investor produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings; or
- (e) restrict the exportation or sale for export.

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 investment activities of an investor of a Party or of a non-Party in its Area, 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 Area. (b) Subparagraph 1(k) shall not apply when the requirement is imposed or the commitment or undertaking is enforced by a court or competition authority to remedy an alleged violation of laws controlling the anti-competitive activities.

(c) Subparagraphs 1(a), 1(b), 1(c), 2(a) and 2(b) shall not apply to qualification requirements for goods or services with respect to foreign aid programs.

(d) Subparagraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Party related to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. Paragraphs 1 and 2 shall not apply to any requirement other than the requirements set out in those paragraphs.

## **Article 10.8. Non-conforming Measures**

1. Articles 10.3, 10.4 and 10.7 shall not apply to: (a) any existing non-conforming measure that is maintained by the central government of a Party, as set out in its Schedule in Annex 8; (b) any existing non-conforming measure that is maintained by a local government of a Party; (c) the continuation or prompt renewal of any nonconforming measure referred to in subparagraphs (a) and (b); or (d) an amendment or modification to any nonconforming measure referred to in subparagraphs (a) and (b), to the extent that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 10.3, 10.4 and 10.7.

2. If a Party considers that the non-conforming measure referred to in subparagraph 1(b) and adopted or maintained by a prefecture or the city of Ulaanbaatar or a province of the other Party creates an impediment to investment activities of an investor of the former Party, that former Party may request consultations with respect to the application of that measure with a view to achieving mutually satisfactory solution.

3. Articles 10.3, 10.4 and 10.7 shall 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 in Annex 9.

4. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex 9, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an



investment that exists at the time when the measure becomes effective.

5. In cases where a Party makes an amendment or a modification to any existing non-conforming measure set out in its Schedule in Annex 8 or where a Party adopts any new or more restrictive measure with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 9 after the date of entry into force of this Agreement, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or in exceptional circumstances, as soon as possible thereafter:

- (a) notify the other Party of detailed information on such amendment, modification or measure; and
- (b) hold, upon request of the other Party, consultations in good-faith with the other Party with a view to achieving mutual satisfaction.

6. Each Party shall endeavor, where appropriate, to reduce or eliminate the non-conforming measures specified in its Schedules in Annexes 8 and 9 respectively.

7. Articles 10.3 and 10.4 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

8. Articles 10.3, 10.4 and 10.7 shall not apply to any measure that a Party adopts or maintains with respect to government procurement.

## **Article 10.9. Expropriation and Compensation**

1. Neither Party shall expropriate or nationalize an investment in its Area of investors of the other Party or take any measure equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;
- (c) upon payment of prompt, adequate and effective compensation in accordance with paragraphs 2 through 4; and
- (d) in accordance with due process of law and Article 10.5.

2. The compensation shall be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced or when the expropriation took place, whichever is earlier. The fair market value shall not reflect any change in value occurring because the intended expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate, taking into account the length of time until the time of payment. It shall be effectively realizable and freely transferable, and shall be freely convertible into the currency of the Party of the investors concerned and into freely usable currencies at the market exchange rate prevailing on the date of expropriation.

4. Without prejudice to the provisions of Article 10.13, the investors affected by expropriation shall have a right of access to the courts or administrative agencies of the Party making the expropriation to seek a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

5. This Article shall apply to taxation measures, to the extent that such taxation measures constitute expropriation.

6. This Article shall be interpreted in accordance with Annex 10.

## **Article 10.10. Protection from Strife**

1. Each Party shall accord to investors of the other Party that have suffered loss or damage related to their investments in the Area of the former Party due to armed conflict or a state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favorable than the treatment it accords to its own investors or to investors of a non-Party, whichever is more favorable to the investors of the other Party.

2. Any payment as a means of settlement referred to in paragraph 1 shall be effectively realizable, freely transferable and freely convertible at the market exchange rate into the currency of the Party of the investors concerned and freely usable currencies.

3. Notwithstanding the provisions of Article 1.10, neither Party shall be relieved of its obligation under paragraph 1 by reason of its measures taken in accordance with that Article.

## **Article 10.11. Transfers**

1. Each Party shall ensure that all transfers related to investments in its Area of an investor of the other Party may be freely made into and out of its Area without delay. Such transfers shall include, in particular, though not exclusively:

- (a) the initial capital and additional amounts to maintain or increase investments;
- (b) profits, interest, capital gains, dividends, royalties, fees and other current incomes accruing from investments;
- (c) payments made under a contract including loan payments in connection with investments;
- (d) proceeds of the total or partial sale or liquidation of investments;
- (e) earnings and remuneration of personnel from the other Party engaged in activities in connection with investments in the

Area of the former Party;

(f) payments made in accordance with Articles 10.9 and 10.10; and

(g) payments arising out of the settlement of a dispute under Article 10.13.

2. Each Party shall further ensure that such transfers may be made without delay in freely usable currencies at the market exchange rate prevailing on the date of the transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent a transfer through the equitable, nondiscriminatory and good-faith application of its laws and regulations related to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses; or

(d) ensuring compliance with orders or judgments in adjudicatory proceedings.

## **Article 10.12. Subrogation**

If a Party or its designated agency makes a payment to any investor of that Party under an indemnity, guarantee or insurance contract, pertaining to an investment of such investor in the Area of the other Party, the latter Party shall recognize the assignment to the former Party or its designated agency of any right or claim of such investor on account of which such payment is made and shall recognize the right of the former Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor. As regards payment to be made to that former Party or its designated agency by virtue of such assignment of right or claim and the transfer of such payment, the provisions of Articles 10.9, 10.10 and 10.11 shall apply *mutatis mutandi*

## **Article 10.13. Settlement of Investment Disputes between a Party and an Investor of the other Party**

1. For the purposes of this Article:

(a) the term "disputing investor" means an investor who is a party to an investment dispute;

(b) the term "disputing Party" means a Party that is a party to an investment dispute;

(c) the term "disputing parties" means the disputing investor and the disputing Party;

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

(e) the term "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;

(f) the term "investment dispute" means a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation of the former Party under this Chapter with respect to the investor of that other Party or its investment in the Area of the former Party; and

(g) the term "New York Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958. 2. Subject to subparagraph 6(a)(i), nothing in this Article shall be construed to prevent a disputing investor from seeking administrative or judicial settlement within the Area of the disputing Party.

3. An investment dispute shall, as far as possible, be settled amicably through consultations between the disputing parties.

4. If the investment dispute cannot be settled through such consultations within 120 days from the date on which the disputing investor requested in writing the disputing Party for the consultations, the disputing investor may, subject to paragraph 6, submit the investment dispute to one of the following international arbitrations:

(a) arbitration in accordance with the ICSID Convention, so long as the ICSID Convention is in force between the Parties;

(b) arbitration under the ICSID Additional Facility Rules, provided that either Party, but not both, is a party to the ICSID Convention;

(c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law; and (d) if agreed with the disputing Party, any arbitration in accordance with other arbitration rules.

5. The applicable arbitration rules shall govern the arbitration set forth in paragraph 4 except to the extent modified in this Article.

6. (a) Notwithstanding paragraphs 4 and 8, no claim may be submitted to the arbitration set forth in paragraph 4 unless:

(i) the disputing investor gives the disputing Party written waiver of any right to initiate before any court under the law of either Party or other dispute settlement procedures including the investment dispute settlement procedures under the Bilateral Investment Agreement, any proceedings with respect to any measure of the disputing Party alleged to constitute a breach referred to in subparagraph 1(f); and (ii) the disputing investor has not initiated before the investment dispute settlement procedures under the Bilateral Investment Agreement, any proceedings with respect to any measure of the disputing Party alleged to constitute a breach referred to in subparagraph 1(f).

(b) Notwithstanding subparagraph (a), the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of monetary damages before any competent court of the disputing Party.

7. The disputing investor who intends to submit the investment dispute to arbitration in accordance with paragraph 4 shall give to the disputing Party written notice of intent to do so at least 90 days before the investment dispute is submitted. The notice of intent shall specify:

(a) the name and address of the disputing investor;

(b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the obligations under this Chapter alleged to have been breached;

(c) arbitration set forth in paragraph 4 which the disputing investor chooses to invoke; and

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

8. (a) Each Party hereby consents to the submission of investment disputes by a disputing investor to arbitration set forth in paragraph 4 chosen by the disputing investor.

(b) The consent given under subparagraph (a) and the submission by a disputing investor of an investment dispute to arbitration shall satisfy the requirements of:

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

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

9. Notwithstanding paragraph 8, no investment disputes may be submitted to arbitration set forth in paragraph 4, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in subparagraph 1(f).

10. Unless the disputing parties otherwise agree, an arbitral tribunal established under paragraph 4 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. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within 60 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes in the case of arbitration referred to in subparagraph 4(a) or 4(b), or the Secretary-General of the Permanent Court of Arbitration, at The Hague in the case of arbitration referred to in subparagraph 4(c) or 4(d), may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed, subject to the requirements of paragraph 11.

11. Unless the disputing parties otherwise agree, the third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity.

12. Unless the disputing parties otherwise agree, the arbitration shall be held in a country that is a party to the New York Convention.

13. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this Chapter and other provisions of this Agreement as applicable and applicable rules of international law. 14. The disputing Party shall deliver to the other Party:

(a) written notice of the investment dispute submitted to the arbitration no later than 30 days after the date on which the investment dispute was submitted; and

(b) copies of all pleadings filed in the arbitration.

15. The Party which is not the disputing Party may, upon written notice to the disputing parties, make submissions to the arbitral tribunal on a question of interpretation of this Chapter and other provisions of this Agreement as applicable.

16. The arbitral tribunal may order an interim measure of protection to preserve the rights of the disputing investor, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of either of the disputing parties. The arbitral tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in subparagraph 1(f).

17. Before ruling on the merits, the arbitral tribunal shall address and, if warranted, decide as a preliminary question any objection by the disputing Party to the jurisdiction of the arbitral tribunal and to the admissibility of the claim of the disputing investor. When the arbitral tribunal decides such an objection as a preliminary question, it 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 arbitral tribunal shall consider whether either the disputing investor's claim or the disputing Party's objection was frivolous. In doing so, the arbitral tribunal shall provide the disputing parties a reasonable opportunity to comment.

18. The arbitral tribunal may award only:

(a) a judgment whether or not there has been a breach by the disputing Party of any obligation under this Chapter with respect to the disputing investor and its investment; and

(b) one or both of the following remedies, only if there has been such a breach:

(i) monetary damages and applicable interest; and

(ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest, in lieu of restitution. The arbitral tribunal may also award costs and attorneys' fees in accordance

with this Article and the applicable arbitration rules.

19. The disputing Party may make available to the public in a timely manner all documents, including an award, submitted to, or issued by, an arbitral tribunal established under paragraph 4, subject to redaction of: (a) confidential business information;

(b) information which is privileged or otherwise protected from disclosure under the applicable laws and regulations of either Party; and

(c) information which shall be withheld in accordance with the relevant arbitration rules.

20. The award rendered by the arbitral tribunal shall be final and binding upon the disputing parties. This award shall be executed in accordance with the applicable laws and regulations, as well as relevant international law including the ICSID Convention and the New York Convention, concerning the execution of award in force in the country where such execution is sought.

21. Neither Party shall give diplomatic protection, or bring an international claim, with respect to an investment dispute which the other Party and an investor of the former Party have consented to submit or submitted to arbitration set forth in paragraph 4, unless the other Party has failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.

22. This Article shall apply to disputes regarding taxation measures to the extent covered by Article 10.5, 10.6 or 10.9.

### **Article 10.14. Temporary Safeguard Measures**

1. A Party may adopt or maintain restrictive measures with respect to cross-border capital transactions as well as payment and transfers related to investments:

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

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

2. Restrictive measures referred to in paragraph 1:

(a) shall be applied on the basis of national treatment and most-favored-nation treatment;

(b) shall be consistent with the Articles of Agreement of the International Monetary Fund;

(c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party; (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. Any restrictions adopted or maintained in accordance with paragraph 1, or any changes therein, shall be promptly notified to the other Party.

4. Nothing in this Article shall be construed to alter the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.

### **Article 10.15. Prudential Measures**

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from adopting or maintaining measures related to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of its financial system.

2. Where the measures adopted or maintained by a Party in accordance with paragraph 1 do not conform with this Chapter, they shall not be used as a means of avoiding the obligations of the Party under this Chapter.

### **Article 10.16. 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 the other Party and to its investment if the enterprise is owned or controlled by an investor of a non-Party and the denying Party:

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

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

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investment if the enterprise is owned or controlled by an investor of a non-Party and the enterprise has no substantial business activities in the Area of the other Party.

### **Article 10.17. Health, Safety and Environmental Measures and Labor Standards**

The Parties shall refrain from encouraging investment by investors of each Party or of a non-Party by relaxing their

respective health, safety or environmental measures or by lowering its labor standards. To this effect each Party should not waive or otherwise derogate from such measures or standards as an encouragement for the establishment, acquisition or expansion in its Area of investments by investors of each Party or of a non-Party.

## **Article 10.18. Sub-committee on Investment**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee").
2. The functions of the Sub-Committee shall be:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) exchanging information on any matters related to this Chapter;
  - (c) discussing any issues related to this Chapter;
  - (d) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and (e) carrying out other functions as may be delegated by the Joint Committee.
3. The Sub-Committee shall be composed of representatives of the Governments of the Parties.
4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.
5. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties. 6. This Article shall apply to matters regarding taxation measures to the extent covered by Article 10.5, 10.6 or 10.9.

## **Article 10.19. Relation to the Bilateral Investment Agreement**

1. Notwithstanding paragraph 2 of Article 17 of the Bilateral Investment Agreement, the Bilateral Investment Agreement shall be terminated upon the date of entry into force of this Agreement.
2. The Parties confirm that with respect to investments and returns acquired prior to the date of termination of the Bilateral Investment Agreement, the provisions of Articles 1 through 16 of the Bilateral Investment Agreement shall continue to be effective for a further period of 15 years from that date in accordance with paragraph 3 of Article 17 of the Bilateral Investment Agreement.
3. For the purposes of paragraph 2, nothing in this Agreement shall affect the rights and obligations of a Party under the relevant provisions of the Bilateral Investment Agreement.

## **Article 10.20. Duration and Termination**

With respect to investments acquired prior to the date of termination of this Agreement, the provisions of this Chapter, as well as provisions of this Agreement which are directly related to this Chapter, shall continue to be effective for a period of 10 years from the date of termination of this Agreement.

# **Chapter 11. Competition**

## **Article 11.1. Anticompetitive Activities**

1. Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against anticompetitive activities, in order to facilitate trade and investment flows between the Parties through the efficient functioning of its markets.
2. For the purposes of this Chapter, the term "anticompetitive activities" means any conduct or transaction that may be subject to penalties or relief under the competition laws and regulations of the respective Parties.

## **Article 11.2. Cooperation on Controlling Anticompetitive Activities**

1. The Parties shall, in accordance with their respective laws and regulations, cooperate and assist each other for controlling anticompetitive activities within their respective available resources.
2. The details and procedures concerning the implementation of cooperation under this Article shall be specified in the Implementing Agreement.

## **Article 11.3. Non-discrimination**

Each Party shall apply its competition laws and regulations in a manner which does not discriminate between persons in like circumstances on the basis of their nationality.

## **Article 11.4. Procedural Fairness**

Each Party shall implement administrative and judicial procedures in a fair manner to control anticompetitive activities, in accordance with its relevant laws and regulations.

## **Article 11.5. Transparency**

Each Party shall promote transparency of the implementation of its competition laws and regulations and its competition policy.

## **Article 11.6. Non-application of Paragraph 2 of Article 1.8 and Chapter 16**

Paragraph 2 of Article 1.8 and Chapter 16 shall not apply to this Chapter.

# **Chapter 12. Intellectual Property**

## **Article 12.1. General Provisions**

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property and provide for measures for the enforcement of intellectual property rights against infringement thereof, in accordance with the provisions of this Chapter and the international agreements related to intellectual property to which both Parties are party.
2. The Parties shall also promote efficiency and transparency in the administration of intellectual property system.
3. Nothing in this Chapter shall derogate from existing rights and obligations that the Parties have under the TRIPS Agreement or other international agreements related to intellectual property to which both Parties are party.

## **Article 12.2. Definition**

The term "intellectual property" referred to in this that are under the TRIPS Agreement.

## **Article 12.3. National Treatment**

Each Party shall accord to nationals of the other Party treatment no less favorable than the treatment it accords to its own nationals with regard to the protection of intellectual property in accordance with Articles 3 and 5 of the TRIPS Agreement.

Note: For the purposes of this Article:

- (a) the term "nationals" shall have the same meaning as in the TRIPS Agreement;
- (b) the term "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter; and
- (c) for greater certainty, the term "protection of intellectual property" shall include the repression of unfair competition as provided for in Article 12.12.

## **Article 12.4. Procedural Matters**

1. For the purposes of providing efficient administration of intellectual property system, each Party shall take appropriate measures to improve its administrative procedures concerning intellectual property rights.
2. Neither Party shall require the authentication of signatures or other means of self-identification on documents to be submitted to the competent authority of the Party, including applications, translations into a language accepted by such authority of any earlier application whose priority is claimed, powers of attorney and certifications of assignment, in the course of application procedure or other administrative procedures on patents, utility models, industrial designs or trademarks.
3. Notwithstanding paragraph 2, a Party may require:
  - (a) the authentication of signatures or other means of self-identification, if the law of the Party so provides, where the signatures or other means of self-identification concern the surrender of a patent or a registration of utility models, industrial designs or trademarks; and
  - (b) the submission of evidence if there is reasonable doubt as to the authenticity of signatures or other means of self-identification on documents submitted to the competent authority of the Party. Where the competent authority notifies the person that the submission of evidence is required, the notification shall state the reason for requiring the submission.

4. Neither Party shall require that the submission of a power of attorney be completed together with the filing of the application as a condition for according a filing date to the application.
5. Each Party shall endeavor to improve patent attorney or registered intellectual property rights authorized representative system.
6. Where the acquisition of an intellectual property right is subject to the right being granted or registered, each Party shall ensure that, irrespective of whether an application for the granting or registration of an intellectual property right is filed as a national or as an international application in accordance with the applicable international agreement, the procedures for granting or registration of the right, subject to compliance with the substantive conditions for acquisition of the right, provide the granting or registration within a reasonable period of time so as to avoid undue curtailment of the period of protection.
7. Each Party shall provide a system for the registration of trademarks, industrial designs and patents which shall include:
  - (a) a requirement to provide to the applicant a communication in writing, which may be electronic, of the decision with reasons for a refusal of the application;
  - (b) an opportunity for the applicant to appeal against administrative refusal;
  - (c) an opportunity for the applicant to ask for judicial review of the final administrative refusal; and
  - (d) an opportunity for interested parties, if so provided in its laws and regulations:
    - (i) to petition to oppose an application or a registration; and
    - (ii) to seek cancellation or invalidation of the registration.

## **Article 12.5. Transparency**

For the purposes of further promoting transparency in the administration of its intellectual property system, each Party shall take appropriate measures available to the extent possible in accordance with its laws and regulations to:

- (a) publish information on, at least:
  - (i) intention to grant patents, or applications for and grant of patents;
  - (ii) registrations of utility models;
  - (iii) intention to grant rights of industrial designs, or registrations of industrial designs; and
  - (iv) registrations of trademarks and/or applications therefor, and provide the relevant information contained in the files thereof at least to interested persons upon request; and
- (b) make available to the public information on its efforts to ensure effective enforcement of intellectual property rights and other information with respect to its intellectual property system.

## **Article 12.6. Promotion of Public Awareness Concerning Protection of Intellectual Property**

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

## **Article 12.7. Patents**

1. Each Party shall ensure that any patent application is not rejected solely on the ground that the subject matter claimed in the application is related to a computer program. Nevertheless, the provision of this Article shall not prejudice the autonomy of each Party to exclude from patentability computer programs as such in accordance with the laws and regulations of each Party.
2. Each Party shall ensure that an applicant may, on its own initiative, divide a patent application containing more than one invention into a certain number of divisional patent applications within the time limit provided for in the laws and regulations of the Party.

## **Article 12.8. Industrial Designs**

Each Party shall provide adequate and effective protection of industrial designs of an article as a whole, and, where appropriate, of a part thereof.

## **Article 12.9. Trademarks**

1. Each Party shall refuse or cancel the registration of a trademark, which is identical or similar to a trademark well-known in either Party as indicating the goods or services of the owner of the well-known trademark, if use of that trademark is for

unfair intentions, mutatis mutandi, intention to gain an unfair profit or intention to cause damage to the owner of the well-known trademark, and/or if such use would result in a likelihood of confusion. Note: Each Party may determine in accordance with its laws and regulations whether a trademark is a well-known trademark.

2. Each Party shall ensure that an applicant may file a request to the competent authority that examination of its application for registration of a trademark be accelerated, subject to reasonable grounds and procedural requirements. Where such a request has been filed, the competent authority shall, where appropriate, accelerate the examination of the application.

## **Article 12.10. Copyright and Related Rights**

1. Each Party shall provide to authors, performers and producers of phonograms the right to authorize the making available to the public of their works, performances fixed in phonograms and phonograms respectively, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. Each Party shall provide to broadcasting organizations the right to prohibit the following acts when undertaken without their consent:

(a) the rebroadcasting of their broadcasts;

(b) the fixation of their broadcasts; or

(c) the reproduction of fixations of their broadcasts.

3. Each Party shall, in accordance with its laws and regulations, take appropriate measures to facilitate the activities to be conducted by the collective management organizations for copyright and related rights in that Party.

## **Article 12.11. Geographical Indications**

Each Party shall ensure adequate and effective protection of geographical indications in accordance with its laws and regulations and with the TRIPS Agreement.

## **Article 12.12. Unfair Competition**

1. Each Party shall provide for effective protection against acts of unfair competition in accordance with Article 10 ELV of the Paris Convention.

2. Each Party shall ensure that provisions of Article 10 ELV of the Paris Convention shall apply mutatis mutandi with respect to services.

3. For the purposes of this Article, the term "Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967 and as amended on September 28, 1979.

## **Article 12.13. Protection of Undisclosed Information**

Each Party shall ensure, in its laws and regulations, adequate and effective protection of undisclosed information in accordance with paragraph 2 of Article 39 of the TRIPS Agreement including not taking measures that limit the duration of protection of the undisclosed information stipulated in private contracts, or measures that force the disclosure of undisclosed information without legitimate reasons.

## **Article 12.14. Enforcement – Border Measures**

1. Each Party shall adopt or maintain procedures with respect to import shipments under which: (a) its customs authorities may act upon their own initiative to suspend the release of goods suspected of infringing rights to trademarks and/or copyrights and related rights (hereinafter referred to in this Article as "suspected goods"); and (b) a right holder may request that Party's competent authorities to suspend the release of suspected goods.

2. Each Party shall adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in paragraph 1, whether the suspected goods infringe rights to trademarks and/or copyrights and related rights.

3. In the case of the suspension with respect to import shipments in accordance with paragraph 1, the importer and the right holder shall be promptly notified of the suspension and shall be provided with all the information available about suspected goods.

## **Article 12.15. Enforcement – Civil Remedies**



Each Party shall ensure that a right holder of intellectual property has the right to claim against the infringer damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

### **Article 12.16. Enforcement – Criminal Remedies**

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale in accordance with Article 61 of the TRIPS Agreement.
2. With respect to the offences specified in paragraph 1, each Party shall provide that its competent authorities have the authority in accordance with its laws and regulations to order the forfeiture or destruction of all infringing goods.

### **Article 12.17. Enforcement – In the Digital Environment**

Each Party's enforcement procedures shall apply to infringement of copyright or related rights over digital networks, which may include the unlawful use of means of widespread distribution for infringing purposes. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with the laws and regulations of that Party, preserves fundamental principles such as freedom of expression, fair process and privacy.

### **Article 12.18. Sub-committee on Intellectual Property**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee").
2. The functions of the Sub-Committee shall be:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights in accordance with the provisions of this Chapter and to promoting efficient and transparent administration of intellectual property system;
  - (c) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and (d) carrying out other functions as may be delegated by the Joint Committee.
3. The Sub-Committee shall be composed of representatives of the Governments of the Parties.
4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

### **Article 12.19. Security Exceptions**

For the purposes of this Chapter, Article 73 of the TRIPS Agreement is incorporated into and forms part of this Agreement, *mutatis mutandi*.

## **Chapter 13. Government Procurement**

### **Article 13.1. Procurement Principle**

Recognizing the importance of government procurement in furthering the expansion of production and trade so as to promote growth and employment, each Party shall ensure transparency of the measures regarding government procurement in accordance with its laws and regulations. The Parties also recognize the need to take into account the development, financial and trade needs of the Parties. Each Party shall ensure a fair and effective implementation of the measures regarding government procurement.

### **Article 13.2. Exchange of Information**

The Parties shall at the central government level, subject to their respective laws and regulations, exchange information, to the extent possible in the English language and in a timely manner, on their respective laws and regulations, policies and practices on government procurement, as well as on any reforms to their existing government procurement regimes.

### **Article 13.3. Further Negotiations**

The Parties shall enter into negotiations to review this Chapter with a view to achieving a comprehensive Chapter on Government Procurement, when Mongolia expresses its intention to become a party to the Agreement on Government

Procurement in Annex 4 to the WTO Agreement (hereinafter referred to in this Article as "the GPA").

Note: If the GPA is amended or is superseded by another agreement, "the GPA", for the purposes of this Article, shall refer to the GPA as amended or such other agreement.

## **Article 13.4. Negotiation on Non-discrimination**

In the event that, after the entry into force of this Agreement, a Party offers a non-Party any advantages of access to its government procurement market or any advantageous treatment concerning the measures regarding government procurement, the former Party shall, upon request of the other Party, afford adequate opportunity to enter into negotiations with the other Party with a view to extending these advantages or advantageous treatment to the other Party on a reciprocal basis.

## **Article 13.5. Sub-committee on Government Procurement**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Government Procurement (hereinafter referred to in this Article as "the Sub-Committee").

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

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) analyzing available information on each Party's government procurement market;
- (c) cooperating on e-procurement and human resource development;
- (d) reporting the findings of the Sub-Committee to the Joint Committee; and
- (e) carrying out other functions as may be delegated by the Joint Committee.

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

4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

## **Chapter 14. Improvement of the Business Environment**

### **Article 14.1. Basic Principles**

1. Each Party shall, in accordance with its laws and regulations take appropriate measures to further improve the business environment for the persons of the other Party conducting their business activities in the former Party.

2. The Parties shall, in accordance with their respective laws and regulations, promote cooperation to further improve the business environment in the respective Parties.

### **Article 14.2. Sub-committee on Improvement of the Business Environment**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Improvement of the Business Environment (hereinafter referred to in this Chapter as "the Sub-Committee").

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

- (a) reviewing findings reported by a Liaison Office on Improvement of the Business Environment (hereinafter referred to in this Chapter as "the Liaison Office") to be designated by each Party in accordance with Article 14.3;
- (b) addressing, and seeking ways to promptly resolve, issues related to the business environment on its own initiative or based on the findings reported by the Liaison Office;
- (c) reporting its findings and making recommendations, including those on measures that should be taken by the Parties, to the Parties;
- (d) reviewing, where appropriate, the measures taken by the Parties related to such recommendations referred to in subparagraph (c);
- (e) making available to the public, in an appropriate manner, the recommendations referred to in subparagraph (c) and the results of the review referred to in subparagraph (d);
- (f) cooperating, in an appropriate manner, with other Sub-Committees established under this Agreement, with a view to avoiding unnecessary duplication of works. The forms of such cooperation may include:
  - (i) informing the results of its consideration to such other Sub-Committees;
  - (ii) seeking opinions from such other Sub-Committees;
  - (iii) inviting to the Sub-Committee the members of such other Sub-Committees; and
  - (iv) where appropriate, transferring the relevant issues to such other Sub-Committees;
- (g) reporting promptly the findings and recommendations referred to in subparagraph (c) to the Joint Committee; and
- (h) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall be composed of representatives of the Governments of the Parties including officials of relevant Ministries or Agencies in charge of the issues to be addressed. The Sub-Committee may invite representatives of relevant

entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be addressed.

4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

### **Article 14.3. Liaison Office**

1. Each Party shall designate and maintain a Liaison Office for the purposes of this Chapter.

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

### **Article 14.4. Non-application of Chapter 16**

Chapter 16 shall not apply to this Chapter.

## **Chapter 15. Cooperation**

### **Article 15.1. Basic Principles**

The Parties shall, in accordance with their respective laws and regulations, promote cooperation under this Agreement for their mutual benefit, in order to further liberalize and facilitate trade in goods and services as well as investment between the Parties and to promote the well-being of the people and sustainable development of the Parties. For this purpose, the Parties shall enhance further cooperation between their Governments, and encourage and facilitate mutual cooperation between relevant entities of the Parties, one or both of whom are entities other than the Governments of the Parties, in the following fields:

(a) agriculture, forestry and fisheries, including matters related to SPS measures referred to in Chapter 5;

(b) manufacturing industry, including matters related to technical regulations, standards and conformity assessment procedures referred to in Chapter 6;

(c) small and medium enterprises;

(d) trade and investment;

(e) infrastructure, construction and urban development;

(f) science and technology and intellectual property;

(g) financial services;

(h) education and human resource development;

(i) tourism;

(j) environment;

(k) mining and energy;

(l) healthcare;

(m) competition;

(n) information and communications technology; and

(o) other fields to be mutually agreed upon by the Governments of the Parties.

### **Article 15.2. Areas and Forms of Cooperation**

The areas and forms of cooperation under this Chapter shall be set forth in the Implementing Agreement.

### **Article 15.3. Costs of Cooperation**

1. The Parties shall initiate discussion, after the entry into force of this Agreement, to explore potential cooperation activities in the fields referred to in Article 15.1 and to ensure timely, efficient and effective implementation of cooperation activities under this Chapter.

2. The Parties shall endeavor to make available the necessary funds and other resources for the implementation of cooperation under this Chapter in accordance with their respective laws and regulations. 3. Costs for cooperation under this Chapter shall be borne in such a manner to be mutually agreed upon by the Parties through efficient and effective utilization of funds and resources.

### **Article 15.4. Sub-committee on Cooperation**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Cooperation (hereinafter referred to in this Article as "the Sub-Committee").

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

- (a) reviewing and monitoring the effective implementation and operation of this Chapter;
- (b) exchanging information on cooperation in each of the fields referred to in Article 15.1;
- (c) identifying ways for further cooperation between the Parties;
- (d) discussing any issues related to this Chapter;
- (e) discussing proposals on cooperation presented by other Sub-Committees established under this Agreement;
- (f) making recommendations to the Joint Committee, where appropriate, on cooperation activities under this Chapter;
- (g) reporting to the Joint Committee the findings and outcome of discussions of the Sub-Committee regarding the implementation of this Chapter, including the measures to be taken by the Parties; and
- (h) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall, where appropriate, recognize and share information with the Parties' existing consultation mechanisms for Official Development Assistance and other cooperation schemes to ensure timely, effective and efficient implementation of cooperation activities under this Agreement.

4. The Sub-Committee shall be composed of representatives of the Governments of the Parties. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

5. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties. The Sub-Committee shall endeavor to hold the first meeting within one year after the entry into force of this Agreement.

## **Article 15.5. Non-application of Chapter 16**

Chapter 16 shall not apply to this Chapter.

# **Chapter 16. Dispute Settlement**

## **Article 16.1. Scope**

Unless otherwise provided for in this Agreement, the dispute settlement procedure of this Chapter shall apply with respect to the avoidance and the settlement of disputes between the Parties arising out of the interpretation and/or application of this Agreement.

## **Article 16.2. General Principle**

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement. They shall make every attempt through cooperation, consultations or other means to arrive at a prompt and mutually satisfactory resolution of any matter concerning the interpretation and/or application of this Agreement.

## **Article 16.3. Choice of Forum**

1. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are party, including the WTO Agreement. The complaining Party may select the forum in which to settle the dispute.

2. Notwithstanding paragraph 1, once the complaining Party has requested the establishment of an arbitral tribunal under this Chapter or any other international agreement to which both Parties are party, including a panel under the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement with respect to a particular dispute, the arbitral tribunal or panel selected shall be used to the exclusion of any other procedure for that particular dispute.

## **Article 16.4. Consultations**

1. Either Party may request in writing consultations to the other Party with respect to any matter on the interpretation and/or application of this Agreement.

2. In the request for consultations referred to in paragraph 1, the complaining Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal and factual basis of the complaint.

3. The Party complained against shall promptly respond in writing to such request and enter into consultations with the complaining Party in good faith within 40 days after the date of receipt of the request. In cases of urgency, including those which concern perishable goods, the Party complained against shall enter into consultations within 20 days after the date of receipt of the request.

4. The Parties shall make every effort to arrive at a mutually satisfactory resolution of the matter through consultations

under this Article. During the consultations the Parties shall provide to each other sufficient information to enable a full examination of the matter.

5. During the consultations under this Article, the Parties shall endeavor to make available personnel of their relevant agencies and organizations with expertise in the matter subject to the consultations.

6. The consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

7. The consultations under this Article may be held in person or by any technological means available to the Parties upon agreement by the Parties. If the Parties agree to hold consultations in person, the consultations shall be held in a venue agreed upon by the Parties, or if there is no agreement on the venue, in the capital of the Party complained against.

## **Article 16.5. Good Offices, Conciliation or Mediation**

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time by agreement of the Parties, and be terminated at any time upon request of either Party.

2. If the Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

3. Proceedings involving good offices, conciliation or mediation and positions taken by the Parties during these proceedings shall be confidential and without prejudice to the rights of either Party in any further proceedings.

## **Article 16.6. Establishment of Arbitral Tribunals**

1. The complaining Party may request in writing the establishment of an arbitral tribunal to the Party complained against if: (a) the Party complained against does not enter into consultations under Article 16.4 within 40 days, or within 20 days in cases of urgency, including those which concern perishable goods, after the date of receipt of the request for such consultations; or

(b) the Parties fail to resolve the dispute through consultations under Article 16.4 within 60 days, or within 30 days in cases of urgency, including those which concern perishable goods, after the date of receipt of the request for such consultations, provided that the complaining Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations under this Agreement, or as a result of the application by the Party complained against of measures which are in conflict with its obligations under this Agreement.

2. Any request to establish an arbitral tribunal in accordance with this Article shall identify the reasons for the request including:

(a) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions of the applicable international law; and

(b) the factual basis of the complaint.

## **Article 16.7. Composition of Arbitral Tribunals**

1. An arbitral tribunal shall comprise three arbitrators, who should have relevant technical or legal expertise. 2. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

3. The Parties shall endeavor to agree on and appoint the third arbitrator within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed in accordance with paragraph 2.

4. If a Party has not appointed the one arbitrator in accordance with paragraph 2, or if the Parties fail to agree on the third arbitrator in accordance with paragraph 3, the arbitrator or arbitrators not yet appointed shall be chosen within 10 days by lot from the candidates proposed in accordance with paragraph 2.

5. The date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

6. If an arbitrator appointed under this Article resigns, dies or otherwise becomes unable to act, a replacement arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator. The replacement arbitrator shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended until the replacement arbitrator is appointed.

## **Article 16.8. Functions of Arbitral Tribunals**

1. The functions of the arbitral tribunal established in accordance with Articles 16.6 and 16.7 shall be to:

- (a) make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with this Agreement;
  - (b) consult regularly with the Parties offering them equal opportunities for such consultations and provide adequate opportunities for the development of a mutually satisfactory resolution;
  - (c) make its award in accordance with this Agreement and applicable rules of international law;
  - (d) include in its award, its findings of law and fact, together with the reasons for the findings; and
  - (e) attach to its award suggested implementation options including suggested period of time for implementing the award, for the Parties to consider in conjunction with Article 16.11, if requested by either Party.
2. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.
3. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral tribunal may request advisory reports in writing from experts. 4. Any information obtained by the arbitral tribunal in accordance with paragraph 3 shall be made available to the Parties.

## **Article 16.9. Proceedings of Arbitral Tribunals**

1. The arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral tribunal to appear before it.
2. The venue for the proceedings of the arbitral tribunal shall be decided by mutual consent of the Parties, failing which it shall alternate between the Parties with the first meeting of the arbitral tribunal proceedings to be held in the capital of the Party complained against.
3. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.
4. Notwithstanding paragraph 3, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated as confidential, the other Party may request a non-confidential summary of the information or written submission which may be disclosed publicly. The Party to which such a request is made may agree to the request and submit such a summary, or refuse the request without needing to ascribe any reasons or justification.
5. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. Any information or written submissions submitted by a Party to the arbitral tribunal, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other Party.
6. The award of the arbitral tribunal shall be drafted without the presence of the Parties.
7. The arbitral tribunal shall, within 120 days, or within 60 days in cases of urgency including those which concern perishable goods, after the date of its establishment, submit to the Parties its draft award, including both the descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review it. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 120 days or 60 days period, it may extend that period with the consent of the Parties. However, in no case should the period from the establishment of the arbitral tribunal to the submission of the draft award to the Parties exceed 150 days. Either Party may submit comments in writing to the arbitral tribunal on the draft award within 30 days after the date of submission of the draft award.
8. The arbitral tribunal shall present its award to the Parties within 45 days after the date of submission of the draft award.
9. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus, but may also make its decisions, including its award, by majority vote. 10. The award of the arbitral tribunal shall be final and binding on the Parties.

## **Article 16.10. Termination of the Proceedings**

The Parties may agree to terminate the proceedings of the arbitral tribunal by jointly so notifying the chair of the arbitral tribunal at any time before the issuance of the award to the Parties, in which case the chair shall terminate the proceedings of the arbitral tribunal without delay.

## **Article 16.11. Implementation of Award**

1. Unless the Parties otherwise agree, the Party complained against shall promptly comply with the award of the arbitral tribunal issued in accordance with Articles 16.8 and 16.9. If this is not practicable, the Party complained against shall comply with the award within a reasonable period of time.
2. The reasonable period of time referred to in paragraph 1 shall be mutually determined by the Parties, taking into account,

where appropriate, the suggested period of time attached to the award by the arbitral tribunal. Where the Parties fail to agree on the reasonable period of time within 45 days after the date of issuance of the award of the arbitral tribunal, either Party may refer the matter to an arbitral tribunal, which shall determine the reasonable period of time.

3. (a) If the Party complained against considers it impracticable to comply with the award within the reasonable period of time, the Party complained against shall, no later than the expiry of that period, enter into consultations with the complaining Party, with a view to developing mutually satisfactory compensation or any alternative arrangement.

(b) If no satisfactory compensation or any alternative arrangement has been agreed within 30 days after the date of expiry of the reasonable period of time, the complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement, after giving notification of such suspension 30 days in advance.

4. If the complaining Party considers that the Party complained against has failed to comply with the award within the reasonable period of time and if the Party complained against has not entered into consultations in accordance with subparagraph 3(a), the complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement, after giving notification of such suspension 30 days in advance.

5. The suspension of the application of concessions or other obligations under paragraph 3 or 4 shall:

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

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

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

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

6. If the Party complained against considers that the requirements for the suspension of the application of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 3, 4 or 5 have not been met, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations in accordance with this paragraph, the Party complained against may refer the matter to an arbitral tribunal, which then shall determine whether the said requirements have been met.

7. The arbitral tribunal that is established for the purposes of this Article shall, whenever possible, have as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article shall be appointed in accordance with paragraphs 2, 3 and 4 of Article 16.7. Unless the Parties agree on a different period, the arbitral tribunal established under this Article shall make its determinations within 60 days after the date when the matter is referred to it. Such determinations shall be final and binding on the Parties.

## **Article 16.12. Modification of Time Periods**

Any time period provided for in this Chapter may be modified for a particular dispute by mutual consent of the Parties.

## **Article 16.13. Expenses**

Each Party shall bear the costs of the arbitrator appointed by it and its representation in the proceedings of the arbitral tribunal. The other costs of the arbitral tribunal shall be borne by the Parties in equal shares, unless the Parties otherwise agree.

## **Article 16.14. Language**

All proceedings of the arbitral tribunal and all documents and information submitted to the arbitral tribunal shall be in the English language.

# **Chapter 17. Final Provisions**

## **Article 17.1. Table of Contents and Headings**

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

## **Article 17.2. Annexes and Notes**

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

### **Article 17.3. Amendment**

1. This Agreement may be amended by written agreement between the Parties.
2. Such amendment shall be approved by the Parties in accordance with their respective legal procedures, and shall enter into force on the date to be agreed upon by the Parties and by means of diplomatic notes exchanged between the Governments of the Parties informing each other that their respective legal procedures necessary for its entry into force have been completed.
3. Notwithstanding paragraph 2, amendments related only to the following may be made by diplomatic notes exchanged between the Governments of the Parties:
  - (a) Annex 1, provided that the amendments are made in accordance with the amendment of the Harmonized System, and include no change on the rates of customs duty to be applied by a Party to the originating goods of the other Party in accordance with Annex 1;
  - (b) Annex 2; and (c) Annex 3.

### **Article 17.4. Entry Into Force**

This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the Parties exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 17.5.

### **Article 17.5. Termination**

Either Party may terminate this Agreement by giving one year's advance notice in writing through the diplomatic channel to the other Party.

### **Article 17.6. Authentic Texts**

1. The texts of this Agreement in the Japanese, Mongolian and English languages shall be equally authentic. 2. Notwithstanding paragraph 1:
  - (a) (i) Part 2 of Annex 1 is in the Japanese and English languages, such texts being equally authentic; and (ii) Part 3 of Annex 1 is in the Mongolian and English languages, such texts being equally authentic;
  - (b) (i) Part 1A and Part 2 of Annex 6 are in the Japanese and English languages, such texts being equally authentic; and (ii) Part 1B of Annex 6 is in the Mongolian and English languages, such texts being equally authentic;
  - (c) (i) Part 1 of Annex 7 is in the Japanese and English languages, such texts being equally authentic; and (ii) Part 2 of Annex 7 is in the Mongolian and English languages, such texts being equally authentic; and
  - (d) (i) Part 1 of Annex 8 and Part 1 of Annex 9 are in the Japanese and English languages, such texts being equally authentic; and (ii) Part 2 of Annex 8 and Part 2 of Annex 9 are in the Mongolian and English languages, such texts being equally authentic.
3. In the event of any divergence among the texts, the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement. DONE at Tokyo on this tenth day of February in the year 2015 in duplicate in the Japanese, Mongolian and English languages. For Japan: For Mongolia: Chimed Saikhanbileg