Free Trade Agreement Between the Democratic Socialist Republic of Sri Lanka and the Republic of Singapore

The Republic of Singapore and the Democratic Socialist Republic of Sri Lanka (hereinafter referred to individually as "Singapore" or "Sri Lanka", respectively, and collectively as "the Parties");

RECOGNISING their longstanding and strong partnership and their important economic, trade and investment relationship;

DESIRING to further strengthen and deepen their economic relationship as part of and in a manner coherent with their overall relations, and convinced that this Agreement will create a new enabling climate for the development of trade and investment between the Parties;

DESIRING to raise living standards, promote economic growth and stability, create new employment opportunities and improve the general welfare and, to this end, reaffirming their commitment to promoting trade and investment liberalisation;

CONVINCED that this Agreement will create an expanded and secure market for goods and services and a stable and predictable environment for investment, thus enhancing the competitiveness of their firms in global markets;

RECOGNISING the need to promote and protect bilateral investments, which will be made with the aim of establishing lasting economic relations, contributing to economic development, and fostering the flow of capital and technology between the Parties, and to increase their economic prosperity,

RECOGNISING the importance of transparency and predictability in international trade to the benefit of all stakeholders;

SEEKING to establish clear and mutually advantageous rules governing their trade and investment and to reduce or eliminate the barriers to mutual trade and investment;

RESOLVED to contribute to the harmonious development and expansion of international trade by removing obstacles to trade through this Agreement and to avoid creating new barriers to trade or investment between the Parties that could reduce the benefits of this Agreement;

BUILDING on their respective rights and obligations under the WTO Agreement and other multilateral, regional and bilateral agreements and arrangements to which they are party,

HAVE AGREED as follows:

Chapter 1. OBJECTIVES AND GENERAL DEFINITIONS

Article 1.1. Establishment of a Free Trade Area

The Parties to this Agreement hereby establish a free trade area, consistent with Article XXIV of GATT 1994 and Article V of GATS.

Article 1.2. Objectives

The objectives of this Agreement are to liberalise and facilitate trade and investment between the Parties in accordance with the provisions of this Agreement.

Article 1.3. Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

(a) **"Agreement on Agriculture"** means the Agreement on Agriculture contained in Annex 1A of the WTO Agreement;

(b) **"Agreement on Government Procurement"** means the Agreement of Government Procurement contained in Annex 4 of the WTO Agreement;

(c) **"Agreement on Preshipment Inspection"** means the Agreement on Preshipment Inspection contained in Annex 1A of the WTO Agreement;

(d) **"Anti-Dumping Agreement"** means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 contained in Annex 1A of the WTO Agreement;

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

(f) **"day"** means a calendar day;

(g) **"DSU"** means the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement;

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

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

(j) **"Harmonized System"** means the Harmonized Commodity Description and Coding System, including all legal notes and amendments thereto (hereinafter referred to as the "HS");

(k) **"IMF"** means the International Monetary Fund;

(l) **"Import Licensing Agreement"** means the Agreement on Import Licencing Procedures contained in Annex 1A of the WTO Agreement;

(m) **"measure"** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, and includes measures taken by:

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

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

(n) **"national"** means:

(i) with respect to the Republic of Singapore, any person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws or a permanent resident of Singapore within the meaning of its domestic laws; and

(ii) with respect to Sri Lanka, any person who is a citizen of Sri Lanka within the meaning of its Constitution and its domestic laws.

(o) **"natural person of a Party"** means a natural person who is a national of a Party. However, a natural person who also possesses nationality of any non-Party shall be deemed to possess exclusively the nationality of the State of his or her dominant and effective nationality. Provided further that a natural person who is considered a national of both Parties shall not be deemed to be a natural person of either Party.

(p) **"person"** means a natural person or a legal person;

(q) **"Safeguards Agreement"** means the Agreement on Safeguards contained in Annex 1A of the WTO Agreement;

(r) **"SCM Agreement"** means the Agreement on Subsidies and Countervailing Measures contained in Annex 1A of the WTO Agreement;

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

(t) **"TBT Agreement"** means the Agreement on Technical Barriers to Trade contained in Annex 1A of the WTO Agreement;

(u) **"territory"** means:

(i) with respect to Singapore, the territory of the Republic of Singapore, as well as the territorial sea, including the airspace above them, and any maritime area situated beyond the territorial sea which has been or might in the future be designated

under its national law, in accordance with international law, as an area within which Singapore may exercise rights with regards to the sea, the sea-bed, the subsoil and the natural resources;

(ii) with respect to Sri Lanka, the land territory including the territorial sea and the airspace above such territory, and the maritime and submarine areas adjacent to its coast, including the exclusive economic zone and the continental shelf, over which Sri Lanka exercises sovereign rights or jurisdiction under its national law, international law and the United Nations Convention on the Law of the Sea (1982);

(v) **"TFA"** means the WTO Agreement on Trade Facilitation;

(w) **"TRIMs Agreement"** means the Agreement on Trade-Related Investment Measures contained in Annex 1A of the WTO Agreement;

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

(y) **"WIPO"** means the World Intellectual Property Organization;

(z) **"WTO Agreement"** means the Marrakesh Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994;

(aa) **"WTO"** means the World Trade Organization.

Chapter 2. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section 2-A. COMMON PROVISIONS

Article 2.1. Objective

The Parties shall progressively liberalise trade in goods over a transitional period starting from the date of the entry into force of this Agreement in accordance with this Agreement and in conformity with Article XXIV of the GATT 1994.

Article 2.2. Scope

This Chapter shall apply to trade in goods between the Parties.

Article 2.3. National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its Notes and Supplementary Provisions. To this end, the obligations contained in Article III of the GATT 1994, including its Notes and Supplementary Provisions, are incorporated into and made part of this Agreement, mutatis mutandis.

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

Article 2.4. Customs Duty

1. For the purposes of this Chapter, a customs duty includes any duty or charge of any kind imposed on or in connection with the importation or exportation of a good, including any form of surtax or surcharge imposed on or in connection with such importation or exportation, but excluding that as set out in paragraph 2 of this Article.

2. A "customs duty" does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article 2.3 (National Treatment);

(b) duty imposed consistently with Chapter 3 (Trade Remedies);

(c) duty applied consistently with Article 5 of the Agreement on Agriculture and the DSU;

(d) fee or other charge imposed consistently with Article 2.13 (Fees and Formalities Connected with Importation and Exportation).

Article 2.5. Classification of Goods

The classification of goods in trade between the Parties shall be governed by each Party's respective tariff nomenclature in conformity with the HS and its amendments.

Section 2-B. REDUCTION AND/OR ELIMINATION OF CUSTOMS DUTIES

Article 2.6. Reduction and/or Elimination of Customs Duties on Imports

1. Each Party shall reduce and/or eliminate its customs duties on imported goods originating in the other Party in accordance with the Schedules in Annex 2-A (Elimination of Customs Duties). For the purposes of this Chapter, "originating" means in accordance with the rules of origin set out in Protocol 1 (Concerning the Definition of the Concept of "Originating Product" and Methods of Administrative Co-operation).

2. The base rate of customs duties on imports to which the successive reductions are to be applied under paragraph 1 of this Article, shall be that specified in the Schedules in Annex 2-A (Elimination of Customs Duties).

3. If at any moment a Party reduces its applied most favoured nation ("MFN") customs duty rates on imports after the date of the entry into force of this Agreement, that duty rate shall apply if and for as long as it is lower than the customs duty rate on imports calculated in accordance with its Schedule in Annex 2-A (Elimination of Customs Duties).

4. Three years after the date of the entry into force of this Agreement, or at the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in the Schedules in Annex 2-A (Elimination of Customs Duties).

5. An agreement between the Parties to accelerate the elimination of a customs duty on an originating good shall supersede any duty rate or staging category determined pursuant to their respective Schedules in Annex 2-A (Elimination of Customs Duties) for that good.

6. A Party may at any time unilaterally accelerate the elimination of customs duties on originating goods set out in its Schedule in Annex 2-A (Elimination of Customs Duties).

Article 2.7. Elimination of Customs Duties and Taxes on Exports

A Party shall not impose customs duties or taxes on or in connection with the exportation or sale for export of goods to the other Party at a rate higher than those imposed on or in connection with the exportation or sale for export of like goods to any non-Party.

Article 2.8. Goods Re-Entered after Repair or Alteration

1. A Party shall not apply a customs duty to a good, regardless of its origin, that re- enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration or has increased the value of the good

2. A Party shall not apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

3. For the purposes of this Article, repair or alteration does not include an operation or process that:

(a) destroys a good's essential characteristics or creates a new or commercially different good; or

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

Article 2.9. Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Material

Each Party shall grant duty-free entry to commercial samples of negligible value (1) and printed advertising material imported from the territory of the other Party, regardless of their origin, but may require that:

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

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

(1) For the purposes of this Article, "commercial samples of negligible value" shall be defined according to each Party's domestic legislation.

Article 2.10. Standstill

1. Except as provided in the Schedules in Annex 2-A (Elimination of Customs Duties), upon the entry into force of this Agreement, a Party shall not increase any existing customs duty or introduce any new customs duty, on the importation of a good originating in the other Party. This shall not preclude either Party from raising a customs duty to the level established in its Schedule in Annex 2-A (Elimination of Customs Duties) following a unilateral reduction of its applied MFN customs duty rates on imports.

2. Paragraph 1 of this Article shall not apply to goods which are not subjected to tariff reduction/elimination under a Party's Schedule in Annex 2-A (Elimination of Customs Duties), unless otherwise provided in the same Schedule.

3. However, in the case of para-tariffs listed out in the Annex 2-A (Elimination of Customs Duties), paragraph 1 of this Article may be applied, on an exceptional basis, to mutually agreed specific tariff lines in the negative list.

Section 2-C. NON-TARIFF MEASURES

Article 2.11. Import and Export Restrictions

1. A Party shall not adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, in accordance with Article XI of GATT 1994, including its Notes and Supplementary Provisions. To this end Article XI of GATT 1994, its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, mutatis mutandis.

2. The Parties understand that before taking any measures provided for in sub-paragraph 2(a) and sub-paragraph 2(c) of Article XI of GATT 1994, the Party intending to take the measures shall supply the other Party with all relevant information as far in advance as practicable, with a view to seeking a solution acceptable to the Parties. The Parties may agree on any means needed to put an end to the difficulties. If no agreement is reached within thirty (30) days of supplying such information, the Party intending to apply the measures under this Article may proceed to do so.

4. Notwithstanding paragraph 2 of this Article, where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

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

(a) export price requirements, except as permitted in enforcement of countervailing and anti-dumping duty orders and undertakings;

(b) import licensing conditioned on the fulfilment of a performance requirement; or

(c) voluntary export restraints inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the Anti-Dumping Agreement.

Article 2.12. Remanufactured Goods

1. For greater certainty, paragraph 1 of Article 2.11 (Import and Export Restrictions) applies to prohibitions and restrictions on the importation of remanufactured goods.

2. If a Party adopts or maintains measures prohibiting or restricting the importation of used goods, it shall not apply those

measures to remanufactured goods.

3. For the avoidance of doubt, "remanufactured goods" under this Chapter shall be as defined in Article 14 (Treatment of Recovered Materials Used in Production of a Remanufactured Good) of Protocol 1 (Concerning the Definition of the Concept of "Originating Product" and Methods of Administrative Co-operation).

Article 2.13. Fees and Formalities Connected with Importation and Exportation

1. Each Party shall ensure, in accordance with Article VIII of GATT 1994, including its Notes and Supplementary provisions, that all fees and charges of whatever character (other than customs duties, and measures listed in sub-paragraph 2(a), sub-paragraph 2(b) and sub-paragraph 2(c) of Article 2.4 (Customs Duty)) imposed on or in connection with importation or exportation of goods:

(a) are limited in amount to the approximate cost of services rendered, which shall not be calculated on an ad valorem basis, and

(b) shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. The obligation set out in sub-paragraph 1(a) of this Article shall be implemented pursuant to the transitional arrangements that each Party has provided for under the TFA. Notwithstanding the above, each Party shall fully implement the obligation in sub-paragraph 1(a) of this Article no later than five (5) years from the date of entry into force of the TFA or at any time earlier as notified by that Party to the WTO.

3. Each Party shall make available via an officially designated medium, including through the internet, fees and charges it imposes in connection with importation or exportation.

4. A Party shall not require consular transactions, (2) including related fees and charges, in connection with the importation of any good of the other Party.

5. Each Party shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

(2) "Consular transactions" means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a non-Party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shippers' export declaration or any other customs documentation in connection with the importation of the good.

Article 2.14. Import and Export Licensing Procedures

1. The Parties affirm their existing rights and obligations under the Import Licensing Agreement.

2. The Parties shall introduce and administer any import or export licensing procedures (3) in accordance with:

(a) Paragraphs 1 to 9 of Article 1 of the Import Licensing Agreement;

(b) Article 2 of the Import Licensing Agreement; and

(c) Article 3 of the Import Licensing Agreement.

To this end, the provisions referred to in sub-paragraphs (a), (b) and (c) of this paragraph are incorporated into and made part of this Agreement. The Parties shall apply those provisions, mutatis mutandis, for any export licensing procedures.

3. The Parties shall ensure that all export licensing procedures are neutral in application and administered in a fair, equitable, non-discriminatory and transparent manner.

4. Each Party shall respond within sixty (60) days to a reasonable enquiry from the other Party regarding:

(a) any licensing procedures which the Party intends to adopt, or has adopted or maintained; or

(b) the criteria for granting and/or allocating import or export licenses.

(3) For the purposes of this Article, "non-automatic licensing procedures" means licensing procedures where approval of the application is not granted for all legal and natural persons who fulfil the requirements of the Party concerned for engaging in import or export operations involving the goods subject to licensing procedures.

Article 2.15. State Trading Enterprises

1. The Parties affirm their existing rights and obligations under Article XVII of GATT 1994, its Notes and Supplementary Provisions and the Understanding on the Interpretation of Article XVII of the GATT 1994, contained in Annex 1-A to the WTO Agreement, which are hereby incorporated into and made part of this Agreement, mutatis mutandis.

2. A Party may request information from the other Party bilaterally as foreseen in sub- paragraph 4(c) and sub-paragraph 4(d) of Article XVII of GATT 1994.

3. Neither Party shall apply any measure that is subject to the requirements under paragraph 2 of this Article to food purchased for non-commercial humanitarian purposes.

Section 2-D. SPECIFIC EXCEPTIONS RELATED TO GOODS

Article 2.16. General Exceptions

1. Nothing in this Chapter prevents the taking of measures in accordance with Article XX of GATT 1994, its Notes and Supplementary Provisions, which are hereby incorporated into and made part of this Agreement, mutatis mutandis.

2. The Parties understand that before taking any measures provided for in paragraphs (i) and (j) of Article XX of GATT 1994, the exporting Party intending to take the measures shall supply the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties may agree on any means needed to put an end to the difficulties. If no agreement is reached within thirty (30) days, the exporting Party may apply measures under this Article on the exportation of the good concerned. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

Chapter 3. TRADE REMEDIES

Section 3-A. ANTI-DUMPING AND COUNTERVAILING MEASURES

Article 3.1. Anti-Dumping, Subsidies and Countervailing Measures

1. Each Party retains its rights and obligations under Article VI of the GATT 1994 and the Anti-Dumping Agreement and any amendment thereto. To this end, the provisions of the Anti-Dumping Agreement shall apply, mutatis mutandis, to the extent not specifically provided for in this Agreement.

2. Each Party retains its rights and obligations under Articles VI and XVI of GATT 1994 and the SCM Agreement, or any amendments thereto. To this end, the provisions of the SCM Agreement shall apply, mutatis mutandis, to the extent not specifically provided for in this Agreement.

3. The Parties, recognising that anti-dumping and countervailing measures can be

abused to obstruct trade, agree that:

(a) such measures should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system; and

(b) careful consideration may be given to the interests of the Party against which such a measure is to be imposed.

4. For the purpose of this Section, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.

Article 3.2. Practices Relating to Anti-Dumping and Countervailing Duty Proceedings

1. Upon receipt by a Party's investigating authorities of a properly documented anti- dumping or countervailing duty application with respect to imports from the other Party, the Party shall immediately provide written notification of its receipt of the application to the other Party.

2. In any proceeding in which a Party's investigating authorities determine to conduct an in-person verification of

information that is provided by a respondent, (1) and that is pertinent to the calculation of anti-dumping duty margins or the level of a countervailable subsidy, the investigating authorities shall promptly notify each respondent of their intent, and:

(a) provide the respondent at least ten (10) working days' advance notice of the dates on which the investigating authorities intend to conduct an in-person verification of the information;

(b) at least five (5) working days prior to an in-person verification, provide to the respondent a document that sets out the topics the respondent should be prepared to address during the verification and that describes the types of supporting documentation to be made available for review; and

(c) after an in-person verification is completed, and subject to the protection of confidential information, (2) issue a written report that describes the methods and procedures followed in carrying out the verification and the extent to which the information provided by the respondent was supported by the documents reviewed during the verification. The report shall be made available to all interested parties in sufficient time for the parties to defend their interests.

3. A Party's investigating authorities shall maintain a public file for each investigation and review that contains:

(a) all non-confidential documents that are part of the record of the investigation or review; and

(b) to the extent feasible without revealing confidential information, non- confidential summaries of confidential information that is contained in the record of each investigation or review.

The public file and a list of all documents that are contained in the record of the investigation or review shall be made physically available for inspection and copying during the investigating authorities' normal business hours or electronically available for download. (3)

4. If, in an anti-dumping or countervailing duty action that involves imports from the other Party, a Party's investigating authorities determine that a timely response to a request for information does not comply with the request, the investigating authorities, to the extent practicable in light of time limits established to complete the anti-dumping or countervailing duty action, shall inform the interested party that submitted the response of the nature of the deficiency and, provide that interested party with an opportunity to remedy or explain the deficiency. If that interested party submits further information in response to that deficiency and the investigating authorities find that the response is not satisfactory, or that the response is not submitted within the applicable time limits, and if the investigating authorities disregard all or part of the original and subsequent responses, the investigating authorities shall explain in the determination or other written document the reasons for disregarding the information.

5. Before a final determination is made, a Party's investigating authorities shall inform all interested parties of the essential facts that form the basis of the decision whether to apply definitive measures. Subject to the protection of confidential information, the investigating authorities shall use any reasonable means to disclose the essential facts, which includes a report summarising the data in the record, a draft or preliminary determination or some combination of those reports or determinations. Each interested party shall be granted the opportunity and sufficient time to review and respond to the disclosure of essential facts.

(1) For the purposes of this paragraph, "respondent" means a producer, manufacturer, exporter, importer, and, where appropriate, a government or government entity, that is required by a Party's investigating authorities to respond to an anti-dumping or countervailing duty questionnaire.

(2) For the purposes of this Chapter, "confidential information" includes information which is provided on a confidential basis and which is by its nature confidential, for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information.

(3) Charges for the copies, if any, are limited in amount to the approximate cost of the services rendered.

Article 3.3. Exemption from Investigation after Termination

Where an anti-dumping investigation in respect of goods from the other Party is terminated with negative final determination, no investigation shall be initiated on the same goods by the importing Party within one (1) year from the date of termination of the previous investigation, unless the pre-initiation examination indicates that the circumstances

have changed.

Article 3.4. Lesser Duty Rule

Should a Party decide to impose any anti-dumping or countervailing duty, and such lesser duty would be adequate to remove the injury, the amount of final duty imposed shall not exceed that lesser duty.

Article 3.5. Consideration of Economic Interest

Anti-dumping or countervailing measures shall not be applied by a Party where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the economic interest of the Party conducting the investigation to apply such measures. Economic interest shall take into account the situation of the domestic industry, importers and their representative associations, representative users and representative consumer organisations, to the extent they have provided relevant information to the investigating authorities.

Section 3-B. CO-OPERATION

Article 3.6. Areas of Co-operation

1. The Parties will endeavour, within available resources, to co-operate in preventing circumvention of trade remedies. The areas of co-operation are as follows:

(a) forwarding questionnaires and other documents to interested parties;

(b) exchanging information relating to investigations; and

(c) any other possible areas to be mutually agreed by the Parties.

2. This Section shall not be construed to require the other Party to furnish or allow access to confidential information pursuant to this Chapter, the disclosure of which it considers would:

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

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

(c) impede law enforcement; or

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

3. Where a Party provides information to the other Party in accordance with this Section and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without specific written permission of the Party providing the information.

4. Chapter 16 (Dispute Settlement) and Article 17.1 (Joint Committee), Article 17.2 (Committees and Working Groups) and Article 17.4 (Decision-Making) of Chapter 17 (Institutional, General and Final Provisions) shall not apply to this Section.

Section 3-C. GLOBAL SAFEGUARD MEASURES

Article 3.7. Application of Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture. To this end, the provisions of the Safeguards Agreement shall apply, mutatis mutandis, to the extent not specifically provided for in this Agreement.

2. No Party shall apply, with respect to the same good, at the same time:

(a) a bilateral safeguard measure; and

(b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

3. For the purposes of this Section, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.

4. When imposing safeguard measures, the Parties shall endeavour to impose them in a way that least affects their bilateral trade.

5. For the purposes of paragraph 4 of this Article, the Party intending to apply the definitive safeguard measures may notify the other Party and give the possibility to hold bilateral consultations.

6. A Party that initiates a safeguard investigatory process shall provide to the other Party an electronic copy of the notification given to the WTO Committee on Safeguards under Article 12.1(a) of the Safeguards Agreement.

Section 3-D. BILATERAL SAFEGUARD MEASURES

Article 3.8. Definitions

For the purposes of this Section:

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

(b) **"threat of serious injury"** means a serious injury that is clearly imminent and shall be understood in accordance with Article 4.1(b) of the Safeguards Agreement;

(c) **"domestic industry"** means the producers as a whole of the like or directly competitive products, operating within the territory of a Party or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products;

(d) **"bilateral safeguard measure"** means a safeguard measure described in this Section.

(e) **"transitional safeguard period"** means, in relation to a particular good, the period from the entry into force of this Agreement until three years after the customs duty on that good is to be fully eliminated in accordance with that Party's schedule of tariff commitments set out in Annex 2-A (Elimination of Customs Duties);

(f) **"Competent Authority"** means the investigating authorities as determined by each Party.

Article 3.9. Application of Bilateral Safeguard Measures

1. Only during the transitional safeguard period, if, as a result of the reduction or elimination of a customs duty under this Agreement, originating goods of a Party are being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing like or directly competitive goods, the importing Party may adopt measures provided for in paragraph 2 of this Article in accordance with the conditions and procedures laid down in this Section.

2. The importing Party may take a bilateral safeguard measure which:

(a) suspends further reduction of the rate of customs duty on the good concerned provided for under Annex 2-A (Elimination of Customs Duties); or

(b) increases the rate of customs duty on the good concerned to a level which does not exceed the lesser of:

(i) the MFN applied rate of customs duty on the good in effect at the time the measure is taken; or

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

Article 3.10. Conditions and Limitations on the Imposition of Bilateral Safeguard Measures

1. The following conditions and limitations shall apply to an investigation or a measure described in Article 3.9 (Application of Bilateral Safeguard Measures):

(a) A Party shall immediately deliver written notice to the other Party upon:

(i) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

(ii) making a finding of serious injury or threat thereof caused by increased imports; and

(iii) taking a decision to apply or the imposition or the extension of bilateral safeguard measures;

(b) in making the notification referred to in sub-paragraph (a) above, the Party proposing to apply a bilateral safeguard measure shall provide the other Party with all pertinent information, as applicable;

(c) a Party proposing to apply a measure shall provide an opportunity for prior consultations with the other Party as far in advance of taking any such measure as practicable with a view to reviewing the information arising from the investigation, and exchanging views on the measure including preliminary views on compensation as set out in Article 3.12 (Compensation).

2. A Party shall apply a bilateral safeguard measure only following an investigation by its Competent Authorities in accordance with Article 3, Article 4.2(a) and Article 4.2(c) of the Safeguards Agreement and to this end, Article 3, Article 4.2(a) and Article 4.2(c) of the Safeguards Agreement shall apply, mutatis mutandis, to the extent not specifically provided for in this Agreement.

3. The determination referred to in Article 3.9 (Application of Bilateral Safeguard Measures) shall not be made unless the investigation demonstrates on the basis of objective evidence the existence of a causal link between increased imports from the other Party and serious injury or threat thereof. In this respect, due consideration shall be given to other factors, including imports of the same product from other countries.

4. Each Party shall ensure that its Competent Authorities complete any such investigation within one (1) year from the date of its initiation.

5. Neither Party may apply a bilateral safeguard measure as set out in paragraph 1 of Article 3.9 (Application of Bilateral Safeguard Measures):

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

(b) for a period exceeding two (2) years, except that the period may be extended up to an additional two (2) years (provided that the total period of application of a bilateral safeguard measure, including the period of initial application and any extension thereof, shall not exceed four (4) years), if the Competent Authorities of the importing Party determine, in conformity with the procedures specified in this Article, that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting; or

(c) no measure shall be applied in the first year after the commencement of the tariff reduction or tariff elimination comes into force as negotiated under this Agreement.

6. No bilateral safeguard measure shall be applied again to the import of the same good during the transitional safeguard period, unless a period of time equal to half of the period during which the bilateral safeguard measure was applied previously has elapsed.

7. In accordance with Article 3.7 (Application of Global Safeguard Measures), no bilateral safeguard measure shall be taken against a good while a global safeguard measure in respect of that good is in place; in the event that a global safeguard measure is taken in respect of a good, any existing bilateral safeguard measure which is taken against that good shall be terminated.

8. Upon the termination of a bilateral safeguard measure, the rate of duty shall be the rate which would have been in effect, as per the reduction schedule, but for the action.

9. No bilateral safeguard measure shall be taken beyond the expiration of the transitional safeguard period.

Article 3.11. Provisional Measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure as per Article 3.9 (Application of Bilateral Safeguard Measures) of this Section on a provisional basis, without complying with the procedural requirements on consultations as per sub-paragraph 1(c) of Article 3.10 (Conditions and Limitations on the Imposition of Bilateral Safeguard Measures)], pursuant to a preliminary determination that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports cause serious injury, or threat thereof, to the domestic industry.

2. The duration of any provisional measure shall not exceed two hundred (200) days, during which time the Party shall comply with the requirements of paragraphs 2 and 3 of Article 3.10 (Conditions and Limitations on the Imposition of Bilateral Safeguard Measures). The Party shall promptly refund any tariff increases if the investigation described in paragraph 2 of Article 3.10 (Conditions and Limitations on the Imposition of Bilateral Safeguard Measures) does not result in a finding that the requirements of Article 3.9 (Application of Bilateral Safeguard Measures) are met. The duration of any provisional measure shall be counted as part of the period prescribed by sub-paragraph 5(b) of Article 3.10 (Conditions and Limitations on the Imposition of Bilateral Safeguard Measures).

3. If a Party takes a provisional measure pursuant to this Article, the Party shall, as far as practicable, notify the other Party in writing prior to taking such measure and shall initiate consultations with the other Party immediately after such measure is taken.

Article 3.12. Compensation

1. A Party applying a bilateral safeguard measure shall consult with the other Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. The Party applying the measure shall provide an opportunity for such consultations no later than thirty (30) days after the application of the bilateral safeguard measure.

2. If the consultations under paragraph 1 of this Article do not result in an agreement on trade liberalising compensation within thirty (30) days after the consultations have begun, the Party whose goods are subject to the bilateral safeguard measure may suspend the application of substantially equivalent concessions on the goods of the Party applying the bilateral safeguard measure. The exporting Party shall notify the other Party in writing at least thirty (30) days before suspending concessions under this paragraph.

3. The suspension of concessions as set out in paragraph 2 of this Article shall not be applicable if the bilateral safeguard measure is applied for:

(a) not more than two (2) years; or

(b) not more than three (3) years in consultation with the other Party, provided that the Party imposing the bilateral safeguard measure provides to the other Party substantial evidence that the industry concerned is adjusting during the first two years;

and provided that the bilateral safeguard measure conforms to the provisions of this Agreement.

Chapter 4. SANITARY AND PHYTOSANITARY MEASURES

Article 4.1. Objectives

The objectives of this Chapter are to protect human, animal, or plant life or health in the territory of the Parties, and to provide a framework to address any bilateral sanitary and phytosanitary (“SPS”) matters so as to facilitate and increase trade between the Parties.

Article 4.2. Scope

1. This Chapter shall apply to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.

2. This Chapter shall not apply to standards, technical regulations and conformity assessment procedures as defined in the TBT Agreement which are covered by Chapter 5 (Technical Barriers to Trade).

3. Nothing in this Chapter shall limit the rights or obligations of the Parties pursuant to the SPS Agreement.

Article 4.3. Definitions

For the purposes of this Chapter:

(a) **“SPS measure”** means any measure referred to in paragraph 1, Annex A of the SPS Agreement; and

(b) The Parties may agree on other definitions for the application of this Chapter taking into consideration the glossaries and definitions of relevant international organisations, such as the CODEX Alimentarius Commission (“Codex Alimentarius”), the

World Organisation for Animal Health (“OIE”) and under the International Plant Protection Convention (“IPPC”).

Article 4.4. Rights and Obligations

The Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.

Article 4.5. General Principles

When implementing this Chapter, each Party:

(a) shall not apply its SPS measure in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade;

(b) shall ensure that any SPS measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence; and

(c) will neither use the procedures established under this Chapter nor any requests for additional information, to delay, without scientific and technical justification, access to its market.

Article 4.6. Competent Authorities

1. The competent authorities of the Parties responsible for the implementation of this Chapter are set out in this Article. The Parties shall notify each other of any change in their respective competent authorities.

2. The competent authority for:

(a) Sri Lanka shall be:

Director General of Agriculture Department of Agriculture
Peradeniya

Sri Lanka

Fax: (0094) 812 388333
Phone: (0094) 812 388331
Email: dgagriculture@gmail.com

Director General Department of Animal Production and Health Sri Lanka Animal Quarantine and Inspection Services

P.O. Box 13
Peradeniya

Sri Lanka

Fax: (0094) 112 448683

Phone: (0094) 812 388195 ; (0094) 112448683
Email: dgdaph@sltnet.lk ;
caqocolombo@sltnet.lk

Director General of Health Services

Chief Food Authority

Ministry of Health, Nutrition, and Indigenous Medicine

“Suwasiripaya” No. 385, Rev. Baddegama Wimalawansa Thero Mawatha Colombo – 10 Sri Lanka

Phone: (0094) 112 694860

Email: dghs@health.gov.lk

Director General of Sri Lanka Standards Institution No. 17, Victoria Place, Elvitigala Mawatha Colombo 08, Sri Lanka

Phone: (0094) 112 671567

Email: dg@slsi.lk (b) Singapore shall be:

Agri-Food & Veterinary Authority of Singapore or its successor Address: 52 Jurong Gateway Road #14-00, Singapore 608550 Fax: (65) 63341381

Email: WTO_Contact@ava.gov.sg

Web: www.ava.gov.sg

Article 4.7. Trade Facilitation

The Parties shall co-operate and jointly identify work in the field of SPS measures with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify initiatives that are appropriate for particular issues or sectors.

Article 4.8. Transparency

1. The Parties reaffirm their transparency obligations under the SPS Agreement.

2. Each Party shall publish all SPS measures in force on a website. Where possible, and upon request, the Parties shall provide information regarding the measures in English.

3. In any event, each Party shall electronically notify to the other Party's Contact Point or Enquiry Point its proposed SPS measures notifications to the WTO, at the same time the Party submits such notifications to the WTO Secretariat in accordance with the SPS Agreement.

4. Unless urgent problems of human, animal or plant life or health protection arise or threaten to arise, or the measure is of a trade-facilitating nature, a Party shall normally allow a period of at least sixty (60) days for the other Party to provide comments on the proposed measure after it makes a notification under paragraph 3 of this Article.

5. Upon request of a Party, the other Party shall communicate the import requirements that apply for the import of specific products wıthın fıfteen (15) days.

6. Each Party shall notify in writing to the other Party within two (2) days, of any serious or significant human, animal or plant life or health risk, including any food emergencies, that have arısen wıthın that Party.

7. Where a Party has serious concerns regarding any risk to human, animal or plant life or health, affecting commodities for which trade takes place between the Parties, technical discussions regarding the situation shall, upon request, take place as soon as possible. In this case, each Party shall endeavour to provide in due time all necessary information to avoid any disruptions to trade.

Article 4.9. Emergency Measures

1. In case of serious human, animal or plant life or health risk, the importing Party may take, without previous notification, measures necessary to protect human, animal or plant life or health. For consignments in transport between the Parties, the importing Party shall consider the most suitable and proportional solution in order to avoid unnecessary disruptions to trade.

2. The Party taking the measures shall inform the other Party as soon as possible and in any case no later than twenty-four (24) hours after the adoption of the measure.

3. Upon request of either Party and in accordance with the provisions of paragraphs 3, 5 and 6 of Article 4.8 (Transparency), the Parties shall hold consultations regarding the situation within fifteen (15) days of the notification. These consultations shall be carried out in order to avoid unnecessary disruptions to trade. The Parties may consider options for the facilitation of the implementation or the replacement of the measures.

4. Either Party may request for any information related to the SPS situation and any measures adopted. The other Party shall answer as soon as the requested information is available.

Article 4.10. Equivalence

1. The Parties recognise that the principle of equivalence, as set out in Article 4 of the SPS Agreement, has mutual benefits for both exporting and importing countries.

2. The importing Party shall accept the SPS measures of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measures achieve the importing Party's appropriate level of SPS protection. To facilitate a determination of equivalence, a Party shall, upon request, advise the other Party of the objective of any relevant SPS measures. A determination of equivalence may be made in relation to a single measure, group of measures or on a systems-wide basis.

3. The determination of equivalence requires an objective, risk-based assessment or evaluation by the importing Party of the existing, revised or proposed measures. The legislative and administrative systems, other factors such as the performance of the relevant competent authorities and any other necessary assessments or tests may be considered.

4. In determining the equivalence of SPS measures, the Parties shall take into account guidance developed by the WTO SPS Committee and the Codex Alimentarius, the OIE and the IPPC, as amended from time to time.

5. Upon request of the exporting Party for an equivalence assessment, and upon submission of sufficient information, the importing Party shall assess the exporting Party's measures to determine if the measures are able to meet the importing Party's appropriate level of SPS protection.

6. The Parties shall give favourable consideration to accepting the equivalence of each other's SPS measures, in order to ease trade of the products subject to SPS measures and foster mutual confidence between the respective competent authorities.

7. Any agreement or arrangement on acceptance of equivalence of the exporting party's SPS measures which may be concluded between the Parties shall be annexed to this Agreement and shall apply to trade between them.

8. Compliance by an exported product with an SPS standard that has been accepted as equivalent to an SPS standard of the importing Party shall not remove the need for that product to comply with any other relevant mandatory requirements of the importing Party.

9. Whenever an agreement on recognition of the equivalence is in process of negotiation and no final approval is achieved, the Parties should neither stop nor apply SPS measures more restrictive than those in force in their mutual trade, except where SPS emergencies arise or threaten to arise for a Party.

Article 4.11. Import Requirements

1. The importing Party shall ensure that its import conditions are applied to products imported from the exporting Party in a non-discriminatory manner and are based on an assessment of the risks to human, animal, or plant life.

2. Any fees imposed for the procedures on products imported from the exporting Party shall be equitable in relation to any fees charged on like domestic products and should be no higher than the actual cost of the service.

3. The importing Party shall have the right to carry out import checks on products imported from the exporting Party for the purposes of implementing SPS measures.

4. The import checks carried out on products imported from the exporting Party shall be based on the SPS risk associated with such importation. They shall be carried out without undue delay and with a minimum effect on trade between the Parties.

5. The information on the frequencies of import checks carried out on products imported from the exporting Party shall be made available upon request. The importing Party may amend the frequencies of physical checks within their responsibilities, as appropriate, as a result of:

(a) on-site checks;

(b) import checks; or

(c) other actions or consultations provided for in this Chapter.

6. In the event that the import checks reveal non-conformity with the relevant standards and/or requirements of the importing Party, any action taken by the importing Party should be proportionate to the SPS risk involved.

Article 4.12. Co-ordinators

1. To facilitate the implementation of this Chapter and co-operation between the Parties, each Party shall designate a Co-ordinator, who shall be responsible for co-ordinating with competent authorities in the Party's territory and communicating

with the other Party's Co-ordinator on all matters pertaining to this Chapter.

2. The Co-ordinators' functions shall include:

(a) enhancing communication between the Parties' competent authorities, including by seeking to facilitate a Party's response to written requests for information from the other Party in print or electronically without undue delay, and in any case within thirty (30) days from the date of receipt of the request and at no cost or at reasonable cost;

(b) facilitating information exchange so as to enhance mutual understanding of each Party's SPS measures and the regulatory processes that relate to those measures and their impact on trade in such goods between the Parties;

(c) promptly addressing any bilateral SPS issues that a Party raises to enhance cooperation and consultation between the Parties to facilitate trade between the Parties; and

(d) simultaneously informing the contact points set out in Article 17.16 (Contact Points) of Chapter 17 (Institutional, General and Final Provisions) of any communication between the Parties.

3. The Co-ordinators may communicate through teleconference, videoconference, or any other means, as mutually determined by the Parties.

4. Each Party shall notify the other Party promptly of any change in their Co-ordinators or any amendment to the details of relevant officials.

4. For the purposes of this Article, the Co-ordinator for:

(a) Sri Lanka shall be:

Department of Commerce
4th Floor,
Rakshana Mandiraya

21, Vauxhall Street
Colombo 02, Sri Lanka
Email: fortrade@doc.gov.lk ; spssrilanka@doc.gov.lk
or its successor.

(b) Singapore shall be:
Ministry of Trade and Industry,
Trade Division,
100 High Street # 09-01, The Treasury, Singapore 179434

Tel: (65) 6225 9911

Fax: (65) 6332 7260

Email: mti_email@mti.gov.sg

or its successor.

Article 4.13. Joint Sub-Committee on Sanitary and Phytosanitary ("SPS") Measures and Technical Barriers to Trade ("TBT")

1. The Parties hereby establish the Joint Sub-Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade ("Joint Sub-Committee"), comprising representatives from the relevant authorities of each Party. The Joint Sub-Committee shall be co-ordinated by the co-ordinators from both Parties specified in this Chapter.

2. The functions of this Joint Sub-Committee may include the following:

(a) reviewing the functioning of and work done by the Co-ordinators of the SPS and TBT Chapters;

(b) strengthening technical co-operation and communication on SPS and TBT issues to enhance the relationship between the Parties;

(c) consulting on agendas, issues, and positions for meetings covering SPS and/or TBT issues in relevant WTO Committees and International Organisations;

(d) arranging the establishment of ad hoc working groups as mutually agreed by the Parties;

(e) monitoring the progress of work programmes and the implementation of Article 4.14 (Cooperation) and Article 4.16 (Sectoral Annexes); and

(f) other functions mutually agreed by the Parties.

3. Each Party shall ensure the participation of its representatives with responsibility for the items in the agenda for each meeting of the Joint Sub-Committee. Upon mutual agreement, the Parties may invite representatives from industry, business associations or other relevant organisations to participate in parts of the meetings of the Joint Sub- Committee on a case by case basis.

4. The Joint Sub-Committee shall meet at least once every two (2) years unless the Parties agree otherwise. Meetings may be conducted in person, by teleconference, by videoconference, or any other means as mutually agreed by the Parties. The Parties may avail themselves of the opportunity to meet in conjunction with other FTA related meetings or in the margins of international meetings, where possible.

5. The Parties shall inform each other of any significant changes in the structure, organisation and division of responsibility within its competent authorities or co- ordinators.

Article 4.14. Co-operation

1. The Parties may enter into mutual recognition arrangements (“MRAs”) to strengthen their co-operation in the field of SPS measures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

2. The Parties shall endeavour to develop a work programme and mechanisms for cooperative activities in the areas of technical assistance and capacity building to address plant, animal and public health and food safety issues of mutual interest. In particular, the Parties shall consider, inter alia, the following activities:

(a) conducting training workshops,

(b) conducting studies and symposiums, and

(c) exchanging of officials and experts

3. The financial arrangements to cover expenses for the cooperative activities undertaken shall be mutually agreed upon by the Parties on a case by case basis subject to the availability of funds.

Article 4.15. Certification

1. Each consignment of animals, animal products, animal by-products, plants, plant products or other related goods shall be accompanied with the relevant official SPS certificates, if necessary, that are based on international standards-setting bodies as defined by the WTO SPS Agreement.

2. Additional certifications and declarations shall be provided by the relevant competent authorities whenever required by the importing Party.

Article 4.16. Sectoral Annexes

1. The Parties may conclude as appropriate, Sectoral Annexes, including MRAs, on product sectors which shall provide the implementing arrangements for such sectors.

2. A Sectoral Annex on the import requirements of specified food products is attached to this Agreement as Annex 4-A (Sectoral Annex on Food Products).

3. A Sectoral Annex shall minimally include:

(a) provisions on scope and coverage; and

(b) applicable laws, regulations and administrative provisions i.e. mandatory requirements of each Party concerning the scope and coverage.

4. The Parties shall:

(a) specify and communicate to each other the applicable articles or annexes contained in the mandatory requirements set out in the Sectoral Annexes;

(b) exchange information concerning the implementation of the mandatory requirements specified in the Sectoral Annexes; and

(c) notify each other of any scheduled changes in their respective mandatory requirements as and when they are made.

5. Unless otherwise provided for, a Sectoral Annex concluded pursuant to paragraph 1 of this Article shall enter into force on the first day of the second month following the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of that Sectoral Annex.

6. A Party may terminate an MRA in its entirety by giving the other Party one (1) year's advance notice in writing unless otherwise stated in the relevant Sectoral Annex. However, a Party shall continue to accept the results of conformity assessment or equivalence for the duration of the notice period.

7. Where urgent problems of safety, health, consumer or environment protection or national security arise or threaten to arise for a Party, that Party may suspend the operation of any Sectoral Annex, in whole or in part, immediately. In such a case, the Party shall immediately advise the other Party of the nature of the urgent problem, the products covered and the objective and rationale of the suspension.

Article 4.17. Final Provisions

Nothing in this Chapter shall limit the authority of a Party to determine the level of protection it considers necessary for the protection of, inter alia, human health or safety, animal or plant life or health or the environment. In pursuance of this, each Party retains all authority to interpret its laws, regulations and administrative provisions.

Chapter 5. TECHNICAL BARRIERS TO TRADE

Article 5.1. Objectives

The objective of this Chapter is to facilitate and increase trade in goods between the Parties, by providing a framework to prevent, identify and eliminate unnecessary barriers to trade within the scope of the TBT Agreement.

Article 5.2. Scope and Definitions

1. This Chapter shall apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures as defined in Annex 1 of the TBT Agreement, which may, directly or indirectly, affect trade in goods between the Parties, regardless of the origin of those goods.

2. Notwithstanding paragraph 1 of this Article, this Chapter shall not apply to:

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

(b) sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement which are covered by Chapter 4 (Sanitary and Phytosanitary Measures).

3. For the purposes of this Chapter, the definitions of Annex 1 to the TBT Agreement shall apply, mutatis mutandis.

Article 5.3. Affirmation and Incorporation of the TBT Agreement

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement which is incorporated into and made part of this Agreement, mutatis mutandis.

Article 5.4. International Standards

1. In accordance with Article 2.4 and Article 5.4 of the TBT Agreement, each Party shall use relevant international standards, guides and recommendation, or relevant parts of them, as a basis for its technical regulations and conformity assessment procedures where relevant international standards exist or their completion is imminent, except when, as duly explained upon request, such international standards, guides and recommendations or their relevant parts are ineffective or

inappropriate to fulfil legitimate objectives.

2. In determining whether an international standard, guide, or recommendation within the meaning of Article 2, Article 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in the Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement, adopted by the WTO Committee on Technical Barriers to Trade, G/TBT/1/rev.12, 21 January 2015 and the subsequent revisions.

3. The Parties shall co-operate with each other, where appropriate, in the context of their participation in international standardising bodies to ensure that international standards developed within such bodies that are likely to become a basis for technical regulations are trade facilitating and do not create unnecessary obstacles to international trade.

4. The Parties undertake to exchange information on:

(a) their use of standards in support of technical regulations;

(b) each other's standardisation processes, and the extent of use of international standards or regional standards as a base for their national standards; and

(c) co-operation agreements implemented by either Party on standardisation, provided the information can be made available to the public.

Article 5.5. Technical Regulations

1. The Parties agree to make best use of good regulatory practice with regard to the preparation, adoption and application of technical regulations, as provided for in the TBT Agreement, including:

(a) when developing a technical regulation, to consider, inter alia, the impact of the envisaged technical regulation and the available regulatory and non-regulatory alternatives to the proposed technical regulation which may fulfil the Party's legitimate objectives;

(b) consistent with Article 2.4 of the TBT Agreement, to use, to the maximum extent possible, relevant international standards as a basis for their technical regulations, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued; where international standards have not been used as a basis, to explain upon request to the other Party the reasons why such standards have been considered inappropriate or ineffective for the aim pursued; and

(c) consistent with Article 2.8 of the TBT Agreement, wherever appropriate, to specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

Article 5.6. Conformity Assessment Procedures

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures, including but not limited to:

(a) the importing Party's reliance on a supplier's declaration of conformity;

(b) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;

(c) unilateral recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;

(d) use of accreditation procedures to qualify conformity assessment bodies;

(e) government designation of conformity assessment bodies, including bodies located in the territory of the other Party;

(f) voluntary arrangements between conformity assessment bodies in the respective territories of each Party; and

(g) use of regional or international multilateral recognition agreements and arrangements of which both the Parties are signatories to.

2. Having regard in particular to those considerations:

(a) the Parties shall:

(i) intensify their exchange of information on these and other mechanisms with a view to facilitating the acceptance of conformity assessment results;

(ii) exchange information on the criteria used to select appropriate conformity assessment procedures for specific products and, in line with Article 5.1.2 of the TBT Agreement, require conformity assessment procedures that are not more strict or are not applied more strictly than necessary to give the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create;

(b) (iii) exchange information on accreditation policy, and consider how to make the best use of international standards for accreditation, and international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Co-operation ("ILAC") and the International Accreditation Forum ("IAF");

(iv) give positive consideration to accredit conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory, to the extent necessary to fulfil their obligations under the ILAC and the IAF; and

(v) ensure that, insofar as two or more conformity assessment bodies are authorised by a Party to carry out conformity assessment procedures required for placing the product on the market, economic operators may choose among them.

a Party shall, on the request of the other Party, explain in writing its reasons for not accepting the results of a conformity assessment procedure performed in the territory of that Party.

3. Before accepting the results of a conformity assessment procedure, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, as appropriate.

4. Upon request by either Party, the Parties may decide to engage in consultations with a view to defining sectoral initiatives regarding the use of conformity assessment procedures or the facilitation of acceptance of conformity assessment results that are appropriate for the respective sectors. The Party making the request should substantiate it with relevant information on how this sectoral initiative would facilitate trade between the Parties. In these consultations, all mechanisms described in paragraph 1 of this Article may be considered. Where a Party declines such a request from the other Party, it shall, upon request, explain its reasons.

Article 5.7. Transparency

1. The Parties reaffirm their transparency obligations under the TBT Agreement with regard to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures.

2. The Parties agree, where a part of the process of developing a standard, technical regulation or conformity assessment procedure is open to public consultation, to take the other Party's views into account and, without discrimination, to provide reasonable opportunities for the other Party and its interested persons to make comments.

3. Where a Party makes a notification under Article 2.9 and Article 5.6 of the TBT Agreement, the Parties agree:

(a) to allow at least sixty (60) days following the notification for the other Party to provide comments in writing on the proposal and where practicable, to give appropriate consideration to reasonable requests for extending the comment period;

(b) to allow a period of not less than six (6) months between the publication of technical regulations or conformity assessment procedures and their entry into force for economic operators of the other Party to demonstrate the conformity of their goods with the relevant requirements of the technical regulation, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise;

(c) to ensure that its notifications contain sufficient detail about the likely content of the proposed technical regulations and conformity assessment procedures; and

(d) to include in the notification an explanation of the objectives of the proposal and how it would address those objectives.

4. The notification of technical regulations and conformity assessment procedures shall include an online link to, or a copy of, the complete text of the notified document in English.

5. Each Party shall publish all standards, technical regulations, and conformity assessment procedures in force.

6. Each Party shall make available, as appropriate and available, written guidance on compliance with its standards, technical regulations, and conformity assessment procedures to the other Party or its economic operators, upon request and without undue delay.

7. No later than the date of publication of a final technical regulation or conformity assessment procedure that may have a significant effect on trade, each Party shall, preferably electronically:

(a) make publicly available an explanation of the objectives and how the final technical regulation or conformity assessment procedure achieves them;

(b) provide as soon as possible, but no later than sixty (60) days after receiving a request from the other Party, a description of alternative approaches, if any, that the Party considered in developing the final technical regulation or conformity assessment procedure and the merits of the approach that the Party selected; and

(c) provide as soon as possible, but no later than sixty (60) days after receiving a request from the other Party, a description of significant revisions, if any, that the Party made to the proposal for the technical regulation or conformity assessment procedure, including those made in response to comments.

Article 5.8. Market Surveillance

The Parties undertake to exchange information on market surveillance and enforcement activities.

Article 5.9. Marking and Labelling

1. For the purposes of this Article, and in accordance with paragraph 1 of Annex 1 of the TBT Agreement, a technical regulation may include or deal exclusively with marking or labelling requirements.

2. The Parties agree that, where their technical regulations contain mandatory marking or labelling, they will ensure that these are not prepared with a view to, or with the effect of, creating unnecessary obstacles to international trade, and should not be more trade restrictive than necessary to fulfil a legitimate objective, as referred to under Article 2.2 of the TBT Agreement.

3. For the purposes of this Agreement, where a Party requires mandatory marking or labelling of products:

(a) the Party shall endeavour to restrict its requirements only to those which are relevant for consumers or users of the product or to indicate the product's conformity with the mandatory requirements;

(b) the Party may specify the information to be provided on the label and may require compliance with certain regulatory requirements for the affixing of the label, but shall not require any prior approval or certification of labels and markings as a precondition for sale of the products in its market unless this is deemed necessary in the light of the risk of the product to human, animal or plant health or life;

(c) where the Party requires the use of a unique identification number by economic operators, the Party shall ensure that such numbers are issued to the relevant economic operators without undue delay and on a non-discriminatory basis;

(d) provided it is not misleading, contradictory or confusing in relation to the information required in the importing Party of the goods, the Party shall permit the following:

(i) information in other languages in addition to the language required in the importing Party of the goods;

(ii) internationally-accepted nomenclatures, pictograms, symbols or graphics; and

(iii) additional information to that required in the importing Party of the goods;

(e) in order to facilitate trade, the Party shall, in cases where it considers that legitimate objectives under the TBT Agreement are not compromised thereby and where applicable, endeavour to develop processes and procedures to accept alternative forms of labelling, such as electronic labels, non-permanent or detachable labels, or marking or labelling in the accompanying materials packaged with the product.

4. Without prejudice to the Parties' rights and obligations under the WTO Agreement, paragraph 3 of this Article shall apply to agricultural products, industrial products, and processed agricultural food products including beverages and spirits.

Article 5.10. Information Exchange

1. Each Party shall respond expeditiously to any enquiry from the other Party on standards, technical regulations or conformity assessment procedures relating to any goods and/or assessments of manufacturers or manufacturing processes of goods traded between the Parties. The explanation provided shall be given in print or electronically in English.

2. The Parties shall endeavour to resolve the matter as expeditiously as possible, recognising that the time required to resolve a matter will depend on a variety of factors, and that it may not be possible to resolve every matter through technical discussions.

3. Nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers would:

(a) be contrary to its essential security interests;

(b) be contrary to the public interest as determined by its domestic laws, regulations and administrative provisions;

(c) be contrary to any of its domestic laws, regulations and administrative provisions including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(d) impede law enforcement; or

(e) prejudice legitimate commercial interests of particular public or private enterprises

Article 5.11. Co-operation

1. The Parties shall strengthen their co-operation in the field of standards, technical regulations and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

2. The Parties shall seek to identify, develop and promote trade facilitating initiatives which may include, but are not limited to:

(a) exchanging information and experiences on the preparation and application of their technical regulations and the use of good regulatory practice;

(b) where appropriate, simplifying technical regulations, standards and conformity assessment procedures;

(c) avoiding unnecessary divergence in their approaches to technical regulations and conformity assessment procedures, and working towards the possibility of converging or aligning technical regulations with international standards;

(d) encouraging cooperation between their respective bodies, public or private, responsible for metrology, standardisation, testing, certification and accreditation;

(e) conducting joint studies, symposiums and seminars;

(f) exchanging information in respect of technical regulations, standards, conformity assessment procedures and good regulatory practice;

(g) reinforcing the role of international standards as a basis for technical regulations and conformity assessment procedures;

(h) promoting the accreditation of conformity assessment bodies on the basis of relevant standards and guides of the International Organization for Standardization (“ISO”) and the International Electrotechnical Commission (“IEC”);

(i) ensuring efficient interaction of regulatory authorities at national, regional and international levels, for instance, by referring enquiries from a Party to the appropriate regulatory authorities; and

(j) exchanging information on developments in relevant regional and multilateral fora related to standards, technical regulations and conformity assessment procedures.

3. The Parties shall promote bilateral cooperation between their public and private institutions in the field of:

(a) food labelling standards, regulations, and certification;

(b) pharmaceuticals and medical devices;

(c) apparels; and

(d) other sectors of mutual interest.

4. Upon request, a Party shall give appropriate consideration to proposals that the other Party makes for cooperation under the terms of this Chapter.

5. The Parties may enter into mutual recognition agreements ("MRAs") to strengthen their cooperation in the field of technical regulations, standards and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

6. The financial arrangements to cover expenses for the cooperative activities undertaken shall be mutually agreed upon by the Parties on a case by case basis subject to the availability of funds.

Article 5.12. Joint Sub-Committee on Sanitary and Phytosanitary ("SPS") Measures and Technical Barriers to Trade ("TBT")

1. The Parties hereby establish the Joint Sub-Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade ("Joint Sub-Committee"), comprising representatives from the relevant authorities of each Party. The Joint Sub-Committee shall be co-ordinated by the co-ordinators from both Parties specified in this Chapter.

2. The functions of this Joint Sub-Committee may include the following:

(a) reviewing the functioning of and work done by the Co-ordinators of the SPS and TBT Chapters;

(b) strengthening technical co-operation and communication on SPS and TBT issues to enhance the relationship between the Parties;

(c) consulting on agendas, issues, and positions for meetings covering SPS and/or TBT issues in relevant WTO Committees and International Organisations;

(d) arranging the establishment of ad hoc working groups as mutually agreed by the Parties;

(e) monitoring the progress of work programmes and the implementation of Article 5.11 (Cooperation) and Article 5.14 (Sectoral Annexes); and

(f) other functions mutually agreed by the Parties.

3. Each Party shall ensure the participation of its representatives with responsibility for the items on the agenda for each meeting of the Joint Sub-Committee. Upon mutual agreement, the Parties may invite representatives from industry, business associations or other relevant organisations to participate in parts of the meetings of the Joint Sub- Committee on a case by case basis.

4. The Joint Sub-Committee shall meet at least once every two (2) years unless the Parties agree otherwise. Meetings may be conducted in person, by teleconference, by videoconference, or any other means as mutually agreed by the Parties. The Parties may avail themselves of the opportunity to meet in conjunction with other FTA related meetings or on the margins of international meetings, where possible.

5. The Parties shall inform each other of any significant changes in the structure, organisation and division of responsibility within its competent authorities or co- ordinators.

Article 5.13. Co-ordinators

1. To facilitate the implementation of this Chapter and co-operation between the Parties, each Party shall designate a Co-ordinator, who shall be responsible for co-ordinating with interested authorities in the Party's territory and communicating with the other Party's Co-ordinator on all matters pertaining to this Chapter.

2. The Co-ordinators' functions shall include:

(a) developing the necessary procedures or arrangements for the implementation and administration of this Chapter;

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

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

(d) exchanging information on standards, technical regulations, and conformity assessment procedures, including referring

enquiries from a Party to the appropriate regulatory authorities, in response to all reasonable requests for such information from a Party;

(e) considering and facilitating any sector-specific proposal a Party makes to further the objectives of this Chapter;

(f) facilitating the consideration of a request by a Party for the recognition of the results of conformity assessment procedures, including a request for the negotiation of an agreement, in a sector nominated by that Party;

(g) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments; and

(h) simultaneously informing the contact points set out in Article 17.16 (Contact Points) of Chapter 17 (Institutional, General and Final Provisions) of any communication between the Parties.

3. The Co-ordinators may communicate through teleconference, videoconference, or any other means, as mutually determined by the Parties.

4. Each Party shall notify the other Party promptly of any change in their Co-ordinator or any amendment to the details of the relevant officials.

5. For the purposes of this Article, the Co-ordinator for:

(a) Singapore shall be:

Ministry of Trade and Industry,

Trade Division,

100 High Street #09-01 The Treasury, Singapore 179434

Tel: (65) 6225 9911

Fax: (65) 6332 7260

Email: mti_email@mti.gov.sg

or its successor; (b) Sri Lanka shall be:

Department of Commerce

4th Floor,

Rakshana Mandiraya

21, Vauxhall Street

Colombo 02, Sri Lanka

Email: fortrade@doc.gov.lk ; spssrilanka@doc.gov.lk

or its successor.

Article 5.14. Sectoral Annexes

1. The Parties may conclude as appropriate, Sectoral Annexes, including MRAs, on product sectors which shall provide the implementing arrangements for such sectors.

2. A Sectoral Annex shall minimally include:

(a) provisions on scope and coverage; and

(b) applicable laws, regulations and administrative provisions i.e. mandatory requirements of each Party concerning the scope and coverage.

3. The Parties shall:

(a) specify and communicate to each other the applicable articles or annexes contained in the mandatory requirements set out in the Sectoral Annexes;

(b) exchange information concerning the implementation of the mandatory requirements specified in the Sectoral Annexes; and

(c) notify each other of any scheduled changes in their respective mandatory requirements as and when they are made.

4. Unless otherwise provided for, a Sectoral Annex concluded pursuant to paragraph 2 of this Article shall enter into force on the first day of the second month following the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of that Sectoral Annex.

5. A Party may terminate an MRA in its entirety by giving the other Party one year's advance notice in writing unless otherwise stated in the relevant Sectoral Annex. However, a Party shall continue to accept the results of conformity assessment or equivalence for the duration of the one year notice period.

6. Where urgent problems of safety, health, consumer or environment protection or national security arise or threaten to arise for a Party, that Party may suspend the operation of any Sectoral Annex, in whole or in part, immediately. In such a case, the Party shall immediately advise the other Party of the nature of the urgent problem, the products covered and the objective and rationale of the suspension.

Chapter 6. CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 6.1. Agreement on Trade Facilitation

The Parties recognise the TFA and shall give effect to the provisions of Section I of the TFA as per the implementation schedule of each Party. In the event of any inconsistency between the obligations set out in Section I of the TFA and the obligations set out in the other provisions of this Chapter, the latter shall prevail to the extent of the inconsistency.

Article 6.2. Advance Rulings

1. A Party shall issue an advance ruling, on an application of an exporter, importer or any person with respect to:

(a) the origin of goods;

(b) the tariff classification of a product; and

(c) the appropriate method or criteria, and the application therof, to be used for determining the customs value under a particular set of facts.

The issuing Party shall issue its determination within sixty (60) days on receipt of all necessary information.

2. The issuing Party shall apply an advance ruling issued by it under paragraph 1 of this Article. The customs administration of a Party shall establish a validity period for an advance ruling of not less than one (1) year from the date of its issuance.

3. The issuing Party may modify or revoke an advance ruling:

(a) if the ruling was based on an error of fact;

(b) if there is a change in the material facts or circumstances on which the ruling was based; or

(c) to conform with a judicial decision or a change in its domestic laws.

4. Each Party shall provide, in its domestic law, that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with the terms and conditions of the advance ruling.

5. Where a Party modifies or revokes an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Party revokes or modifies an advance ruling with retrospective effect, it may only do so where the advance ruling was based on incomplete, incorrect, false or misleading information.

6. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it. The Party may provide that the advance ruling is binding on the applicant.

Article 6.3. Single Window

The Parties shall develop or maintain single window systems within the capability of that Party, to facilitate a single, electronic submission of all information required by customs and other legislation for the exportation, importation and transit of goods.

Article 6.4. Publication

1. The Parties shall promptly publish or otherwise make available, including through electronic means, the following information in a non-discriminatory and easily accessible manner, in order to enable interested parties to become acquainted with them:

(a) importation, exportation and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;

(b) applied rates of duties, and taxes of any kind imposed on or in connection with importation or exportation;

(c) rules for the classification or the valuation of products for customs purposes;

(d) laws, regulations and administrative rulings of general application relating to rules of origin;

(e) import, export or transit restrictions or prohibitions;

(f) fees and charges imposed on or in connection with importation, exportation or transit;

(g) penalty provisions against breaches of import, export or transit formalities;

(h) appeal procedures;

(i) agreements or parts thereof with any country or countries relating to importation, exportation or transit; and

(j) administrative procedures relating to the imposition of tariff quotas.

2. The information in paragraph 1 of this Article shall, to the extent practicable, be made available on the Internet in English.

3. The Parties shall designate or maintain one or more inquiry or information points to address inquiries by interested persons concerning customs and trade facilitation matters. Such inquiries shall be addressed in English.

Article 6.5. Temporary Admission of Goods

The Parties shall continue to facilitate the procedures for the temporary admission of goods traded between the Parties in accordance with the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods and Article 10.9 (Temporary Admission of Goods meant for Inward and Outward Processing) of the TFA.

Article 6.6. Technical Co-operation

In order to enhance co-operation on customs matters, the Parties shall, inter alia:

(a) exchange information concerning their respective customs legislation, its

implementation, and customs procedures, particularly in the following areas:

(i) simplification and modernisation of customs procedures;

(ii) border enforcement of intellectual property rights by the customs authorities;

(iii) transit movements and transhipment; and

(iv) relations with the business community;

(b) consider developing joint initiatives relating to import, export and other customs procedures, as well as towards ensuring an effective service to the business community;

(c) work together on customs-related aspects of securing and facilitating the international trade supply chain; and

(d) strengthen co-ordination in international organisations such as the WTO and the World Customs Organization.

Article 6.7. Customs Contact Points

1. The Parties shall exchange lists of designated contact points for matters arising under this Chapter.

2. The contact points shall endeavour to resolve operational matters covered by this Chapter through consultations.

Article 6.8. Express Shipments

The Parties shall ensure efficient clearance of all shipments, while maintaining appropriate control and customs selection. In the event a Party's existing system does not ensure efficient clearance, it should adopt procedures to expedite express shipments. Such procedures shall:

(a) provide for pre-arrival processing of information related to express shipments;

(b) permit, as a condition for release, the submission of a single document in the form that the Party considers appropriate, such as a single manifest or a single declaration, covering all of the goods in the shipment by an express service company, through, if possible, electronic means;

(c) minimise, to the extent possible, the documentation required for the release of express shipments; and

(d) allow, in normal circumstances, for an express shipment to be released within six (6) hours of the submission of necessary customs documentation.

Article 6.9. Risk Management

1. The Parties shall adopt or maintain a risk management system for assessment and targeting that enables its customs administration to focus its inspection activities on high-risk goods and that simplifies the clearance and movement of low-risk goods.

2. The Parties shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

3. The Parties shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, the Harmonized System Code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

Article 6.10. Pre-Arrival Processing

1. The Parties shall adopt or maintain procedures allowing for the submission of import documentation and other required information in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

2. The Parties shall provide for advance lodging of documents in electronic format for pre-arrival processing of such documents. (1)

(1) In the case of Sri Lanka, this provision is subject to legislation being passed by Sri Lanka.

Article 6.11. Pre-Shipment Inspection

1. The Parties shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.

2. Without prejudice to the rights of the Parties to use types of pre-shipment inspection not prohibited by paragraph 1 of this Article, the Parties shall endeavour not to introduce or apply new requirements for the use of pre-shipment inspections. (2)

(2) This paragraph refers to pre-shipment inspections covered by the Agreement on Preshipment Inspection, and does not preclude pre-shipment inspections for sanitary and phytosanitary purposes.

Article 6.12. Post-Clearance Audit

1. With a view to expediting the release of goods, the Parties shall adopt or maintain post- clearance audits to ensure compliance with customs and other related laws and regulations.

2. The Parties shall select a person or a consignment for post-clearance audit in a risk- based manner, which may include appropriate selectivity criteria. The Parties shall conduct post-clearance audits in a transparent manner. Where conclusive results of a post-clearance audit have been achieved, the Party conducting the post-clearance audit shall, without delay, notify the person whose record was audited of the audit results, the person's rights and obligations, and the reasons for the audit results, wherever practicable.

3. The Parties shall, wherever practicable, use the result of post-clearance audit in applying risk management.

Article 6.13. Release of Goods

1. The Parties shall adopt or maintain procedures:

(a) providing for the release of goods within a period of time no greater than that required to ensure compliance with its customs laws;

(b) allowing, to the extent possible, goods to be released within forty-eight (48) hours of arrival; and

(c) allowing importers who have complied with the procedures that the relevant Party may have in place relating to the determination of value and payment of duty to obtain the release of goods from the customs authorities, but may require importers to provide security as a condition for the release of goods, when such security is required to ensure that obligations arising from the entry of the goods will be fulfilled.

2. The Parties shall:

(a) ensure that the amount of any security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled, and, where applicable, not in excess of the amount chargeable, based on tariff rates under domestic and international law, including this Agreement, and on valuation in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;

(b) ensure that any security shall be discharged as soon as possible after the relevant customs authorities are satisfied that the obligations arising from the importation of the goods have been fulfilled; and

(c) shall adopt procedures allowing:

(i) importers to provide security such as bank guarantees, bonds, or other non-cash financial instruments covering multiple entries; and

(ii) importers to provide security in any other forms specified by the relevant customs authorities.

Article 6.14. Electronic Payment

The Parties shall adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by the relevant customs authorities incurred upon importation and exportation.

Article 6.15. Trade Facilitation Measures for Authorised Operators

1. The Parties shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 3 of this Article, to operators who meet specified criteria, hereinafter called authorised operators. Alternatively, a Party may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

2. The specified criteria to qualify as an authorised operator shall be related to compliance, or the risk of non-compliance, and specified in a Party's laws, regulations or procedures.

(a) Such criteria, which shall be published, may include:

(i) an appropriate record of compliance with customs and other related laws and regulations;

(ii) a system of managing records to allow for necessary internal controls;

(iii) financial solvency, including, where appropriate, provision of a sufficient security or gurantee; and

(iv) supply chain security.

(b) Such criteria shall not:

(i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and

(ii) to the extent possible, restrict the participation of small and medium- sized enterprises.

3. The trade facilitation measures provided pursuant to paragraph 1 of this Article shall include at least three (3) of the following measures: (3)

(a) low documentary and data requirements, as appropriate;

(b) low rate of physical inspections and examinations, as appropriate;

(c) rapid release time, as appropriate;

(d) deferred payment of duties, taxes, fees, and charges;

(e) use of comprehensive guarantees or reduced guarantees;

(f) a single customs declaration for all imports or exports in a given period; and

(g) clearance of goods at the premises of the authorised operator or another place authorised by the relevant customs authorities.

4. The Parties shall endeavour to develop authorised operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

5. In order to enhance the trade facilitation measures provided to operators, a Party shall afford to the other Party the possibility of negotiating mutual recognition of authorised operator schemes.

6. The Parties shall exchange relevant information about authorised operator schemes in force.

(3) A measure listed in sub-paragraphs 3(a) to 3(g) of this Article will be deemed to be provided to authorised operators if it is generally available to all operators.

Chapter 7. TRADE IN SERVICES

Article 7.1. Definitions

For the purposes of this Chapter:

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

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

(c) “commercial presence” means any type of business or professional establishment, including through

(i) the constitution, acquisition or maintenance of a juridical person, or;

(ii) the creation or maintenance of a branch or a representative office within the territory of a Party for the purpose of supplying a service;

(d) “computer reservation system services” means services provided by computerised systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

(e) “direct taxes” comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

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

(g) “juridical person of a Party” means a juridical person which is either:

(i) constituted or otherwise organised under the law of that Party; or

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

(A) natural persons of that Party; or

(B) juridical persons of that Party identified under sub-paragraph g(i) of this Article;

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

(i) “measures by a Party” means measures taken by:

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

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

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

(j) “measures by a Party affecting trade in services” includes measures in respect of:

(i) the production, distribution, marketing, sale and delivery of a service;

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

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

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

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

(l) “natural person of a Party” means a natural person who is a national of Sri Lanka or Singapore, according to their respective legislation;

(m) “person” means either a natural person or a juridical person;

(n) “sector” of a service means,

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party’s Schedule,

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

(o) “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 application conditions;

(p) “services” includes any service in any sector except services supplied in the exercise of governmental authority;

(q) “service consumer” means any person that receives or uses a service;

(r) “service of a Party” means a service which is supplied:

(i) from or in the territory of that Party, or in the case of maritime transport, by a vessel registered under the laws of that Party, or by a person of that Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a

service supplier of that Party;

(s) “service supplier” means any person that supplies or seeks to supply a service; (1)

(t) “supply of a service” includes the production, distribution, marketing, sale and

delivery of a service;

(u) “trade in services” is defined as the supply of a service:

(i) from the territory of a Party into the territory of the other Party ("cross- border”);

(ii) in the territory of a Party to the service consumer of the other Party (“consumption abroad”)

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

(iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party (“presence of natural persons”);

(v) “traffic rights” means the right 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 the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

(1) Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

Article 7.2. Scope and Coverage

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

2. This Chapter shall not apply to:

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

(b) a service supplied in the exercise of governmental authority within the territory of each Party;

(c) government procurement; or

(d) measures affecting air traffic rights, however granted; or to measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;

(ii) the selling and marketing of air transport services;

(iii) computer reservation system services;

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

4. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits (2) accruing to the other Party under the terms of this Chapter.

(2) The sole fact of requiring a visa for natural persons of a certain nationality and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

Article 7.3. Market Access

1. With respect to market access through the modes of supply defined in sub-paragraph (u) of Article 7.1 (Definitions), a Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its respective Schedule of Specific Commitments in Annexes 7-A (Sri Lanka) and 7-B (Singapore). (3)

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its respective Schedule of Specific Commitments in Annexes 7-A (Sri Lanka) and 7-B (Singapore), are:

(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; (4)

(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.

(3) If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in Article 7.1(u)(i) 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 Article 7.1(u)(iii), it is thereby committed to allow related transfers of capital into its territory.

(4) Sub-paragraph 2(c) of Article 7.3 (Market Access) does not cover measures of a Party which limit inputs for the supply of services.

Article 7.4. National Treatment

1. In the sectors set out in its respective Schedule of Specific Commitments in Annexes 7-A (Sri Lanka) and 7-B (Singapore), and subject to any conditions and qualifications set out therein, a Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. (5)

2. A Party may meet the requirement of paragraph 1 of this Article 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 favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party compared to like services or service suppliers of the other Party.

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

Article 7.5. Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling

under Article 7.3 (Market Access) or Article 7.4 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be set out in a Party's Schedule of Specific Commitments in Annexes 7-A (Sri Lanka) and 7-B (Singapore).

Article 7.6. Schedule of Specific Commitments

1. Each Party shall set out in a Schedule the Specific Commitments it undertakes under Article 7.3 (Market Access), Article 7.4 (National Treatment) and Article 7.5 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

(d) where appropriate, the time-frame for implementation of such commitments; and (e) the date of entry into force of such commitments.

2. Measures inconsistent with both Article 7.3 (Market Access) and Article 7.4 (National Treatment) shall be inscribed in the column relating to Article 7.3 (Market Access). In this case, the inscription will be considered to provide a condition or qualification to Article 7.4 (National Treatment) as well.

3. Each Party shall identify in its Schedule of Specific Commitments sectors or sub- sectors for future liberalisation with an 'R'. In these sectors and subsectors, any applicable terms, conditions, limitations, qualifications and undertakings referred to in sub-paragraphs 1(a) through 1(c) of this Article shall be limited to measures that the Party maintains on the date of entry into force of this Agreement.

4. If a Party amends a measure referred to in paragraph 3 of this Article in a manner that reduces or eliminates the inconsistency of that measure with Article 7.3 (Market Access) or Article 7.4 (National Treatment), as it existed immediately before the amendment, or provides further liberalisation under Article 7.5 (Additional Commitments), that Party shall not subsequently amend that measure in a way that increases the measure's inconsistency with Article 7.3 (Market Access) or Article 7.4 (National Treatment) or decreases liberalisation under Article 7.5 (Additional Commitments).

5. Each Party shall endeavour to inform the Joint Committee of its new level of commitment pursuant to such unilateral amendments. Such unilateral amendments shall, on the date that the unilateral amendment enters into force, form an integral part of that Party's Schedule of Specific Commitments under this Chapter.

6. Paragraphs 3, 4 and 5 of this Article shall not apply to all Mode 4 commitments made by either Party in its Schedule of Specific Commitments. In respect of commitments made under Modes 1 to 3, paragraphs 3, 4 and 5 of this Article shall apply to all measures which fall under a sector or sub-sector that a Party identifies for future liberalisation with an "R" in its Schedule of Specific Commitments.

7. The Schedules of Specific Commitments shall be annexed to this Chapter as Annex 7- A for Sri Lanka and Annex 7-B for Singapore.

Article 7.7. Domestic Regulation

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

2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. The provisions of paragraph 2 of this Article shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the

request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

5. With the objective of ensuring that domestic regulation, relating to qualification requirements and procedures, technical standards and licensing requirements, does not constitute an unnecessary barrier to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures, pursuant to paragraph 4 of Article VI of the GATS, with a view to their incorporation into this Chapter. The Parties note that such disciplines aim to ensure that such requirements are, inter alia:

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

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

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

6. Pending the incorporation of disciplines pursuant to paragraph 5 of this Article, for sectors where a Party has undertaken specific commitments and subject to any terms, limitations, conditions or qualifications set out therein, a Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(a) does not comply with the criteria outlined in sub-paragraphs (a), (b) or (c) of paragraph 5 of this Article; and

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

7. In determining whether a Party is in conformity with the obligation under paragraph 6 of this Article, account shall be taken of international standards of relevant international organisations (6) applied by that Party.

(6) The term "relevant international organisations" refers to international bodies whose memberships are open to the relevant bodies of the Parties.

Article 7.8. Recognition

1. For the purposes of the fulfilment of its standards or criteria for the authorisation, licensing or certification of services suppliers, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in the other Party.

2. The Parties shall encourage their relevant competent bodies to enter into negotiations on recognition of professional qualifications, licenses, or registration procedures with a view to the achievement of early outcomes.

3. Any arrangement reached pursuant to paragraph 2 of this Article shall be consistent with this Agreement.

Article 7.9. Monopolies and Exclusive Service Suppliers

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

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

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

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

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

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

Article 7.10. Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 7.9 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. A Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1 of this Article. 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 domestic laws and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 7.11. Payments and Transfers

1. Except under the circumstances envisaged in Article 7.12 (Restrictions to Safeguard the Balance-of-Payments), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the IMF 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, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 7.12 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the IMF.

Article 7.12. 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 in respect of which it has obligations under Article 7.3 (Market Access) and Article 7.4 (National Treatment), including on payments or transfers for transactions relating to such obligations. It is recognised that particular pressures on the balance-of-payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 of this Article:

(a) shall not discriminate among WTO Members;

(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;

(e) shall not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article;

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article 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 programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be promptly notified to the other Party.

5. The Party adopting any restrictions under paragraph 1 of this Article shall commence consultations with the other Party in order to review the restrictions adopted by it.

Article 7.13. Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 of this Article is not practicable, such information shall be made otherwise publicly available.

3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1 of this Article. Each Party shall also use

the existing enquiry points or, when they do not exist, establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters.

Article 7.14. Disclosure of Confidential Information

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 7.15. Relationship with Chapter 10 (Investment)

1. Chapter 10 (Investment) does not apply to measures adopted or maintained by a Party to the extent that they are covered by this Chapter.

2. Notwithstanding paragraph 1 of this Article, the following Articles and Section of Chapter 10 (Investment) shall apply, mutatis mutandis, to any measure affecting the supply of services by a service supplier of a Party through commercial presence in the territory of the other Party:

(a) Article 10.3 (Minimum Standard of Treatment);

(b) Article 10.6 (Compensation for Losses);

(c) Article 10.10 (Expropriation);

(d) Article 10.11 (Transfers);

(e) Article 10.12 (Subrogation); and

(f) Section 10-B (Investment Disputes between a Party and an Investor),

but only to the extent that any such measures relate to a covered investment and an obligation under Chapter 10 (Investment), regardless of whether such a service sector is scheduled in the Party's Schedule of Specific Commitments in Annexes 7-A (Sri Lanka) and 7-B (Singapore).

Article 7.16. Denial of Benefits

1. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter:

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

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

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

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

(c) to a service supplier of the other Party where the Party establishes that the service supplier is owned or controlled by persons of a non-Party and that it has no substantive business operations in the territory of a Party.

Chapter 8. TELECOMMUNICATIONS

Article 8.1. Definitions

For purposes of this Chapter:

(a) "broadcasting" means the transmission of signs or signals via any technology for the reception and/or display of aural and/or visual programme signals by all or part of the public;

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

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

(d) “enterprise” means an entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation, and a branch of an enterprise;

(e) “essential facilities” means facilities of a public telecommunications network or service that:

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

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

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

(g) “international mobile roaming service” means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables end-users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end-user’s home public telecommunications network is located;

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

(i) “licence” means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for such person to offer a telecommunications service, including concessions, permits, or registrations;

(j) “major supplier” means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(i) control over essential facilities; or

(ii) use of its position in the market;

(k) “network element” means a facility or equipment used in supplying a public telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;

(l) “non-discriminatory” means treatment no less favourable than that accorded to any other user of like public telecommunications services in like circumstances, including with respect to timeliness;

(m) “number portability” means the ability of end-users of public telecommunications services to retain the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

(n) “physical co-location” means physical access to and control over space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;

(o) “public telecommunications network” means telecommunications infrastructure used to provide public telecommunications services between defined network termination points;

(p) “public telecommunications service” means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving the real-time transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer’s information;

(q) “reference interconnection offer” means an interconnection offer extended by a major supplier and filed with, approved by, or determined by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection, such that a supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;

“service supplier” means a person of a Party that seeks to supply or supplies a service;

“telecommunications” means the transmission and reception of signals by any electromagnetic means, including by photonic means;

“telecommunications regulatory body” means a body or bodies responsible for the regulation of telecommunications;

“user” means a service consumer or a service supplier; and

“virtual co-location” means an arrangement whereby a requesting supplier seeking co-location may specify equipment to be used in the premises of a major supplier but does not obtain physical access to such premises and allows the major supplier to install, maintain, and repair such equipment.

Article 8.2. Scope and Coverage

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

2. This Chapter shall not apply to any measure affecting broadcasting.

3. Nothing in this Chapter shall be construed to require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally.

Article 8.3. Access to and Use of Public Telecommunications Services 1

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications service offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions.

2. Each Party shall ensure that service suppliers of the other Party are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with, a public telecommunications network;

(b) provide services to individual or multiple end-users over leased or owned circuits;

(c) connect owned or leased circuits with public telecommunications networks or services, or with circuits leased or owned by another enterprise;

(d) perform switching, signalling, processing or conversion functions; and

(e) use operating protocols of their choice.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3 of this Article, a Party may take such measures as are necessary to ensure the security and confidentiality of messages and protect the privacy of personal data of end-users of public telecommunications networks or services, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5 of this Article, conditions

for access to and use of public telecommunications networks or services may include:

(a) requirements to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(b) requirements, where necessary, for the inter-operability of such networks or services;

(c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks; and

(d) licensing, permit, registration or notification procedures which, if adopted or maintained, are transparent and provide for the processing of applications filed thereunder in accordance with the Party’s domestic laws and regulations.

1For greater certainty, this Article does not prohibit a Party from requiring a service supplier to obtain a licence to supply any public telecommunications service within its territory.

Article 8.4. Competitive Safeguards on Major Suppliers

Each Party shall introduce or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. Such anti- competitive practices shall include in particular:

(a) engaging in anti-competitive cross-subsidisation, price squeeze or predatory pricing;

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

(c) not making available to other suppliers of public telecommunications networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Article 8.5. Interconnection

1. Each Party shall ensure that any service supplier authorised to provide public telecommunications networks or services has the right and obligation to negotiate interconnection with other suppliers of public telecommunications networks or services. Interconnection should be agreed on the basis of commercial negotiations (2) between the parties concerned. (3)

2. The telecommunications regulatory body of each Party shall ensure that any supplier authorised to provide public telecommunications networks or services that acquires information from another supplier of public telecommunications networks or services during the process of negotiating interconnection arrangements, uses that information solely for the purpose for which it was supplied and respects, at all times, the confidentiality of information transmitted or stored.

(2) For further clarity, service suppliers authorised to provide public telecommunications networks or services shall freely determine the terms, conditions and rates that will be included in their interconnection agreements by negotiating among themselves. Each Party shall ensure that if such negotiations fail, any one of the parties may have recourse to the telecommunications regulatory body for resolution of disputes regarding appropriate terms, conditions and rates for interconnection. The telecommunications regulatory body shall conduct the dispute settlement procedure within the scope of relevant domestic legislation and resolve the dispute within a reasonable period of time.

(3) For Sri Lanka, all interconnection agreements will need to be approved by the telecommunications regulatory body of Sri Lanka.

Article 8.6. Interconnection with a Major Supplier

1. Each Party shall ensure that any major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of the other Party at any technically feasible point in the major supplier's network. Such interconnection shall be provided:

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates, and of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers, or for like services of its subsidiaries or other affiliates;

(b) in a timely fashion, on terms and conditions (including technical standards and specifications) and at cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

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

2. Each Party shall ensure that the procedures applicable for interconnection with a major supplier in its territory are made publicly available.

3. Each Party shall provide a means for suppliers of public telecommunications networks or services of the other Party to obtain the rates, terms and conditions necessary for interconnection offered by a major supplier. Such means include, at a

minimum, ensuring the public availability of:

(a) interconnection agreements in effect between a major supplier in its territory and other suppliers of public telecommunications networks or services in its territory;

(b) rates, terms and conditions for interconnection with a major supplier set by the telecommunications regulatory body; or

(c) a reference interconnection offer.

4. Further to paragraphs 2 and 3 of this Article, each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications networks or services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through the following options:

(a) a reference interconnection offer or another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services; or

(b) the terms and conditions of an interconnection agreement in effect.

5. In addition to the options provided in paragraph 4 of this Article, each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through negotiation of a new interconnection agreement.

Article 8.7. Co-Location by Major Suppliers

1. Each Party shall endeavour to ensure that a major supplier in its territory provides, to suppliers of public telecommunications networks or services of the other Party in the Party's territory, physical co-location of equipment necessary for interconnection, or access to unbundled network elements on a timely basis and on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and based on a generally available offer.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory provides an alternative solution such as facilitating virtual co-location on a timely basis and on terms and conditions, and at cost-oriented rates, that are reasonable, non- discriminatory and based on a generally available offer.

3. Each Party may determine, in accordance with its laws and regulations, which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2 of this Article. When making this determination, the Party shall take into account factors such as the state of competition in the market in which co- location is required, whether such premises can feasibly be economically or technically substituted in order to provide a competing service, or other specified public interest factors.

4. If a Party does not require that a major supplier offer co-location at certain premises, it nonetheless shall allow service suppliers to request that those premises be offered for co-location consistent with paragraph 1 of this Article, without prejudice to the Party's decision on such a request.

Article 8.8. Access to Poles, Ducts, Conduits and Rights-of-Way Owned or Controlled by Major Suppliers

1. Each Party shall endeavour to ensure that a major supplier in its territory provides, to suppliers of public telecommunications networks or services of the other Party in the first Party's territory, access to poles, ducts, conduits, and rights-of-way, or any other structures as determined by the Party, owned or controlled by the major supplier on a timely basis and on terms and conditions, and at rates, that are reasonable, non- discriminatory, and transparent and subject to technical feasibility.

2. Each Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, rights-of-way or any other structures to which it requires major suppliers in its territory to provide access under paragraph 1 of this Article. When making this determination, the Party shall take into account factors such as the competitive effect of lack of such access, whether such structures can feasibly be economically or technically substituted in order to provide a competing service, or other specified public interest factors.

Article 8.9. Licensing Process

1. When a Party requires a supplier of public telecommunications networks or services to have a licence, the Party shall

ensure the public availability of the following information:

(a) all the licensing criteria and procedures it applies;

(b) the period it normally requires to reach a decision concerning an application for a licence; and

(c) the terms and conditions of all licences in effect.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the:

(a) denial of a licence;

(b) imposition of supplier-specific conditions on a licence;

(c) revocation of a licence; or

(d) refusal to renew a licence.

Article 8.10. Allocation and Use of Scarce Resources

1. Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner.

2. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

3. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered as inconsistent with Article 7.3 (Market Access) of Chapter 7 (Trade in Services) or Article 10.7 (Performance Requirements) of Chapter 10 (Investment). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may have the effect of limiting the number of suppliers of a public telecommunications network or service, provided it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account present and future needs, and spectrum availability.

4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services. To this end, each Party shall have the authority to use appropriate mechanisms, including auctions, to assign spectrum for commercial use.

Article 8.11. Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.

2. Such obligations shall not be regarded as anti-competitive per se, provided they are administered in a transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and not be more burdensome than necessary for the kind of universal service defined by each Party.

3. Where applicable, any fund that has been set up by a Party for the purposes of universal services shall be used in accordance with the relevant legislation of the Party.

Article 8.12. Number Portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability, in accordance with its laws and regulations, on reasonable terms and conditions, and without impairment to quality and reliability of the service or convenience to the end-users.

Article 8.13. International Submarine Cable Systems

1. Where under national law and regulation, a Party has authorised a supplier of public telecommunications services in its territory to operate a submarine cable system (including the landing facilities and services) as a public telecommunications service, that Party shall ensure that such supplier provides that public telecommunications service to suppliers of public telecommunications services of the other Party on reasonable terms, conditions, and rates that are no less favourable than such supplier offers to any other supplier of public telecommunications services in like circumstances.

2. Where submarine cable landing facilities and services cannot be economically or technically substituted, and a major supplier of public international telecommunication services that controls such cable landing facilities and services has the ability to materially affect the price and supply for those facilities and services for the provision of public telecommunications services in a Party's territory, that Party shall ensure that such major supplier:

(a) permits suppliers of public telecommunications services of the other Party to:

(i) use the major supplier's cross-connect links in the submarine cable landing station to connect their equipment to backhaul links and submarine cable capacity of any supplier of telecommunications; and

(ii) co-locate their transmission and routing equipment used for accessing submarine cable capacity and backhaul links at the submarine cable landing station at terms, conditions, and cost-oriented rates, that are reasonable and non-discriminatory; and

(b) provides suppliers of telecommunications of the other Party submarine cable capacity, backhaul links and cross-connect links in the submarine cable landing station at terms, conditions and rates that are reasonable and non- discriminatory.

Article 8.14. Independent Regulators

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest (4) or maintain an operating or management role in any supplier of public telecommunications services.

2. Each Party shall ensure that the regulatory decisions and procedures of its telecommunications regulatory body or other competent authority related to provisions contained in this Chapter are impartial with respect to all market participants.

3. A Party shall not accord more favourable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of the other Party on the basis that the supplier receiving more favourable treatment is owned by the national government of that Party.

(4) This paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of public telecommunications services.

Article 8.15. International Mobile Roaming

1. The Parties shall endeavour to co-operate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade between the Parties and enhance consumer welfare.

2. A Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:

(a) ensuring that information regarding retail rates is easily accessible to consumers; and

(b) minimising impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Party from the territory of the other Party can access telecommunications services using the devices of their choice, including mobile devices.

3. The Parties recognise that a Party, when it has the authority to do so, may choose to adopt or maintain measures affecting rates for wholesale international roaming services with a view to ensuring that those rates are reasonable. If a Party considers it appropriate, it may co-operate and implement mechanisms with the other Party to facilitate the implementation of those measures, including by entering into arrangements with the other Party.

4. If a Party ("the first Party") chooses to regulate rates or conditions for wholesale international mobile roaming services, it shall ensure that a supplier of public telecommunications services of the other Party ("the second Party") has access to the regulated rates or conditions for wholesale international mobile roaming services for its customers roaming in the territory of the first Party in circumstances in which: (5)

(a) the second Party has entered into an arrangement with the first Party to reciprocally regulate rates or conditions for wholesale international mobile roaming services for suppliers of both Parties; (6) or

(b) in the absence of an arrangement of the type referred to in sub-paragraph (a) above, the supplier of public

telecommunications services of the second Party, of its own accord:

(i) makes available to suppliers of public telecommunications services of the first Party wholesale international mobile roaming services at rates or conditions that are reasonably comparable to the regulated rates or conditions; (7) and

(ii) meets any additional requirements (8) that the first Party imposes with respect to the availability of the regulated rates or conditions.

The first Party may require suppliers of the second Party to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

5. A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services in accordance with paragraph 4 of this Article shall be deemed to be in compliance with its obligations under Article 8.3 (Access to and Use of Public Telecommunications Services) and Article 8.6 (Interconnection with a Major Supplier) with respect to international mobile roaming services.

6. Each Party shall endeavour to ensure that:

(a) suppliers of public telecommunications services in its territory; or

(b) its telecommunications regulatory body, make publicly available retail rates for international mobile roaming services.

7. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

(5) For greater certainty, neither Party shall, solely on the basis of any obligations owed to it by the first Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any existing international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale international mobile roaming services that is provided under this Article.

(6) For greater certainty, access under this sub-paragraph to the rates or conditions regulated by the first Party shall be available to a supplier of the second Party only if such regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement referred to in this subparagraph. The telecommunications regulatory body of the first Party shall, in the case of disagreement, determine whether the rates or conditions are reasonably comparable.

(7) For the purposes of this subparagraph, rates or conditions that are reasonably comparable means rates or conditions agreed to be such by the relevant suppliers or, in the case of disagreement, determined to be such by the telecommunications regulatory body of the first Party.

(8) For greater certainty, such additional requirements may include, for example, that the rates provided to the supplier of the second Party reflect the reasonable cost of supplying international mobile roaming services by a supplier of the first Party to a supplier of the second Party, as determined through the methodology of the first Party.

Article 8.16. Resolution of Telecommunications Disputes

1. Each Party shall ensure that:

Recourse

(a) service suppliers authorised by the telecommunications regulatory body of a Party to provide public telecommunications networks or services in its territory may have recourse to the telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Articles 8.3 to 8.15 of this Chapter;

(b) if the telecommunications regulatory body or other relevant body of the Party declines to initiate any action on a request to resolve a dispute, it shall, upon request, provide a written explanation for its decision within a reasonable period of time;

(c) suppliers of public telecommunications networks or services requesting interconnection with a major supplier in its territory will have recourse, either:

(i) at any time; or

(ii) after a reasonable or specified period of time which has been made publicly known,

to an independent domestic body, which may be a telecommunications regulatory body as referred to in Article 8.14 (Independent Regulators), to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

Reconsideration

(d) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may appeal to or petition the telecommunications regulatory body, or other relevant body, including judicial body, in accordance with its laws and regulations, to reconsider that determination or decision. No Party may permit the making of an application for reconsideration to constitute grounds for non- compliance with the determination or decision of the telecommunications regulatory body, unless the telecommunications regulatory body or other relevant body issues an order that the determination or decision not be enforced while the proceeding is pending. A Party may limit the circumstances under which an application for reconsideration is available, in accordance with its laws and regulations.

Judicial Review

2. No Party may permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the relevant judicial body issues an order that the determination or decision not be enforced while the proceeding is pending.

Article 8.17. Transparency

1. Each Party shall ensure that when its telecommunications regulatory body seeks input for a proposal for a regulation, that body shall:

(a) make the proposal public or otherwise available to any interested persons;

(b) include an explanation of the purpose of and reasons for the proposal;

(c) provide interested persons with adequate public notice of the ability to

comment and reasonable opportunity for such comment;

(d) to the extent practicable, make publicly available all relevant comments filed with it; and

(e) respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation.

2. A Party shall ensure that its measures relating to public telecommunications networks or services are made publicly available, including those pertaining to:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces;

(c) conditions for attaching terminal or other equipment to the public telecommunications network;

(d) notification, permit, registration or licensing requirements, if any;

(e) general procedures relating to resolution of telecommunications disputes provided for in Article 8.16 (Resolution of Telecommunications Disputes); and

(f) any measures of the telecommunications regulatory body through which the responsibility for preparing, amending and adopting standards-related measures affecting access and use are delegated to other bodies.

Article 8.18. Flexibility In the Choice of Technology

No Party may prevent suppliers of public telecommunications networks or services from choosing the technologies they wish to use to supply their services, subject to its national laws and regulations or requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting such choice is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade. For greater certainty, a Party adopting such measures shall do so consistent with Article 8.17 (Transparency).

Article 8.19. Relationship to other Chapters

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

Chapter 9. ELECTRONIC COMMERCE

Article 9.1. Definitions

For purposes of this Chapter:

(a) “computing facilities” means computer servers and storage devices for processing or storing information for commercial use, and does not include facilities used for the supply of public telecommunications services (“PTS”);

(b) “covered person” means:

(a) an investment as defined in Article 10.1 (Definitions);

(b) an investor of a Party as defined in Article 10.1 (Definitions), but does not include an investor in a financial institution; (1) or

(c) a service supplier of a Party as defined in Article 7.1 (Definitions),

but does not include a “financial institution” or a “financial service supplier” as defined in Paragraph 8 (Definitions) of the Annex on Financial Services to Chapter 7 (Trade in Services).

(c) “broadcasting” means the transmission of signs or signals via any technology for the reception and/or display of aural and/or visual programme signals by all or part of the public;

(d) “digital products” means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, and transmitted electronically. For greater certainty, digital products do not include digitised representations of financial instruments, including money;

(e) “electronic authentication” means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;

(f) “electronic transmission or transmitted electronically” means transmissions made using any electromagnetic means, including by photonic means;

(g) “personal data” means any data, including information, about an identified or identifiable natural person;

(h) “trade administration documents” means forms a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

(1) For the purposes of this Chapter only, “financial institution” means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located.

Article 9.2. Scope and General Provisions

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

2. The Parties recognise the economic growth and opportunities provided by electronic commerce, and the importance of promoting consumer confidence in electronic commerce and of avoiding barriers to its use and development.

3. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of:

(a) Chapter 7 (Trade in Services), including:

(i) any applicable terms, limitations and conditions on market access; and

(ii) any applicable conditions and qualifications on national treatment,

adopted or maintained in accordance with Article 7.6 (Schedule of Specific Commitments) and specified in the Schedules of Specific Commitments in Annex 7-A (Sri Lanka) and Annex 7-B (Singapore); and

(b) Chapter 10 (Investment), including the measures adopted or maintained in accordance with paragraph 8 Article 12.2 (Scope and Coverage) and set out in the Schedules in Annex 10-B (Sri Lanka) and Annex 10-C (Singapore) .

4. The obligations contained in Article 9.4 (Non-Discriminatory Treatment of Digital Products), Article 9.9 (Cross-Border Transfer of Information by Electronic Means) and Article 9.10 (Location of Computing Facilities) shall not apply to the following:

(a) in respect of Chapter 7 (Trade in Services):

(i) the terms, limitations and conditions on market access; and

(ii) the conditions and qualifications on national treatment,

adopted or maintained in accordance with Article 7.6 (Schedule of Specific Commitments) and specified in the Schedules of Specific Commitments in Annex 7-A (Sri Lanka) and Annex 7-B (Singapore); and

(b) in respect of Chapter 10 (Investment), the measures adopted or maintained in accordance with paragraph 8 of Article 12.2 (Scope and Coverage) and set out in the Schedules in Annex 10-B (Sri Lanka) and Annex 10-C (Singapore).

5. This Chapter shall not apply to:

(a) government procurement; or

(b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

Article 9.3. Customs Duties

1. Each Party shall maintain its practice of not imposing customs duties on electronic transmissions between the Parties, consistent with paragraph 3 of the WTO Ministerial Decision of 13 December 2017 in relation to the Work Programme on Electronic Commerce (WT/MIN(17)/W/6) as well as future WTO Ministerial Decisions which continue the non-imposition of custom duties on electronic transmissions.

2. Each Party reserves the right to adjust its practice referred to in paragraph 1 of this Article in accordance with any future WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

Article 9.4. Non-Discriminatory Treatment of Digital Products

1. No Party may accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of the other Party, or to digital products of which the author, performer, producer, developer or owner is a person of the other Party than it accords to other like digital products. (2)

2. The Parties understand that this Article does not apply to subsidies or grants provided by a Party including government-supported loans, guarantees and insurance.

3. This Article does not apply to any measure affecting broadcasting.

(2) For greater certainty, to the extent that a digital product of a non-Party is a “like digital product”, it will qualify as an “other like digital product” for the purposes of this paragraph.

Article 9.5. Domestic Electronic Transactions Framework

1. The Parties shall, to the extent possible, maintain domestic legal frameworks governing electronic transactions consistent with the principles of the UN Convention on the Use of Electronic Communications in International Contracts (New York, 2005) to which both Parties are party to.

2. The Parties shall endeavour to avoid any unnecessary regulatory burden on electronic transactions.

Article 9.6. Electronic Authentication and Electronic Signatures

1. Except where otherwise provided for in its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form as provided within the framework of the UN Convention on the Use of Electronic Communications in International Contracts (New York, 2005).

2. No Party may adopt or maintain measures for electronic authentication that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or

(b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication.

3. Notwithstanding paragraph 2 of this Article, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards prescribed, or be certified by an authority accredited, in accordance with the Party's laws and regulations.

4. The Parties shall encourage the use of interoperable electronic authentication.

Article 9.7. Personal Data Protection

1. The Parties recognise the economic and social benefits of protecting the personal data of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

2. To this end, each Party shall adopt such domestic legal framework, that each Party may consider adequate, for the protection of the personal data of users of electronic commerce.

Article 9.8. Paperless Trading

The Parties shall endeavour to:

(a) make trade administration documents available to the public in electronic form; and

(b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 9.9. Cross-Border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 of this Article to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 9.10. Location of Computing Facilities

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 of this Article to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 9.11. Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities when they engage in electronic commerce.

2. For the purposes of this Article, fraudulent and deceptive commercial refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example, a practice of:

(a) making a misrepresentation of material fact, including factual misrepresentation, that causes significant detriment to the economic interests of a misled consumer;

(b) failing to deliver products or provide services to a consumer after the consumer is charged; or

(c) charging or debiting a consumer's financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.

4. The Parties recognise the importance of co-operation between their respective national consumer protection agencies or other relevant bodies on activities related to cross- border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the co-operation sought includes cooperation with respect to online commercial activities.

Article 9.12. Co-operation

Recognising the global and inter-connected nature of electronic commerce, the Parties shall endeavour to:

(a) work together to assist small and medium enterprises to overcome obstacles encountered in the use of electronic commerce;

(b) explore collaborative efforts in the recognition of professional certifications in the ICT sector; and

(c) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:

(i) personal information protection;

(ii) security in electronic communications;

(iii) authentication; and

(iv) e-Government.

Chapter 10 . Investment

Article 10.1 . Definition

For the purposes of this Chapter:

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

(b) "disputing parties" means the claimant and the respondent;

(c) "disputing party" means either the claimant or the respondent;

(e) "enterprise" means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation; and a branch of an enterprise;

(f) "enterprise of a Party" means an enterprise constituted or organised under the law of a Party, and a branch (1) located in the territory of a Party and carrying out business activities there;

(g) "freely useable currency" means any currency as determined by the IMF under the Articles of Agreement of the International Monetary Fund and any amendments thereto;

(h) "government procurement" means the process by which a government obtains the use of or acquires goods or services,

or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;

(i) "ICLP" means the Arbitration Centre of the Institute for the Development of Commercial Law and Practice in Sri Lanka;

(j) "intellectual property rights" means:

(i) copyright and related rights;

(ii) patents;
(iii) trademarks;

(iv) designs;

(v) layout-designs (topographies) of integrated circuits;

(vi) geographical indications; and

(vii) protection of undisclosed information;

(k) "investment" means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, (2) which includes the commitment of capital or other resources, a certain duration, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include: (3)(4)

(i) an enterprise;

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

(iii) bonds, debentures, loans and other debt instruments, (5)(6) of an enterprise;

(iv) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(v) claims to money (7) or to other assets, or to any contractual performance having an economic value associated with an investment;

(vi) intellectual property rights; (8)

(vii) licences, authorisations, permits, and similar rights conferred pursuant to applicable domestic law;

(viii) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges; (9)

(l) "investor of a Party" means a Party, a natural person or an enterprise of a Party recognised as a legal entity by the laws of the other Party, that has made a covered investment in the territory of the other Party;

(m) "investor of a non-Party" means, with respect to a Party, an investor that has made an investment in the territory of that Party, that is not an investor of either Party;

(n) "measures" means any measure taken by a Party, whether in the form of a law, regulation, rule, procedure, decision or administrative action, and includes measures taken by:

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

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

(o) "national" means"

(i) with respect to the Republic of Singapore, any person who is a citizen of

Singapore within the meaning of its Constitution and its domestic laws; and

(ii) with respect to Sri Lanka, any person who is a citizen of Sri Lanka within the meaning of its Constitution and its domestic laws;

(p) "New York Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted at the United Nations in New York on 10 June 1958;

(q) “respondent” means the Party that is a party to an investment dispute;

(r) “return” means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income. For the purposes of the definition of “investment”, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

(s) “SIAC” means the Singapore International Arbitration Centre;

(t) “SLNAC” means the Sri Lanka National Arbitration Centre; and

(u) “UNCITRAL Arbitration Rules” means the arbitration rules of the United Nations Commission on International Trade Law, as adopted by the United Nations General Assembly on 15 December 1976, as revised in 2010.

(1) For greater certainty, a branch of a legal entity of a non-Party shall not be considered as an enterprise of a Party.

(2) Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take.

(3) For greater certainty, donation does not constitute an investment.

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

(5) Some forms of debt, such as bonds, debentures, and long term notes, are more likely to have the characteristics of an investment, while other forms of debt such as claims to payment that are immediately due and result from the sale of goods or services, are not likely to have such characteristics.

(6) For the purpose of this Chapter, “loans and other debt instruments” described in sub-paragraph (k)(iii) of this Article and “claims to money or to any contractual performance” described in sub-paragraph (k)(v) of this Article refer to assets which relate to a business activity associated with an investment and do not refer to assets which are of a personal nature, unrelated to any business activity associated with an investment.

(7) For greater certainty, claims to money does not include:
(a) claims to money that arise solely from commercial contracts for the sale of goods or services by a natural person or enterprise in the territory of a Party to a natural person or enterprise in the territory of the other Party;
(b) the domestic financing of such contracts; or
(c) any order, judgment or arbitral award related to sub-paragraph (a) or (b) above.

(8) In accordance with the relevant laws of the Party admitting the investment.

(9) For greater certainty, market share, access to market, expected gains, and opportunities for profit making are not, by themselves, investments.

Section 10-A . INVESTMENT PROTECTION

Article 10.2. Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) investors of the other Party; and

(b) all investments made by investors of one Party in the territory of the other Party, whether made before or after the entry into force of this Agreement.

2. This Chapter shall not apply to:

(a) government procurement by a Party;

(b) services supplied in the exercise of governmental authority within the territory of the respective Party. For purposes of this Chapter, a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;

(c) subsidies or grants provided by a Party, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to investors of the Party or investments of investors of the Party, including government-supported loans, guarantees and insurance;

(d) any measures adopted or maintained by a Party to the extent that they are covered by Chapter 7 (Trade in Services). Notwithstanding the foregoing, Article 10.3 (Minimum Standard of Treatment), Article 10.6 (Compensation for Losses), Article 10.10 (Expropriation), Article 10.11 (Transfers), Article 10.12 (Subrogation) and Section 10-B (Investment Disputes Between a Party and an Investor) shall apply, mutatis mutandis, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of the other Party pursuant to Chapter 7 (Trade in Services), but only to the extent that any such measures relate to an investment and an obligation under this Chapter, regardless of whether such a service sector is scheduled in the Party's Schedule of Specific Services Commitments in Annex 7-A (Sri Lanka) and Annex 7-B (Singapore); and

(e) any taxation measure, including measures taken to enforce taxation obligations.

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

4. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail over this Chapter to the extent of the inconsistency. For the avoidance of doubt, this paragraph shall not be deemed to impose additional obligations on a Party other than the obligations set out in this Chapter in respect of any dispute under Section 10-B (Investor-State Dispute Settlement).

5. The requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security, to the extent that such bond or financial security is an investment.

6. For greater certainty, the provisions of this Chapter do not impose any obligation on either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

7. In the event that a Party extends protection to the establishment, acquisition or expansion of investments to any non-Party after the signing of this Agreement, the other Party shall have the right to initiate a review of the commitments under this Chapter, to extend the provisions of this Chapter to the establishment, acquisition and expansion of investments in like circumstances.

8. Articles 10.4 (National Treatment), 10.5 (Most-Favoured-Nation Treatment), 10.7 (Performance Requirements) and 10.8 (Senior Management and Board of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex 10-B (Sri Lanka) and Annex 10-C (Singapore).

9. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and set out in its Schedule to Annex 10-B (Sri Lanka) and Annex 10-C (Singapore), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

10. Articles 10.4 (National Treatment) and 10.5 (Most-Favoured-Nation Treatment) do not apply to any measure that is an exception to, or derogation from, a Party's obligations under Chapter 13 (Intellectual Property) and the TRIPS Agreement, as specifically provided for in that Agreement.

Article 10.3. Minimum Standard of Treatment

1. Each Party shall accord to investments treatment in accordance with customary international law minimum standard of

treatment of aliens, (10) including “fair and equitable treatment” and “full protection and security”.

2. For greater certainty, paragraph 1 of this Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation to provide:

(a) “fair and equitable treatment” requires the Parties not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process; and

(b) “full protection and security” requires each Party to provide the level of police protection in relation to the physical security of investors and investments as required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

(10) Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to this Article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Article 10.4. National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, (11) to its own investors with respect to the management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the management, conduct, operation, and sale or other disposition of investments.

(11) For greater certainty, whether treatment is accorded in “like circumstances” depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

Article 10.5. Most-Favoured-Nation Treatment

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

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

3. For greater certainty, paragraphs 1 and 2 of this Article shall not be construed as granting to investors options or procedures for the settlement of disputes other than those set out in Section 10-B (Investor-State Dispute Settlement).

4. The treatment, as set forth in paragraphs 1 and 2 of this Article, shall not include:

(a) any preferential treatment accorded to investors or their investments under any existing bilateral, regional, multilateral or international agreements or arrangements or any forms of economic and regional cooperation with any non-Party;

(b) in the case of Singapore, any measure that accords preferential treatment to ASEAN member states under any agreements between all ASEAN member states, in force or signed after the date of entry into force of this Agreement. For the avoidance of doubt, such agreements do not include agreements between ASEAN member states and non-ASEAN member states; and

(c) in the case of Sri Lanka, any measure that accords preferential treatment to SAARC member states under any agreements between all SAARC member states, in force or signed after the date of entry into force of this Agreement. For the avoidance of doubt, such agreements do not include agreements between SAARC member states and non-SAARC member states.

Article 10.6 . Compensation for Losses

1. Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, insurrection, riot, or any other similar event in the territory of the latter Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Party accords to investments of its own investors or investments of investors of any non- Party, whichever is more favourable, to the investment of the investor of the former Party.

2. Notwithstanding paragraph 1 of this Article, if an investor of a Party, in the situations referred to in paragraph 1 of this Article, suffers a loss in the territory of the other Party resulting from:

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

(b) destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,
the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss.

Article 10.7 . Performance Requirements

The provisions of Annex 1A to the TRIMs Agreement, which are not specifically mentioned in or modified by this Chapter, shall apply, mutatis mutandis, to this Chapter.

Article 10.8. Senior Management and Boards of Directors

1. A Party shall not require that an enterprise of that Party that is an investment appoint to senior management positions natural persons of any particular nationality.

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

3. For the avoidance of doubt, nothing in this Article shall be construed to limit a Party from exercising its rights as a shareholder.

Article 10.9. Special Formalities and Treatment of Information

1. Nothing in Article 12.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investments, such as residency requirements for registration or a requirement that investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and investments pursuant to this Chapter.

2. Notwithstanding Article 12.4 (National Treatment) and Article 12.5 (Most-Favoured- Nation Treatment), a Party may require an investor of the other Party or its investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 10.10. Expropriation (12)

1. Neither Party shall nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") an investment unless such a measure is taken on a non-discriminatory basis, for a public purpose, in accordance with due process of law and upon payment of compensation in accordance with this Article.

2. The expropriation shall be accompanied by the payment of prompt, adequate and effective compensation. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge. Such compensation shall be effectively realisable, freely transferable in accordance with Article 10.11 (Transfers) and made without delay. The compensation shall include interest at an appropriate

and reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

3. Notwithstanding paragraphs 1 and 2 of this Article, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation.

4. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 13 (Intellectual Property) and the TRIPS Agreement. (13)

(12) Article 10.10 (Expropriation) is to be interpreted in accordance with Annex 12-A (Expropriation).

(13) For greater certainty, the Parties recognise that, for the purposes of this Article, the term “revocation” of intellectual property rights includes the cancellation or nullification of such rights, and the term “limitation” of intellectual property rights includes exceptions to such rights.

Article 10.11. Transfers

1. Each Party shall permit all transfers relating to an investment to be made freely and without delay (14) into and out of its territory. Such transfers include:

(a) the initial capital and additional amounts to maintain or increase an investment;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

(e) payments made pursuant to Article 10.6 (Compensation for Losses) and Article 10.10 (Expropriation); and

(f) payments arising under Section 10-B (Investor-State Dispute Settlement).

2. Each Party shall permit such transfers to be made in a freely convertible currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to an investment to be made as authorised or specified in an investment authorisation or other written agreement between the Party (15) and an investment or an investor of the other Party.

4. Notwithstanding paragraphs 1, 2, and 3 of this Article, a Party may delay or prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

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

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences; (16)

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings;

(f) social security, (17) public retirement or compulsory savings schemes; or

(g) labour and severance entitlements of employees.

5. Nothing in this Chapter shall affect the rights and obligations of the members of the IMF under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are consistent with such Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations

under this Chapter regarding such transactions, except under Article 17.6 (Restrictions to Safeguard the Balance-of-Payments) of Chapter 17 (Institutional, General and Final Provisions) or at the request of the IMF.

(14) A transfer shall be deemed to have been made without delay if effected within a reasonable period as is typically required for the completion of the relevant transfer formalities.

(15) In the case of Sri Lanka, the investment authorisation or written agreement may only be granted or entered into, in accordance with its written laws, by the Board of Investment of Sri Lanka or such other entities as may be designated by Sri Lanka.

(16) For greater certainty, the laws relating to criminal and penal offences include laws relating to the recovery of proceeds of crimes.

(17) For greater certainty, social security schemes include compulsory health insurance schemes.

Article 10.12. Subrogation

1. If a Party (or any agency, institution, statutory body or corporation designated by it) makes a payment to any of its investors under a guarantee, a contract of insurance or other form of indemnity it has granted in respect of an investment, against non- commercial risks, the other Party shall recognise the subrogation or transfer of any right or title in respect of such investment. The Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party (or any agency, institution, statutory body or corporation designated by it) has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the designated agency of the Party making the payment, pursue those rights and claims against the other Party.

Section 10-B. INVESTOR-STATE DISPUTE SETTLEMENT

Article 10.13. Scope

1. This Section shall apply to disputes between a Party and an investor of the other Party (18) concerning an alleged breach of Articles 10.3 (Minimum Standard of Treatment), 10.4 (National Treatment), 10.5 (Most-Favoured-Nation Treatment), 10.6 (Compensation for Losses), 10.9 (Special Formalities and Treatment of Information), 10.10 (Expropriation), 10.11 (Transfers), and 10.12 (Subrogation), which causes loss or damage to that investor or its investment.

2. This Section shall apply to losses and damages incurred in respect of activities carried out prior to the establishment of an investment only where such activities result in an investment being established in the Party hosting the investment.

3. This Section shall not apply to any dispute concerning any measure adopted or maintained or any treatment accorded to investors or investments by a Party in respect of tobacco or tobacco-related products (19) that is aimed at protecting or promoting human health.

(18) For greater certainty, a natural person possessing the nationality or citizenship of a Party shall not pursue a claim against that Party under this Agreement.

(19) For the purpose of this Chapter, “tobacco products” means products under HS Chapter 24 (Tobacco and Manufactured Tobacco Substitutes) and tobacco-related products falling outside HS Chapter 24 (Tobacco and Manufactured Tobacco Substitutes).

Article 10.14. Institution of Arbitral Proceedings

1. The disputing parties shall initially seek to resolve the dispute by consultations.

2. In the event of an investment dispute, the claimant may deliver to the respondent a written request for consultations.

Such written request shall specify the measure(s) complained of and how such measure(s) has given rise to the dispute.

3. Where the dispute cannot be resolved as provided for under paragraphs 1 and 2 of this Article within six (6) months from the date of receipt of such written request for consultations, the claimant shall exhaust any domestic remedy provided in the respondent State. In the event:

(a) the claimant has invoked domestic remedies and such remedies have not been concluded within a period of twenty-four (24) months from the date that notice invoking such domestic remedies was served on the respondent State; or
(b) the claimant has invoked and exhausted all domestic remedies,
the claimant may have recourse to the dispute settlement procedures in this Section.

4. Subject to paragraph 3 of this Article, a claimant may submit to arbitration: (20)

(a) a claim, on its own behalf, that the respondent has breached an obligation under this Agreement and the claimant has incurred loss or damage by reason of, or arising out of, that breach; or

(b) a claim, on behalf of an enterprise of the respondent that is an enterprise that the claimant owns or controls, (21) that the respondent has breached an obligation under this Agreement and the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

5. A claimant may submit the claim to arbitration:

(a) under the SIAC and the SIAC Arbitration Rules;

(b) to the ICLP or the SLNAC;

(c) under the UNCITRAL Arbitration Rules; or

(d) to any other arbitral institutions or under any other arbitration rules, if the disputing parties so agree.

6. Each Party hereby consents to the submission of a dispute to arbitration under sub- paragraphs 5(a), 5(b), 5(c) and 5(d) of this Article in accordance with the provisions of this Section, conditional upon:

(a) the submission of the dispute to such arbitration taking place within four (4) years from the time at which the claimant became aware, or should reasonably have become aware, of a breach of an obligation under this Agreement causing loss or damage to the claimant or its investment;

(b) the claimant not being an enterprise of the respondent until the claimant refers the dispute for arbitration pursuant to paragraph 5 of this Article;
(c) the claimant providing written consent to arbitration in accordance with the provisions set out in this Section; and

(d) the claimant providing written notice, which shall be delivered at least ninety (90) days before the claim is submitted, to the respondent of its intent to submit the dispute to such arbitration and which:

(i) states whether the claim is made on its own behalf or on behalf of the enterprise;

(ii) states the name and address of the claimant and, where a dispute is submitted on behalf of an enterprise, the name, address, and place of constitution of the enterprise;

(iii) nominates one of the fora referred to in paragraph 5 of this Article as the forum for dispute settlement;

(iv) is accompanied:
(A) for claims submitted to arbitration under sub-paragraph 4(a) of this Article, by the claimant's written waiver; and
(B) for claims submitted to arbitration under subparagraph 4(b) of this Article, by the claimant's and the enterprise's written waivers,
of any right to initiate or continue any proceedings (excluding proceedings for interim measures of protection referred to in paragraph 1 of Article 10.18 (Interim Measures of Protection and Diplomatic Protection)) before any of the other dispute settlement fora referred to in paragraph 5 of this Article in relation to the matter under dispute; and
(v) briefly summarises the alleged breach of the respondent under this Agreement (including the measures giving rise to the claim and the provisions alleged to have been breached), the legal and factual basis for the dispute, the loss or damage allegedly caused to the claimant or its investment by reason of that breach, the type of relief sought and the approximate amount of damages claimed.

7. The consent under paragraph 6 of this Article and the submission of a claim to arbitration under this Section shall satisfy the requirements of Article II of the New York Convention for an "agreement in writing".

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

20For greater certainty, a claimant shall not be entitled to bring a claim under both sub-paragraphs (a) and (b) of paragraph 4 of this Article in respect of the same alleged breach of an obligation.

21Anil enterprise is:
(a) owned by natural persons or enterprises of the other Party if more than fifty (50) percent of the equity interest in it is beneficially owned by natural persons or enterprises of that Party;
(b) controlled by natural persons or enterprises of the other Party if such natural persons or enterprises have the power to name a majority of its directors or otherwise to legally direct its actions.

Article 10.15. Constitution of Arbitral Tribunal

1. Unless the disputing parties otherwise agree, the arbitral tribunal shall be composed of three (3) arbitrators. Each disputing party shall appoint one arbitrator and the disputing parties shall agree upon a third arbitrator, who shall be the chairman of the arbitral tribunal. If an arbitral tribunal has not been established within ninety (90) days from the date on which the claim was submitted to arbitration, either because a disputing party failed to appoint an arbitrator or because the disputing parties failed to agree upon the chairman, the President of the Permanent Court of Arbitration ("PCA"), upon request of either disputing party, shall appoint, at his own discretion, the arbitrator or arbitrators not yet appointed.

2. For the purposes of paragraph 1 of this Article, in the event that the President of the PCA is a national or permanent resident of either Party, the Vice-President of the PCA or the officer next in seniority who is not a national or permanent resident of either Party shall be requested to make the necessary appointment or appointments.

Article 10.16. Place of Arbitration

1. Unless the disputing parties otherwise agree, the place of arbitration shall be in the territory of either Party.

2. In the event, the disputing parties cannot agree between the territories of the Parties as the place of arbitration, the tribunal shall determine the place of arbitration giving consideration to where the investment has been made, unless tribunal is of the opinion that there are reasons for the place of arbitration to be in the territory of the other Party or a non-Party.

Article 10.17. Conduct of the Arbitration

1. A tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and the applicable rules and principles of international law. 22

2. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 10.19 (Award).

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

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

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

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

respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 3 of this Article.

3. In the event that the respondent so requests within forty-five (45) days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 2 of this Article or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than one hundred and fifty (150) days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional thirty (30) days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed thirty (30) days.

4. When it decides a respondent's objection under paragraphs 2 or 3 of this Article, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

22The Parties confirm their mutual understanding that when domestic law of the Respondent is relevant to a claim, an arbitral tribunal established under this Section shall take into account the domestic law as a matter of fact.

Article 10.18. Interim Measures of Protection and Diplomatic Protection

1. Sub-paragraph 6(d)(iii) of Article 10.14 (Institution of Arbitral Proceedings) shall not prevent the claimant from seeking interim measures of protection, not involving the payment of damages or resolution of the substance of the matter in dispute before the courts or administrative tribunals of the respondent, prior to the institution of proceedings before any of the dispute settlement fora referred to in paragraph 3 of Article 10.14 (Institution of Arbitral Proceedings), for the preservation of its rights and interests.

2. Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to arbitration under this Section, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

Article 10.19. Award

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

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

2. Any arbitral award shall be final and binding upon the disputing parties. Each Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

3. Where a claim is submitted on behalf of an enterprise of the respondent, the arbitral award shall be made to the enterprise.

Article 10.20. Consolidation

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

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the President of the PCA and to all the disputing parties sought to be covered by the order, specifying the name and address of all the disputing parties sought to be covered by the order; the nature of the order sought; and the grounds on which the order is

sought.

3. Unless the President of the PCA finds within thirty (30) days after receiving a request in conformity with paragraph 2 of this Article that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the consolidation order otherwise agree, the tribunal established under this Article shall comprise three (3) arbitrators:

(a) one (1) arbitrator appointed by agreement of the disputing investors;

(b) one (1) arbitrator appointed by the respondent; and

(c) the chairman of the arbitral tribunal appointed by the President of the PCA provided that the chairman shall not be a national of either Party.

5. If, within the sixty (60) days after the President of the PCA receives a request made under paragraph 2 of this Article, the respondent fails or the disputing investors fail to appoint an arbitrator in accordance with paragraph 4 of this Article, the President of the PCA, on request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration in accordance to Article 10.14 (Institution of Arbitral Proceedings), have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

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

(b) assume jurisdiction over, and hear and determine one or more claims, whose determination it considers would assist in the resolution of the other claims; or

(c) instruct a tribunal previously established under Article 10.15 (Constitution of Arbitral Tribunal) to assume jurisdiction over and to hear and determine together, all or part of the claims, provided that:

(i) that tribunal, at the request of any disputing investor not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the disputing investors shall be appointed pursuant to sub-paragraph 4(a) and paragraph 5 of this Article; and

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

7. Where a tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration pursuant to Article 10.14 (Institution of Arbitral Proceedings) and that has not been named in a request made under paragraph 2 of this Article, may make a written request to the tribunal that it be included in any order issued under paragraph 6 of this Article, specifying:

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

(b) the nature of the order sought; and

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

The claimant shall provide the President of the PCA with a copy of his request.

8. A tribunal established pursuant to this Article shall conduct the proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 10.15 (Constitution of Arbitral Tribunal) shall not have jurisdiction to decide a claim or a part of a claim over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established pursuant to this Article may, pending its decision under paragraph 6 of this Article, order that the proceedings of a tribunal established under Article 10.15 (Constitution of Arbitral Tribunal) be stayed, unless the latter tribunal has already adjourned its proceedings.

Section 10-C . Final Provisions

Article 10.21 . Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party and to its investments if the investor is an enterprise owned or controlled by persons of a non-Party or the denying Party, and such enterprise has no substantive business operations in the territory of the other Party.

2. The denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the request of the other Party.

Article 10.22. Publication of International Agreements

1. To the extent possible, each Party shall ensure that international agreements pertaining to or affecting investors or investment activities to which a Party is a signatory shall be promptly published or otherwise made available in such a manner as to enable interested persons or parties to become acquainted with them.

2. To the extent possible, each Party shall make the international agreements of the kind referred to in paragraph 1 of this Article available on the Internet. Each Party shall, upon request by the other Party, respond to specific questions from and provide information to the other Party with respect to the international agreements referred to in paragraph 1 of this Article.

Article 10.23. General Exceptions 23

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party or its investors where like conditions prevail, or a disguised restriction on investments of investors of the other Party in the territory of a Party, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures:

(a) necessary to protect public morals or to maintain public order; (24)
(b) necessary to protect human, animal or plant life or health; (25)

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

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

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

(iii) safety; or

(d) relating to the conservation of exhaustible natural resources. (26)
(e) necessary to protect national treasures of artistic, historic or archaeological value;

(23) For greater certainty, the application of the general exception to these provisions shall not be interpreted so as to diminish the ability of governments to take measures where investors are not in like circumstances due to the existence of legitimate regulatory objectives.

(24) The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society. For greater certainty, the Parties understand that the fundamental interests of society include the maintenance of religious harmony.

(25) The Parties understand that the measures referred in sub-paragraph 1(b) of this Article include environmental measures necessary to protect human, animal or plant life or health.

(26) The Parties understand that the measures referred in sub-paragraph 1(d) of this Article include environmental measures relating to the conservation of living and non-living exhaustible natural resources.

Article 10.24. Savings Clause

1. For ten (10) years from the date of termination of this Agreement, the following provisions shall continue to apply to investments in existence at the date of termination, and without prejudice to the application thereafter of the rules of general international law:

(a) the provisions of this Chapter; and

(b) such other provisions in the Agreement as may be necessary for or consequential to the application or interpretation of this Chapter.

Article 10.25. Term of Investment Promotion and Protection Agreement

1. Subject to paragraph 2 of this Article, the Parties hereby agree that the Agreement between the Government of the Republic of Singapore and the Government of the Socialist Republic of Sri Lanka Concerning the Reciprocal Promotion and Protection of Investments Signed in Singapore on 09th May 1980 ("IPPA"), as well as all the rights and obligations derived from the said agreement, shall cease to have effect on the date of entry into force of this Agreement.
2. Any and all investments made pursuant to the IPPA before the entry into force of this Agreement will be governed by the rules of the said IPPA regarding any matter arising while the IPPA was in force. An investor may only submit an arbitration claim pursuant to the IPPA regarding any matter arising while the IPPA was in force, pursuant to the rules and procedures established in it, and provided that no more than three (3) years have elapsed since the date of entry into force of this Agreement.

Article 10.26. Corporate Social Responsibility

The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party.

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Paragraph 1 of Article 10.10 (Expropriation) addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

2. The second situation addressed by paragraph 1 of Article 10.10 (Expropriation) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

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

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

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

Articles 10.4 (National Treatment), 10.5 (Most-Favoured Nation Treatment), 10.7 (Performance Requirements) and 10.8 (Senior Management and Boards of Directors) shall not apply to any measure relating to the following sectors:

(a) agriculture;

(b) fisheries;

(c) forestry;

(d) mining and quarrying;

(e) real estate;

(f) arms and explosives; and

(g) traditional handicrafts.

Articles 10.4 (National Treatment), 10.5 (Most-Favoured-Nation Treatment), 10.7 (Performance Requirements) and 10.8 (Senior Management and Board of Directors) do not apply to any measure relating to:

Articles 10.4 (National Treatment), 10.5 (Most-Favoured-Nation Treatment), 10.7 (Performance Requirements) and 10.8 (Senior Management and Board of Directors) do not apply to any measure relating to:

(a) the collection, purification, treatment, disposal and distribution of water, including waste water, in Singapore;

(b) real estate, including but not limited to the ownership, purchase, development, maintenance, use, enjoyment, sale or other disposal of real estate in Singapore;

(c) the arms and explosives sector;

(d) the retention of a controlling interest by the Singapore Government in Singapore Technologies Engineering (the Company) and/or its successor body, including but not limited to controls over the appointment and termination of members of the Board of Directors, divestment of equity and dissolution of the Company for the purpose of safeguarding the security interest of Singapore; and

(e) broadcasting.

Chapter 11. GOVERNMENT PROCUREMENT

Article 11.1. Definitions

For the purposes of this Chapter:
(a) “commercial goods or services” means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

(b) “construction service” means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (“CPC”); (1)

(c) “electronic auction” means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

(d) “in writing” or “written” means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;

(e) “limited tendering” means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(f) “measure” means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

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

(h) “notice of intended procurement” means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

(i) “offsets” means any condition or undertaking that encourages local development or improves a Party’s balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

(j) “open tendering” means a procurement method whereby all interested suppliers may submit a tender;

(k) “privatised” means an entity that has been reconstituted from a procuring entity or part thereof to be a legal person acting in accordance with commercial considerations in the procurement of goods or services and that is no longer entitled to exercise governmental authority, even though the government possesses holdings thereof or appoints members of the Board of Directors thereto;

For greater certainty, where the government possesses holdings thereof or appoints a government official to the Board of Directors of a privatised entity, the entity is deemed to act in accordance with commercial considerations in its purchase of goods or services, such as with regard to the availability, price and quality of the goods or services, if the government or the Board of Directors so appointed does not, directly or indirectly, influence or direct the decisions of the Board in the entity’s procurement of goods or services;

(l) “procuring entity” means an entity covered under a Party’s Annexes 11-A (Central Entities) or 11-C (Other Entities);

(m) “qualified supplier” means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

(n) “selective tendering” means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

(o) “services” includes construction services, unless otherwise specified;

(p) “standard” means a document approved by a recognised body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;

(q) “supplier” means a person or group of persons that provides or could provide goods or services;

(r) “technical specification” means a tendering requirement that:

(i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

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

(1) In the case of Sri Lanka, the term “Works” is used in Sri Lanka’s domestic law to describe Construction Service.

Article 11.2. Scope and Coverage

1. In the case of Singapore, this Chapter shall apply to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means. In the case of Sri Lanka, this Chapter shall apply to any measure regarding covered procurement under International Competitive Bidding, (2) whether or not it is conducted exclusively or partially by electronic means.

2. For the purposes of this Chapter, covered procurement means procurement for governmental purposes:

(a) of goods, services, or any combination thereof:

(i) as specified in each Party’s Annexes; and

(ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

(b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with paragraphs 6 to 8 of this Article, equals or exceeds the relevant threshold specified in a Party’s Annexes at the time of publication of a notice in accordance with Article 11.7 (Notices);

(d) by a procuring entity; and

(e) that is otherwise not excluded from coverage in paragraph 3 of this Article or in a Party's Annexes.

3. Except where provided otherwise in a Party's Annexes, this Chapter shall not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including co-operative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts;

(e) procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid;

(ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.

4. Each Party shall specify the following information in its Annexes to this Chapter:

(a) in Annex 11-A (Central Entities), the central government entities whose procurement is covered by this Chapter;

(b) in Annex 11-B (This Annex is intentionally left blank);

(c) in Annex 11-C (Other Entities), all other entities whose procurement is covered by this Chapter;

(d) in Annex 11-D (Goods), the goods covered by this Chapter;

(e) in Annex 11-E (Services), the services, other than construction services, covered by this Chapter;

(f) in Annex 11-F (Construction Services), the construction services covered by this Chapter;

(g) in Annex 11-G (General Notes and Derogations), any General Notes; and

(h) in Annex 11-H (Means of Publication), means of publications.

5. Where a procuring entity, in the context of covered procurement, requires persons not covered under a Party's Annexes to procure in accordance with particular requirements, Article 11.4 (General Principles) shall apply mutatis mutandis to such requirements.

Valuation

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

(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions and interest; and

(ii) where the procurement provides for the possibility of options, the total value of such options.

7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts ("recurring contracts"), the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding twelve (12) months or

the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following twelve (12) months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the twelve (12) months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) where the term of the contract is twelve (12) months or less, the total estimated maximum value for its duration; or

(ii) where the term of the contract exceeds twelve (12) months, the total estimated maximum value, including any estimated residual value;

(b) where the contract is for an indefinite period the estimated monthly installment multiplied by forty-eight (48); and

(c) where it is not certain whether the contract is to be a fixed-term contract, sub- paragraph (b) above shall be used.

(1) International Competitive Bidding will be as defined under Sri Lankan domestic law.

Article 11.3. Security and General Exceptions

1. Nothing in this Chapter shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent any Party from imposing or enforcing measures:

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

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.

Article 11.4. General Principles

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services and suppliers.3

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier of the other Party less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

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

Use of Electronic Means

3. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and inter-operable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Conduct of Procurement

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

Rules of Origin

5. For the sole purpose of determining customs duties applicable to goods imported for purposes of government procurement, the Parties shall apply the same rules of origin that are used to determine customs duties applicable to imports of goods for other purposes.

Measures Not Specific to Procurement

6. Paragraphs 1 and 2 of this Article shall not apply to:

(a) customs duties and charges of any kind imposed on, or in connection with, importation;

(b) the method of levying such duties and charges; and

(c) other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

(3) For greater certainty, the requirement of registration or the creation of a local establishment as a pre-condition to bidding shall not be deemed to be non-compliant with Article 11.4 (General Principles).

Article 11.5. Industry Development

1. Subject to paragraphs 2, 3, and 4 of this Article, considering the development needs and circumstances of the Parties, and notwithstanding paragraphs 1 and 2 of Article 11.4 (General Principles), Sri Lanka may:

(a) provide a price preference to the suppliers of domestic goods and domestic suppliers of services; and

(b) impose or enforce offsets.

2. With effect from ten (10) years from the date of the entry into force of this Agreement, Sri Lanka shall apply paragraphs 1 and 2 of Article 11.4 (General Principles) in relation to:

(a) suppliers of Singapore-originating products, as defined in Protocol 1 (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Co-operation); and

(b) service suppliers of Singapore, which have substantive business operations in the territory of Singapore, as defined by Chapter 7 (Cross-Border Trade in Services).

3. Sri Lanka shall not increase the maximum margin of price preference in force at the date of the entry into force of this Agreement.

4. In the event that Sri Lanka implicitly or explicitly, extends more favourable treatment to any third party or parties, with regard to price preference or offsets in any international agreement, or ceases to provide for price preference or offsets within its domestic legislation after the entry into force of this Agreement, Sri Lanka shall automatically extend the same benefit to Singapore.

Article 11.6. Information on the Procurement System

1. Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract

clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

(b) provide an explanation thereof to the other Party, on request.

Each Party shall list in Annex 11-H (Means of Publication):

(a) the electronic or paper media in which the Party publishes the information described in paragraph 1 of this Article;

(b) the electronic or paper media in which the Party publishes the notices required by Article 11.7 (Notices), paragraph 8 of Article 11.9 (Qualification of Suppliers), and paragraph 2 of Article 11.16 (Transparency of Procurement Information).

Each Party shall promptly notify the other Party any modification to the Party's information listed in Annex 11-H (Means of Publication).

Article 11.7. Notices

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in Annex 11-H (Means of Publication), except in the circumstances described in Article11.13 (Limited Tendering). Such medium shall be widely disseminated and such notice shall remain readily accessible to the public, at least until the expiration of the time-period indicated in the notice. Parties, including their procurement entities covered under Annex 11-C (Other Entities), are encouraged to publish their notices by electronic means and make them accessible free of charge through a single point of access.

2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

(d) a description of options, if any;

(e) the time-frame for delivery of goods or services or the duration of the contract;

(f) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(g) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(h) the address and the final date for the submission of tenders;

(i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;

(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement; and

(k) where, pursuant to Article 11.9 (Qualification of Suppliers), a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender.

Summary Notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement in English. The summary notice shall contain at least the following information:

(a) the subject matter of the procurement;

(b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the procurement may be requested.

Notice of Planned Procurement

4. Procuring entities are encouraged to publish in the appropriate paper or electronic medium listed in Annex 11-H (Means of Publication), as early as possible in each fiscal year, a notice regarding their future procurement plans ("notice of planned procurement"). The notice of planned procurement should include the subject matter of the procurement and the planned date or indicative period of the publication of the notice of intended procurement.

5. A procuring entity covered under Annex 11-C (Other Entities) may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 of this Article as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

Article 11.8. Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of that Party; and

(b) may require relevant prior experience where essential to meet the requirements of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

(a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

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

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

Article 11.9. Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Each Party shall ensure that:

(a) its procuring entities make efforts to minimise differences in their qualification procedures; and

(b) where its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Selective Tendering

4. Where a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in sub-paragraphs 2(a), (b), (f), (g), (j) and (k) of Article 11.7 (Notices) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time period for tendering, at least the information specified in sub-paragraphs 2(c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in sub-paragraph 3(b) of Article 11.11 (Time Periods).

5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4 of this Article, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5 of this Article.

Multi-Use Lists

7. A procuring entity, where the domestic legislation permits, may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:

(a) published annually; and

(b) where published by electronic means, made available continuously, in the appropriate medium.

8. The notice provided for in paragraph 7 of this Article shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;

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

(d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and

(e) an indication that the list may be used for procurement covered by this Chapter.

9. Notwithstanding paragraph 7 of this Article, where a multi-use list will be valid for three (3) years or less, a procuring entity may publish the notice referred to in paragraph 7 of this Article only once, at the beginning of the period of validity of the list, provided that the notice:

(a) states the period of validity and that further notices will not be published; and

(b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi- use list and shall include on the list all qualified suppliers within a reasonably short time.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time period provided for in paragraph 2 of Article 11.11 (Time Periods), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Entities covered under Annex 11-C (Other Entities)

12. A procuring entity covered under Annex 11-C (Other Entities) may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 7 of this Article and includes the information required under paragraph 8 of this Article, as much of the information required under paragraph 2 of Article 11.7 (Notices) as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the procuring entity promptly provides to suppliers that have expressed an interest in a given procurement to the procuring entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in paragraph 2 of Article 11.7 (Notices), to the extent such information is available.

13. A procuring entity covered under Annex 11-C (Other Entities) may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 of this Article to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

5. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the procuring entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

Article 11.10. Technical Specifications and Tender Documentation

Technical Specifications

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

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognised national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfill the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

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

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

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

Tender Documentation

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

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

(c) all evaluation criteria the procuring entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

(d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

8. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

10. A procuring entity shall:

(a) promptly make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) promptly provide, on request, the tender documentation to any interested supplier; and

(c) without undue delay, reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

11. Where, prior to:

(a) in the case of Singapore, the award of a contract; or (b) in the case of Sri Lanka, the closing of bids,

a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

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

Article 11.11. Time Periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.

Such time periods, including any extension of the time periods, shall be the same for all interested or participating suppliers.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than twenty- five (25) days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to not less than ten (10) days.

3. Except as provided for in paragraphs 4, 5, 7 and 8 of this Article, a procuring entity shall establish that the final date for the submission of tenders shall not be less than forty (40) days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the procuring entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 of this Article to not less than ten (10) days where:

(a) the procuring entity has published a notice of planned procurement as described in paragraph 4 of Article 11.7 (Notices) at least forty (40) days and not more than twelve (12) months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(v) as much of the information that is required for the notice of intended procurement under paragraph 2 of Article11.7 (Notices), as is available;

(b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 3 of this Article impracticable.

5. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 of this Article by five (5) days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the entity accepts tenders by electronic means.

6. The use of paragraph 5 of this Article, in conjunction with paragraph 4 of this Article, shall in no case result in the reduction of the time period for tendering established in accordance with paragraph 3 of this Article to less than ten (10) days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering established in accordance with paragraph 3 of this Article to not less than thirteen (13) days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time period established in accordance with paragraph 3 of this Article to not less than ten (10) days.

8. Where a procuring entity that is covered under 11-C (Other Entities) has selected all or a limited number of qualified

suppliers, as permitted by domestic legislation, the time period for tendering may be fixed by agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than ten (10) days.

Article 11.12. Negotiations

1. A Party may provide for its procuring entities to conduct negotiations:

(a) where the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required under paragraph 2 of Article 11.7 (Notices); or

(b) in the case of Singapore, where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article 11.13. Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Article 11.7 (Notices), Article 11.8 (Conditions for Participation), Article 11.9 (Qualification of Suppliers), paragraphs 7 to 11 of Article 11.10 (Technical Specifications and Tender Documentation), Article 11.11 (Time Periods), Article 11.12 (Negotiations), Article 11.14 (Electronic Auctions) and Article 11.15 (Treatment of Tenders and Awarding of Contracts) only under any of the following circumstances:

(a) where:

(i) no tenders were submitted or no suppliers requested participation;

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

(iii) no suppliers satisfied the conditions for participation; or (iv) the tenders submitted have been collusive,

provided that the requirements of the tender documentation are not substantially modified;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

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

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of inter-changeability or inter-operability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate

that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1 of this Article. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 of this Article that justified the use of limited tendering.

Article 11.14. Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

Article 11.15. Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders in accordance with procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

2. In the case of Singapore, a procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders, but before the award of the tender if the delay is due solely to mishandling on the part of the procuring entity.

3. Where allowed by a Party, its procuring entity may provide a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract on the condition that the procuring entity provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender in terms of price and non-price criteria; or

(b) where price is the sole criterion, the lowest price.

6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted or the estimated procurement value, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents

the obligations under this Chapter.

Article 11.16. Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraph 2 and paragraph 3 of Article 11.17 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender. (4)

Publication of Award Information

2. Not later than seventy-two (72) days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Annex 11-H (Means of Publication). Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

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

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

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

(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

(e) the date of award; and

(f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article 11.13 (Limited Tendering), a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

3. Each procuring entity shall, for a period of at least three (3) years from the date it awards a contract, maintain:

(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 11.13 (Limited Tendering); and

(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Collection and Reporting of Statistics

4. Each Party shall communicate to the other Party the available and comparable statistics relevant to the procurement covered by this Chapter.

(4) For Sri Lanka, "on request" may not be applicable because the explanation of the reasons for the selection and the relative advantages are already provided at the point where the participating suppliers are informed of the procuring entity's decision.

Article 11.17. Disclosure of Information

Provision of Information to Parties

1. On request of a Party, the other Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review

bodies, to disclose confidential information where disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

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

(d) would otherwise be contrary to the public interest.

Article 11.18. Domestic Review Procedures

1. In the event of a complaint by a supplier of a Party that there has been a breach of this Chapter in the context of procurement by the other Party, that Party may encourage the supplier to first seek resolution of its complaint in consultation with the procuring entity of the other Party.

2. Each Party shall provide suppliers of the other Party with non-discriminatory, timely, transparent and effective administrative or judicial procedures to challenge alleged breaches of this Chapter arising in the context of procurements in which they have, or have had, an interest.

3. Each Party shall provide its challenge procedures in writing and make them generally available.

4. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment.

5. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which:

(a) in the case of Singapore, shall not be less than ten (10) days; and

(b) in the case of Sri Lanka, shall not be less than seven (7) days;

from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

6. Each Party shall adopt or maintain administrative or judicial procedures that provide for rapid interim measures to preserve the supplier’s opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing.

7. In the case of Singapore, the total liability for any breach of this Chapter or compensation for loss or damages suffered by a supplier shall be limited to the costs for tender preparation reasonably incurred by the supplier for the purpose of the procurement.

Article 11.19. Modifications and Rectifications to Coverage

Notification of Proposed Modification

1. A Party shall notify the other Party of any proposed rectification, transfer of an entity from one Annex to another, withdrawal of an entity or other modification of its Annexes (“modification”) in writing.

2. For any proposed withdrawal of an entity from any Party’s Annexes on the grounds that government control or influence over the entity's covered procurement has been effectively eliminated, the Party proposing the modification (“modifying Party”) shall include in the notification evidence that such government control or influence has been effectively eliminated. Government control or influence over the covered procurement of entities listed in its Annexes is deemed to be effectively eliminated if the procuring entity has been privatised or where the majority of shares of the entity is not held by government or other public bodies.

3. Where government control or influence over the covered procurement of an entity of a Party has been effectively eliminated, the other Party shall not be entitled to compensatory adjustments.

4. For any other proposed modification, the modifying Party shall include in the notification information as to the likely consequences of the change for the coverage provided in this Chapter. Where the modifying Party proposes to make minor amendments or technical rectifications of a purely formal nature not affecting covered procurement, it shall notify these

modifications at least every two (2) years.

Resolution of Objection

5. In case of objection by the other Party ("objecting Party") to the notification by the modifying Party, the Parties shall seek to resolve the objection through bilateral consultations. In such consultations, the Parties shall consider:

(a) evidence pertaining to the effective elimination of government control or influence over an entity's covered procurement in the case of a notification under paragraph 2 of this Article;

(b) evidence that the proposed modification does not affect coverage in the case of a notification under paragraph 4 of this Article; and

(c) any claims relating to the need for or level of compensatory adjustments, arising from modifications notified according to paragraph 1 of this Article. The adjustments may consist of either compensatory expansion of coverage by the modifying Party or a withdrawal of equivalent coverage by the objecting Party, with a view to maintaining a balance of rights and obligations and a comparable level of agreed coverage provided in this Chapter.

6. Where the objecting Party, after bilateral consultations under paragraph 5 of this Article, considers that one or more of the following situations exist:

(a) in the case of sub-paragraph 5(a) of this Article, government control or influence over an entity's covered procurement has not been effectively eliminated;

(b) in the case of sub-paragraph 5(b) of this Article, a modification does not meet the criteria in paragraph 4 of this Article and which affects coverage, and should be subject to compensatory adjustments; or

(c) in the case of sub-paragraph 5(c) of this Article, compensatory adjustments proposed during the consultation between the Parties are not adequate to maintain a comparable level of agreed coverage,

the Parties may have recourse to the dispute settlement mechanism under Chapter 16 (Dispute Settlement).

Implementation

7. A proposed modification shall become effective only where:

(a) the other Party has not submitted to the modifying Party a written objection to the proposed modification within forty-five (45) days from the date of the notification of the proposed modifications;

(b) the objecting Party has notified the modifying Party of the withdrawal of its objection;

(c) the Parties have reached an agreement after due consultations under paragraph 5 of this Article; or

(d) the objection has been resolved through the dispute settlement mechanism under Chapter 16 (Dispute Settlement) pursuant to paragraph 6 of this Article.

Article 11.20. Review

In the event that Sri Lanka

(a) commits an entity not listed in Annexes 11-B to 11-G; or

(b) provides more favourable treatment in respect of its commitments in Annexes 11-B to 11-G;

to a non-Party in an international agreement that is in force or signed after the date of the entry into force of this Agreement, the Parties shall enter into consultations to review Sri Lanka's commitments in Annexes 11-B to 11-G.

Chapter 12. COMPETITION AND RELATED MATTERS

Article 12.1. Principles

1. The Parties recognise the importance of free and undistorted competition in their trade relations. They acknowledge that anti-competitive business conduct or anti-competitive transactions have the potential to distort the proper functioning of their markets and undermine the benefits of trade liberalisation.

2. To promote free and undistorted competition in all sectors of their economies, the

Parties shall introduce or maintain (1) comprehensive legislation in their respective territories, which effectively address:
(a) horizontal agreements between undertakings, decisions by associations of undertakings and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition in their own territory as a whole or in a substantial part thereof;

(b) abuses by one or more undertakings of a dominant position in their own territory as a whole or in a substantial part thereof; and

(c) concentrations between undertakings which result in a substantial lessening of competition or which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in their own territory as a whole or in a substantial part thereof; which affect trade between them.

(1) Sri Lanka does not have legislation dealing comprehensively with competition policy. It is in the process of formulating legislation and every endeavour will be made to introduce such legislation within a reasonable time period.

Article 12.2. Implementation

1. The Parties shall maintain autonomy in developing and enforcing their respective laws. The Parties undertake, however, to maintain authorities responsible and appropriately equipped for the effective enforcement of the legislation referred to in paragraph 2 of Article 12.1 (Principles).

2. The Parties will apply their respective legislation referred to in paragraph 2 of Article 12.1 (Principles) in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence of the parties concerned, including the right of the parties concerned to be heard prior to deciding on a case.

Article 12.3. Co-operation and Co-ordination In Law Enforcement

The Parties recognise the importance of co-operation and co-ordination to further enhance effective law enforcement. Their respective authorities shall endeavour to co-ordinate and co- operate in the enforcement of their respective laws to fulfil the objective of this Agreement of free and undistorted competition in their trade relations.

Article 12.4. Confidentiality

1. Each Party shall endeavour to provide information, in accordance with its laws and regulations, to facilitate effective enforcement of their respective competition laws.

2. When a Party communicates information in confidence under this Chapter, the receiving Party shall, in accordance with its laws and regulations, maintain the confidentiality of the communicated information.

Article 12.5. Consultations

1. To foster mutual understanding between the Parties, or to address specific matters that may arise under this Chapter, each Party shall, upon the request of the other Party, enter into consultations on issues raised by the other Party. The Party requesting consultations shall indicate, if relevant, how the matter affects trade between the Parties.

2. The Parties shall promptly discuss, upon the request of a Party, any questions arising from the interpretation or application of this Chapter.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavour to provide relevant non-confidential information to the other Party.

Article 12.6. Non-Application of Dispute Settlement

Neither Party shall have recourse to any dispute settlement procedure in respect of the provisions under this Chapter. Chapter 16 (Dispute Settlement) shall not apply to this Chapter.

Chapter 13. INTELLECTUAL PROPERTY

Section 13-A. PRINCIPLES

Article 13.1. Scope and Definitions

1. The Parties recall the commitments under the international treaties dealing with intellectual property, including the TRIPS Agreement and the Paris Convention for the Protection of Industrial Property (of 20 March 1883, as revised at Stockholm on 15 July 1967). The provisions of this Chapter shall complement the rights and obligations of the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property to which they both are parties.

2. For the purposes of this Chapter, **"intellectual property rights"** means:

(i) copyright and related rights;

(ii) patents;

(iii) trademarks;

(iv) designs;

(v) layout-designs (topographies) of integrated circuits;

(vi) geographical indications; and

(vii) protection of undisclosed information.

Article 13.2. Exhaustion

Each Party shall be free to establish its own regime for the exhaustion of intellectual property rights subject to the relevant provisions of the TRIPS Agreement.

Section 13-B. STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

Subsection 13-B-1. COPYRIGHT AND RELATED RIGHTS

Article 13.3. Protection Granted

The Parties shall comply with the rights and obligations set out in the Berne Convention for the Protection of Literary and Artistic Works (of 9 September 1886, as last revised at Paris on 24 July 1971), and the TRIPS Agreement. The Parties may provide for the protection of performers, producers of phonograms and broadcasting organisations in accordance with the relevant provisions of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (done at Rome on 26 October 1961). (1)

(1) The Parties recognise that references to these international agreements are subject to the reservations which each Party has formulated in relation thereto.

Article 13.4. Term of Protection

1. Each Party shall provide, where the term of protection of a work is to be calculated on the basis of the life of the author, that the term shall be not less than the life of the author and seventy (70) years after the author's death.

2. In the case of a work of joint authorship, the term referred to in paragraph 1 of this Article shall be calculated from the death of the last surviving author.

3. The term of protection of cinematographic works (2) shall be not less than seventy (70) years after the work has been made available to the public with the consent of the author or, failing such an event within fifty (50) years from the making of such a work, at least seventy (70) years after the making.

4. The term of protection to be granted to producers of phonograms under this Agreement shall last, at least, until the end of a period of fifty (50) years computed from the end of the year in which the phonogram was published, or failing such

publication within fifty (50) years from fixation of the phonogram, fifty (50) years from the end of the year in which the fixation was made.

5. The term of protection for rights in broadcasts shall be not less than fifty (50) years after the first transmission or making of the broadcast.

6. The terms laid down in this Article shall be calculated based on the event which gives rise to them in the manner provided by the Parties' respective domestic legislation.

(2) For purposes of this paragraph, "cinematographic works" shall mean the same as "audio-visual works".

Article 13.5. Presumptions Relating to Copyright and Related Rights

In civil proceedings involving copyright or related rights, each Party shall provide for a presumption that, at least with respect to a literary or artistic work, performance or phonogram, in the absence of proof to the contrary, the person whose name appears on such work, performance or phonogram in the usual manner, is the right holder and is consequently entitled to institute infringement proceedings.

Article 13.6. Cooperation on Collective Management of Rights

The Parties shall endeavour to promote dialogue and cooperation among their respective collective management societies with the purpose of ensuring easier access and delivery of content between the territories of the Parties, and the transfer of royalties arising from the use of works or other copyright-protected subject matter.

Subsection 13-B-2. TRADEMARKS

Article 13.7. International Agreements

The Parties shall comply with all international agreements on trademarks to which they have ratified or will ratify, including the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (adopted at Madrid on June 27, 1989, as amended on October 3, 2006 and on November 12, 2007).

Article 13.8. Registration Procedure

Each Party shall provide for a system for the registration of trademarks in which the relevant trademark administration shall give reasons for a refusal to register a trademark in writing. The applicant shall have the opportunity to appeal against such refusal before a judicial authority. Each Party shall introduce the possibility for third parties to oppose trademark applications. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.

Article 13.9. Well-Known Trademarks

The Parties shall protect well-known trademarks in accordance with the TRIPS Agreement. In determining whether a trademark is well-known, the Parties agree to take into consideration the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999).

Article 13.10. Exceptions to the Rights Conferred by a Trademark

Each Party:

(a) shall provide for the fair use of descriptive terms (3) as a limited exception to the rights conferred by trademarks; and

(b) may provide for other limited exceptions, including for the purpose of adopting measures necessary to protect public health and nutrition;

provided that these exceptions take account of the legitimate interests of the owners of the trademarks and of third parties.

(3) The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services, and where such use is in accordance with honest practices in industrial or commercial matters.

Subsection 13-B-3. GEOGRAPHICAL INDICATIONS (4)

Article 13.11. Scope

1. This Sub-Section applies to the recognition and protection of geographical indications for goods originating in the territories of the Parties.

2. Geographical indications of a Party to be protected by the other Party shall only be subject to this Sub-Section if they are recognised and declared as geographical indications in their country of origin.

(4) For the purposes of this Chapter, "geographical indications" means indications which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Article 13.12. System of Protection of Geographical Indications

With the recognition of the importance of the protection of geographical indications, each Party shall provide a system for the protection of geographical indications in accordance with Section 3 (Geographical Indications), Part II of the TRIPS Agreement and protect the geographical indications of the other Party in accordance with its legislation. (5)

(5) For greater certainty, the Parties acknowledge that geographical indications will be recognised and protected by the Parties only to the extent permitted by and according to the terms and conditions set out in their respective domestic laws.

Subsection 13-B-4. DESIGNS

Article 13.13. Requirements for Protection of Registered Designs

1. The Parties shall provide for the protection of independently created designs that are new. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with the provisions of this Sub-Section.(6)

2. Design protection shall not extend to designs dictated essentially by technical or functional considerations.

3. A design right shall not subsist in a design which is contrary to public order or to accepted principles of morality. (7)

(6) It is understood that designs are not excluded from protection simply on the basis that they constitute a part of an article or product, provided that they are visible, fulfil the criteria of this paragraph, and:
(a) fulfil any other criteria for design protection; and
(b) are not otherwise excluded from design protection, under the Parties' respective domestic law.

(7) Nothing in this Article precludes either Party from providing other specified exclusions from design protection under its domestic law. The Parties understand that such exclusions shall not be extensive.

Article 13.14. Rights Conferred by Registration

The owner of a protected design shall have the right to prevent third parties, not having the owner's consent, from at least making, offering for sale, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

Article 13.15. Term of Protection

The duration of protection available shall be consistent with Article 26.3 of the TRIPS Agreement.

Article 13.16. Exceptions

The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

Subsection 13-B-5. PATENTS

Article 13.17. International Agreements

The Parties shall comply with the obligations under the Patent Cooperation Treaty (done at Washington on 19 June 1970, amended on 28 September 1979 and modified on 3 February 1984) ("PCT").

Article 13.18. Patents and Public Health

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health (adopted in Doha on 14 November 2001 by the Ministerial Conference of the WTO). In interpreting and implementing the rights and obligations under this Sub-Section, the Parties shall ensure consistency with this Declaration.

2. The Parties shall respect the Decision of the WTO General Council of 30 August 2003 on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Decision of the WTO General Council of 6 December 2005 on Amendment of the TRIPS Agreement, adopting the Protocol Amending the TRIPS Agreement.

3. The Parties shall explore cooperation in the granting of patents on the basis of applications filed by applicants of a Party in the other Party, and patent examination and work sharing. Further, desiring to establish a mutually supportive relationship between the Parties, the Parties agree as follows:

(a) Sri Lanka hereby recognises and designates the Intellectual Property Office of Singapore ("IPOS") as a competent International Search Authority ("ISA") or International Preliminary Examination Authority ("IPEA") under the PCT for international applications received by Sri Lanka, as well as for search and examination of national patent applications; and

(b) conditional upon the National Intellectual Property Office of Sri Lanka ("NIPOS") and the International Bureau of WIPO entering into an agreement in relation to the functioning of NIPOS as an ISA and/or IPEA under Articles 16 and 23 of the PCT, Singapore shall designate NIPOS as an ISA and/or IPEA under the PCT for international applications received by Singapore insofar as these applications are submitted in the English language.

Section 13-C. ENFORCEMENT

Article 13.20. Enforcement of Intellectual Property Rights

1. The Parties shall provide suitable and effective protection of intellectual and industrial property rights in line with the TRIPS Agreement and other international agreements to which both Parties are party. The Parties shall ensure enforcement procedures as specified in Part III of the TRIPS Agreement so as to permit effective action against any act of infringement of intellectual property rights.

2. In particular, the measures, procedures and remedies referred to in paragraph 1 of this Article, and provided for by each Party under its domestic law, shall:

(a) take into account, as appropriate, the need for proportionality between the seriousness of the infringement and the interests of third parties;

(b) be fair and equitable;

(c) not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays; and

(d) be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

3. Nothing in this Chapter affects the capacity of either Party to enforce its domestic law in general or creates any obligation on either Party to amend its existing laws as they relate to the enforcement of intellectual property rights. Without prejudice

to the foregoing general principles, nothing in this Chapter creates any obligation on either Party:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general; or

(b) with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

Article 13.21. Publication of Judicial Decisions

In civil judicial proceedings instituted for infringement of an intellectual property right, each Party shall take appropriate measures, pursuant to its domestic law and policies, to publish or make available to the public information on final judicial decisions. Nothing in this Article shall require a Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 13.22. Legal Costs

Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of intellectual property rights, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's domestic law.

Section 13-D. CO-OPERATION

Article 13.23. Co-operation

1. The Parties agree to co-operate with a view to supporting the implementation of the commitments and obligations undertaken in this Chapter. Areas of co-operation include, but are not limited to, the following activities:

(a) exchange of information on legal frameworks concerning intellectual property rights, including those pertaining to the implementation of intellectual property legislation and systems, aimed at promoting the efficient registration of intellectual property rights;

(b) exchange, between the respective authorities responsible for the enforcement of intellectual property rights, of their experiences and best practices concerning enforcement of intellectual property rights;

(c) exchange of information and co-operation on public outreach and appropriate initiatives to promote awareness of the benefits of intellectual property rights and systems;

(d) capacity-building and technical co-operation in relation, but not limited, to: management, licensing, valuation and exploitation of intellectual property rights; technology and market intelligence; facilitation of industry collaborations, including on intellectual property rights that may be applied towards environmental conservation or enhancement which may include establishing a platform or database; and public private partnerships to support culture and innovation;

(e) exchange of information and co-operation on intellectual property issues, where appropriate and relevant to developments in environmentally friendly technology; and

(f) any other areas of co-operation or activities as may be discussed and agreed between the Parties.

2. Without prejudice to paragraph 1 of this Article, the Parties agree to designate a contact point for the purpose of maintaining dialogue including, where useful, convening meetings on intellectual property issues between their respective technical experts on matters covered by this Chapter.

3. Co-operation under this Chapter shall be carried out subject to each Party's laws, rules, regulations, directives or policies. Co-operation shall also be on mutually agreed terms and conditions and be subject to the availability of resources of each Party.

Chapter 14. TRANSPARENCY

Article 14.1. Definitions

For the purposes of this Chapter:

(a) “administrative ruling of general application” means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(i) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(ii) a ruling that adjudicates with respect to a particular act or practice.

(b) “interested person” means any person that may be subject to any rights or obligations under measures of general application.

Article 14.2. Publication

Each Party shall ensure that its laws, regulations and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable the other Party and interested persons to become acquainted with them.

Article 14.3. Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any measure that, the Party considers, may materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. Upon request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any measure whether or not the requesting Party has been previously notified of that measure.

3. Any notification, or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

4. Any notification, request, or information under this Article shall be provided to the other Party through the relevant contact points.

5. When the information pursuant to paragraph 1 of this Article has been made available by notification to the WTO in accordance with its relevant rules and procedures or when the mentioned information has been made available by a Party on its official, publicly accessible and fee-free website, the information exchange shall be considered to have taken place.

Article 14.4. Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures referred to in Article 14.2 (Publication), each Party in applying such measures to particular persons, goods or services of the other Party in specific cases, shall:

(a) endeavour to provide interested persons of the other Party, who are directly affected by a proceeding, with reasonable notice, in accordance with the procedures under its laws, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy; and

(b) afford such interested persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, insofar as time, the nature of the proceeding and the public interest permit in accordance with the procedures under its laws.

Article 14.5. Review of Administrative Actions

1. Each Party shall, subject to its laws, establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of administrative actions1 relating to matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

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

(b) a decision based on the evidence and submissions of record or, where required by its laws, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its laws, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

(1) For greater certainty, the review of administrative actions can take the form of common law judicial review, and the correction of administrative actions may include a referral back to the body that took such action for corrective action.

Article 14.6. Specific Rules

Specific rules in other Chapters of this Agreement regarding the subject matter of this Chapter shall prevail to the extent that they differ from the provisions of this Chapter.

Chapter 15. ECONOMIC AND TECHNICAL CO-OPERATION

Article 15.1. Objectives

The Parties shall seek to:

(a) Strengthen and enhance economic co-operation between them on the basis of equality and mutual benefit;

(b) Explore new areas of and develop appropriate measures for closer economic co-operation as a means to greater economic integration between the two countries; and

(c) Support and augment economic co-operation in accordance with developmental needs, including the development of regulatory frameworks, of each other and the welfare of their respective peoples.

Article 15.2. Scope of Co-operation

1. The Parties shall promote economic co-operation between them in various fields, and encourage exchange of information and technical expertise in those fields. Such economic co-operation may include all possible areas that the Parties may deem fit and beneficial to their citizens and to which both Parties have agreed.

2. All co-operation activities under this Chapter shall be carried out in accordance with the applicable laws and regulations of each Party.

Article 15.3. Implementation of Co-operation

1. Co-operation between the Parties in various areas identified under this Chapter shall be effected, where applicable, through relevant Memoranda of Understanding, Agreements or Protocols that have been concluded between the Parties and so long as they remain in force.

2. Where such Memoranda of Understanding, Agreements or Protocols do not cover areas of co-operation identified in Article 15.4 (Areas of Co-operation), the Parties shall consult in good faith concerning the making of arrangements for such activities, through the conclusion of appropriate Memoranda of Understanding, Agreements or Protocols between authorised institutions or bodies in accordance with the laws and regulations in force from time to time in each country.

Article 15.4. Areas of Co-operation

1. The areas of co-operation may include, but are not limited to, the following fields:

(a) Construction and Building;

(b) Customs Procedures and Trade Facilitation;

(c) Energy;

(d) Environment Protection;

(e) Financial Services;

(f) Intellectual Property Rights;

(g) Investment and Trade Promotion;

(h) Manufacturing;

(i) Science and Technology;

(j) Small and Medium Enterprises;

(k) Transport and Infrastructure;

(l) Tourism and Hospitality; and

(m) Urban Solutions.

2. The areas of co-operation may be reviewed, expanded and updated through consultation between the Parties.

3. Proposals for the review, expansion and update of this Chapter, may be submitted by either Party to the Joint Committee established under Chapter 17 (Institutional, General and Final Provisions) for consideration. Implementation of co-operation in such new areas shall proceed in accordance with and subject to the fulfilment of the requirements outlined in Article 15.3 (Implementation of Co-operation).

4. Nothing in this Chapter shall be construed as preventing the Parties from entering into new economic co-operation agreements and/or programmes, with a view to further enhancing the economic and technical co-operation between the Parties.

Article 15.5. Non-Application of Dispute Settlement

1. Neither Party shall have recourse to any dispute settlement procedure in respect of the provisions under this Chapter. Chapter 16 (Dispute Settlement) shall not apply to this Chapter.

2. Any differences or dispute between the Parties concerning the interpretation or implementation of this Chapter shall be resolved through consultations between the Parties. Consultations shall take place in the Joint Committee established under Chapter 17 (Institutional, General and Final Provisions).

Chapter 16. DISPUTE SETTLEMENT

Article 16.1. Objective

The objective of this Chapter is to avoid and settle any dispute between the Parties concerning the interpretation or application of this Agreement with a view to arrive at, where possible, a mutually acceptable solution.

Article 16.2. Scope

Except as otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of the provisions of this Agreement or wherever a Party considers that:

(a) a measure of the other Party is inconsistent with the obligations under the provisions of this Agreement; or

(b) the other Party has otherwise failed to carry out its obligations under the provisions of this Agreement.

Article 16.3. Choice of Forum

1. Where a dispute regarding any matter referred to in Article 16.2 (Scope) arises under this Agreement and under the WTO Agreement, or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

2. The complaining Party shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.

3. Once the complaining Party has selected a particular forum, the forum selected shall be used to the exclusion of other possible fora.

4. For the purposes of this Article, the complaining Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel.

Article 16.4. Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of the provisions of this Agreement and to resolve any dispute thereof by entering into consultations in good faith with the aim of reaching a solution agreed to by the Parties.

2. A Party shall seek consultations, by means of a written request to the other Party, and shall give the reasons for the request, identification of the measures at issue, the applicable provisions of the Agreement referred to in Article 16.2 (Scope), and the reasons for the applicability of such provisions.

3. Consultations shall be held within thirty (30) days of the date of receipt of the request and take place, unless the Parties agree otherwise, in the territory of the Party complained against. The consultations shall be deemed concluded within sixty (60) days of the date of receipt of the request, unless the Parties agree otherwise. Consultations shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

4. Consultations on matters of urgency, including those regarding perishable goods, shall be held within fifteen (15) days of the date of receipt of the request, and shall be deemed concluded within thirty (30) days of the date of receipt of the request, unless the Parties agree otherwise.

5. If the Party to which the request is made does not respond to the request for consultations within ten (10) days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 of this Article or in paragraph 4 of this Article respectively, or if consultations have been concluded and no solution has been agreed upon by the Parties, the complaining Party may request the establishment of an arbitration panel in accordance with Article 16.5 (Initiation of Arbitration Procedure).

Article 16.5. Initiation of Arbitration Procedure

The request for the establishment of an arbitration panel shall be made in writing to the Party complained against. The complaining Party shall identify in its request the specific measure at issue, and explain how such measure constitutes a breach of the applicable provisions of the Agreement referred to in Article 16.2 (Scope) in a manner sufficient to present the legal basis for the complaint clearly.

Article 16.6. Terms of Reference

Unless the Parties otherwise agree within twenty (20) days from the date of receipt of the request for the establishment of the arbitration panel, the terms of reference of the arbitration panel shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 16.5 (Initiation of Arbitration Procedure) and to make findings, determinations and any recommendations for resolution of the dispute, and issue a written report, as provided in Article 16.9 (Arbitration Panel Report)”.

Article 16.7. Composition and Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three (3) members. Each Party shall appoint a member within thirty (30) days of the receipt of the request referred to in Article 16.5 (Initiation of Arbitration Procedure) and the two members shall, within thirty (30) days of the appointment of the second of them, designate by agreement the third member. Such designation shall be notified to the Parties and accompanied by a brief profile of the third member and any disclosures as required under paragraph 3 of Annex 16-A (Code of Conduct for Arbitrators).

2. The Parties shall, within ten (10) days of receiving the notification of the designation of the third member, approve or disapprove the appointment of that member, who shall, if approved, act as the chairperson of the arbitration panel. If a Party fails to respond within the said period, that Party shall be deemed to disapprove the appointment of that member.

3. If the third member has not been designated within thirty (30) days of the appointment of the second member, or one of

the Parties disapproves the appointment of the third member, the Director-General of the WTO shall, at the request of either Party, appoint within a further period of thirty (30) days, the third member who shall act as the chairperson of the arbitration panel.

4. If one of the Parties does not appoint a member within thirty (30) days of the receipt of the request referred to in Article 16.5 (Initiation of Arbitration Procedure), the other Party may inform the Director-General of the WTO who shall appoint within a further period of thirty (30) days, the third member who shall act as the chairperson of the arbitration panel, and the chairperson shall, upon appointment, request the Party which has not appointed a member to do so within fourteen (14) days. If after such period, that Party has still not appointed a member, the chairperson shall inform the Director-General of the WTO who shall make this appointment within a further period of thirty (30) days.

5. For the purposes of paragraphs 3 and 4 of this Article, in the event that the Director- General of the WTO is a national of either Party, the Deputy Director-General of the WTO or the officer next in seniority who is not a national of either Party shall be requested to make the necessary appointments.

6. Any person appointed as a member of the arbitration panel shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements. A member shall be chosen strictly on the bases of objectivity, reliability, sound judgment and independence, and shall conduct himself or herself on the same bases throughout the course of the arbitration proceedings and in accordance with Annex 16-A (Code of Conduct for Arbitrators) and shall serve in their individual capacities and not be affiliated with, nor take instructions from either Party. If a Party considers that a member of the arbitration panel is in violation of these requirements, the Parties shall consult and if they agree, the member shall be removed and a new member shall be appointed in accordance with this Article. Additionally, the chairperson shall not be a national of either Party or have his or her usual place of residence in the territory of, nor be employed by, either Party nor have dealt with the dispute in any capacity.

7. If a member of the arbitration panel appointed under this Article becomes unable to participate in the proceeding or resigns or is to be removed according to paragraph 6 of this Article, a successor shall be selected in the same manner as prescribed for the appointment of the original member. The successor shall have all the powers and duties of the original member. In such a case, the work of the arbitration panel and any time period applicable to the arbitration panel proceedings shall be suspended for a period beginning on the date the original member becomes unable to participate in the proceeding or resigns, or on the date the Parties agree to remove the member according to paragraph 6 of this Article. The work of the arbitration panel and any time period applicable to the arbitration panel proceedings shall resume on the date the new member is appointed.

8. The date of establishment of the arbitration panel shall be the date on which the last of the three members is appointed.

Article 16.8. Proceedings of the Arbitration Panel

1. The arbitration panel shall meet in closed session, unless the Parties decide otherwise.

2. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the arbitration panel, including any comments on the interim report and responses to questions put by the arbitration panel, shall be made available to the other Party.

3. A Party asserting that a measure of the other Party is inconsistent with this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

4. The arbitration panel should consult with the Parties as appropriate and provide adequate opportunities for the achievement of a mutually satisfactory resolution.

5. The arbitration panel shall make every effort to take any decision by consensus. Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote.

6. At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source it deems appropriate for the arbitration panel proceedings. The arbitration panel also has the right to seek the relevant opinion of experts as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Any information obtained in this manner must be disclosed to the Parties and submitted for their comments.

7. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.

8. Notwithstanding paragraph 7 of this Article, 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 arbitration panel which the other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, within thirty (30) days of a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

Article 16.9. Interim Arbitration Panel Report and Final Arbitration Panel Report

1. The arbitration panel shall issue an interim report to the Parties setting out:

(a) a summary of the submissions and arguments of the Parties;

(b) the findings of fact, together with reasons;

(c) its determination as to the interpretation or application of the provisions of this Agreement or whether a measure at issue is inconsistent with the provisions of this Agreement or whether a Party has failed to carry out its obligations under the provisions of this Agreement, or any other determination requested by the Parties in the terms of reference; and

(d) if there is a determination of inconsistency, its recommendation that the Party complained against bring the measure into conformity with the obligations under this Agreement and, if the Parties agree, on the means to resolve the dispute,

not later than ninety (90) days from the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its interim report. Under no circumstances should the arbitration panel issue its interim report later than one hundred and twenty (120) days after the date of its establishment.

2. Any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within thirty (30) days of its notification.

3. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report and make any further examination it considers appropriate. The final report of the arbitration panel shall set out the matters listed in paragraph 1 of this Article, include a sufficient discussion of the arguments made at the interim review stage, and answer clearly to the written comments of the two Parties.

4. The arbitration panel shall issue its final report to the Parties within one hundred and fifty (150) days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its final report. Under no circumstances should the arbitration panel issue its final report later than two hundred and seventy (270) days after the date of its establishment.

5. In cases of urgency, including those involving perishable goods:

(a) the arbitration panel shall make every effort to issue its interim and final reports to the Parties within half of the respective time periods under paragraphs 1 and 4 of this Article. Under no circumstances should the arbitration panel issue its final report later than ninety (90) days after the date of its establishment;

(b) any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within half of the time period under paragraph 2 of this Article.

6. Any findings, determinations and recommendations in the final report of the arbitration panel shall be final and binding on the Parties and shall not create any rights or obligations to any person. For greater certainty, nothing in the final report may add to or diminish the rights and obligations of the Parties under this Agreement.

Article 16.10. Implementation of the Arbitration Panel Report

1. The Party complained against shall take any measure necessary to comply in good faith with the determinations and recommendations in the final report, and the Parties shall endeavour to agree on the time period for the Party complained against to comply with such determinations and recommendations.

2. No later than thirty (30) days after the receipt of the final report, the Party complained against shall notify the complaining Party of the time it will require for compliance (hereinafter referred to as “reasonable period of time”), if immediate compliance is not practicable.

3. If there is disagreement between the Parties on the reasonable period of time to comply with the determinations and recommendations in the final report, the complaining Party shall, within fifty (50) days of the date of issuance of the final report, request in writing to the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party. The original arbitration panel shall issue its determination on the length of the reasonable period of time to the Parties within twenty (20) days from the date of the submission of the request.

4. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 16.7 (Composition and Establishment of the Arbitration Panel) shall apply. The time limit for issuing the determination on the length of the reasonable period of time shall be thirty-five (35) days (1) from the date of the submission of the request referred to in paragraph 3 of this Article.

5. The Party complained against shall inform the complaining Party in writing of its progress to comply with the determinations and recommendations in the final report at least one (1) month before the expiry of the reasonable period of time.

6. The reasonable period of time may be extended by the agreement of the Parties.

7. The Party complained against shall notify the complaining Party before the end of the reasonable period of time of any measure that it has taken to comply with the determinations and recommendations in the final report.

8. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 7 of this Article with the provisions referred to in Article 16.2 (Scope), the complaining Party may request in writing the original arbitration panel to determine on the matter. Such request shall identify the specific measure at issue and the provisions referred to in Article 16.2 (Scope) with which it considers that measure to be inconsistent, in a manner sufficient to present the legal basis for the complaint clearly, and it shall explain how such measure is inconsistent with the provisions referred to in Article 16.2 (Scope). The original arbitration panel shall notify its determination within forty-five (45) days of the date of the submission of the request.

9. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 16.7 (Composition and Establishment of the Arbitration Panel) and Annex 16-B (Rules of Procedure for Arbitration) shall apply. The time limit for issuing the determination shall be sixty (60) days (2) from the date of the submission of the request referred to in paragraph 8 of this Article.

(1) For greater certainty, the period of thirty-five (35) days does not include the days suspended pursuant to paragraph 7 of Article 16.7 (Composition and Establishment of the Arbitration Panel).

(2) For greater certainty, the period of sixty (60) days does not include the days suspended pursuant to paragraph 7 of Article 16.7 (Composition and Establishment of the Arbitration Panel).

Article 16.11. Compensation and Suspension of Concessions or other Obligations

1. If the Party complained against fails to notify any measure taken to comply with the determinations and recommendations in the final report before the expiry of the reasonable period of time, or if the arbitration panel determines that no measure taken to comply exists or that the measure notified under paragraph 7 of Article 16.10 (Implementation of Arbitration Panel Report) is inconsistent with that Party's obligations under the provisions referred to in Article 16.2 (Scope), the Party complained against shall, enter into negotiations with the complaining Party with a view to developing mutually acceptable agreement on compensation.

2. If no agreement on compensation is reached within thirty (30) days after the end of the reasonable period of time or, where applicable, the issuance of the arbitration panel determination under paragraph 8 of Article 16.10 (Implementation of the Arbitration Panel Report) that no measure taken to comply exists or that a measure taken to comply is inconsistent with the provisions referred to in Article 16.2 (Scope), the complaining Party shall be entitled, upon notification to the other Party, to suspend concessions or obligations arising from any provision referred to in Article 16.2 (Scope) at a level equivalent to the nullification or impairment caused by the violation. The notification shall specify the level of concessions or other obligations that the complaining Party intends to suspend and indicate the reasons on which the suspension is based. The complaining Party may implement the suspension at any moment after the expiry of twenty-five (25) days after the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 5 of this Article.

3. The compensation referred to in paragraph 1 of this Article and the suspension referred to in paragraph 2 of this Article shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the final report of the arbitration panel.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2 of this Article:

(a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the final report of the arbitration panel referred to in Article 16.9 (Interim Arbitration Panel Report and Final Arbitration Panel Report) has found an inconsistency with the obligations under this Agreement;

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may suspend concessions or other obligations with respect to other sector(s); and

(c) the complaining Party will take into consideration those concessions or other obligations the suspension of which would least disturb the functioning of the this Agreement.

5. If the Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the original arbitration panel to determine the matter. Such request shall be notified to the complaining Party before the expiry of the twenty-five (25) day period referred to in paragraph 2 of this Article. The original arbitration panel, having sought, if appropriate, the opinion of experts, shall notify its determination on the level of the suspension of concessions or other obligations to the Parties within thirty (30) days of the date of the submission of the request. Concessions or other obligations shall not be suspended until the original arbitration panel has notified its determination, and any suspension shall be consistent with the arbitration panel determination.

6. In the event that any member of the original arbitration panel is no longer available, the procedures laid down in Article 16.7 (Composition and Establishment of the Arbitration Panel) shall apply. The period for issuing the determination shall be forty- five (45) days (3) from the date of the submission of the request referred to in paragraph 5 of this Article.

7. The suspension of concessions or other obligations shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 16.14 (Mutually Agreed Solution); or

(b) the Parties have reached an agreement on whether the measure notified under paragraph 1 of Article 16.12 (Review of Any Measure Taken to Comply After the Suspension of Concessions or Other Obligations) brings the Party complained against into conformity with the provisions referred to in Article 16.2 (Scope); or

(c) any measure found to be inconsistent with the provisions referred to in Article 16.2 (Scope) has been withdrawn or amended so as to bring it into conformity with those provisions, as determined under paragraph 2 of Article 16.12 (Review of Any Measure to Comply After the Suspension of Concessions or Other Obligations).

(3) For greater certainty, the period of forty-five (45) days does not include the days suspended pursuant to paragraph 7 of Article 16.7 (Composition and Establishment of the Arbitration Panel).

Article 16.12. Review of Any Measure Taken to Comply after the Suspension of Concessions or other Obligations

1. The Party complained against shall notify the complaining Party of any measure it has taken to comply with the final report of the arbitration panel and of its request for the termination of the suspension of concessions or other obligations applied by the complaining Party.

2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the provisions referred to in Article 16.2 (Scope) within thirty (30) days of the date of receipt of the notification, the complaining Party shall request in writing the original arbitration panel to determine the matter. Such request shall be notified simultaneously to the other Party. The arbitration panel determination shall be notified to the Parties within forty-five (45) days of the date of the submission of the request. If the complaining Party does not request the arbitration panel to determine the matter, or the arbitration panel determines that any measure taken to comply is in conformity with the provisions referred to in Article 16.2 (Scope), the suspension of concessions or other obligations shall be terminated.

3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 16.7 (Composition and Establishment of the Arbitration Panel) shall apply. The time limit for issuing the determination shall be sixty (60) (4) days from the date of the submission of the request referred to in paragraph 2 of this Article.

(4) For greater certainty, the period of 60 days does not include the days suspended pursuant to paragraph 7 of Article 17.7(Composition and Establishment of the Arbitration Panel).

Article 16.13. Suspension and Termination of Arbitration Procedures

1. The arbitration panel shall, at the written request of both Parties, suspend its work at any time for a period agreed by the Parties not exceeding twelve (12) months and shall resume its work at the end of this agreed period at the written request of the complaining Party, or before the end of this agreed period at the written request of both Parties. If the complaining Party does not request the resumption of the arbitration panel's work before the expiry of the agreed suspension period, the dispute settlement procedures initiated pursuant to this Chapter shall be deemed terminated. Subject to Article 16.3 (Choice of Forum), the suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in another proceeding.

2. The Parties may, at any time, agree in writing to terminate the dispute settlement procedures initiated pursuant to this Chapter.

Article 16.14. Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall notify the arbitration panel, if any, of such a solution. If the solution requires approval pursuant to the relevant domestic procedures of either Party, the notification shall refer to this requirement, and the dispute settlement procedures initiated pursuant to this Chapter shall be suspended. If such approval is not required, or upon notification of the completion of any such domestic procedures, the procedure shall be terminated.

Article 16.15. Rules of Procedure

1. Dispute settlement procedures under this Chapter shall be governed by Annex 16-B (Rules of Procedure for Arbitration).

2. Any time period or other rules and procedures for arbitration panels provided for in this Chapter may be modified by mutual agreement of the Parties.

Article 16.16. Rules of Interpretation

The arbitration panel shall interpret the provisions referred to in Article 16.2 (Scope) in accordance with customary rules of interpretation of public international law, including those codified in the 1969 Vienna Convention on the Law of Treaties.

Article 16.17. Expenses

Each Party shall bear the cost of its appointed arbitrator and its own expenses and legal costs. The cost of the chairperson of an arbitration panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares.

Chapter 17. INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

Article 17.1. Joint Committee

1. The Parties hereby establish a Joint Committee comprising representatives of Singapore and Sri Lanka.

2. The first meeting of the Joint Committee shall be held within one (1) year after the entry into force of this Agreement. Thereafter, the Joint Committee shall meet every two (2) years in Singapore or Sri Lanka alternately, unless the Parties agree otherwise. The Joint Committee shall be co-chaired by the representatives appointed by Singapore and Sri Lanka. The Joint Committee shall agree on its meeting schedule and set its agenda.

3. The Joint Committee shall:

(a) ensure that this Agreement operates properly;

(b) supervise and facilitate the implementation and application of this Agreement, and further its general aims;

(c) supervise the work of all sub-committees, working groups and other bodies established under this Agreement;

(d) consider ways to further enhance trade relations between the Parties;

(e) without prejudice to Chapter 16 (Dispute Settlement), seek to solve problems which might arise in areas covered by this Agreement; and

(f) consider any other matter of interest relating to an area covered by this Agreement.

4. The Joint Committee may:

(a) decide to establish or dissolve sub-committees, or allocate responsibilities to them;

(b) communicate with all interested parties including private sector and civil society organisations;

(c) take decisions in the matters related to this Agreement where the Joint Committee is specifically empowered to do so;

(d) consider and recommend amendments to this Agreement;

(e) adopt interpretations of the provisions of this Agreement, which shall be binding on the Parties and all bodies set up under this Agreement including arbitration panels referred to under Chapter 10 (Investment) and Chapter 16 (Dispute Settlement);

(f) adopt decisions or make recommendations as envisaged by this Agreement;

(g) adopt its own rules of procedure; and

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

Article 17.2. Committees and Working Groups

1. The Joint Committee may set up sub-committees, working groups or any other bodies it deems appropriate.

2. The composition, frequency of meetings, and functions of the sub-committees, working groups or any other bodies may be established either by relevant provisions of this Agreement or by the Joint Committee acting consistently with this Agreement.

3. The sub-committees, working groups or any other bodies shall inform the Joint Committee of their schedule and agenda sufficiently in advance of their meetings. They shall report to the Joint Committee on their activities at each regular meeting of the Joint Committee. The creation or existence of a sub-committee, a working group or any other body shall not prevent either Party from bringing any matter directly to the Joint Committee.

4. The Joint Committee may decide to change or undertake the task assigned to a sub- committee, a working group or any other body; or may dissolve a sub-committee, a working group or any other body.

Article 17.3. Evolving WTO Law

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult with each other, via the Joint Committee, with a view to finding a mutually satisfactory solution, where necessary.

Article 17.4. Decision Making

1. The Joint Committee shall, for the purpose of attaining the objectives of this Agreement, have the power to take decisions in respect of all matters in the cases provided by this Agreement, without prejudice to the Parties' respective applicable legal requirements and procedures.

2. The decisions taken shall be binding on the Parties, which shall take the necessary measures to implement the decisions taken in accordance with their respective applicable legal requirements and procedures. The Joint Committee may also make appropriate recommendations.

3. The Joint Committee shall draw up its decisions and recommendations by agreement between the Parties.

Article 17.5. Taxation

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax agreement to which both Parties are parties. In the event of any inconsistency between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency. In the case of a bilateral tax agreement between the Parties, the competent authorities under that agreement shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that agreement.

3. Notwithstanding paragraph 2 of this Article, Article 2.3 (National Treatment) of Chapter 2 (National Treatment and Market Access for Goods) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994.

4. For the purposes of this Article:

(a) "competent authorities" means:

(i) for Singapore, the Chief Tax Policy Officer, Ministry of Finance, or his successor or such other public officer as may be designated by Singapore; and

(ii) for Sri Lanka, the Commissioner General of Inland Revenue, or his successor or such other public officer as may be designated by Sri Lanka;

(b) "tax agreement" means an agreement for the avoidance of double taxation or other international taxation agreement or arrangement; and

(c) taxation measures do not include:

(i) customs duties; or

(ii) the measures listed in sub-paragraphs 2(b), 2(c) and 2(d) of Article 2.4 (Customs Duty) of Chapter 2 (National Treatment and Market Access for Goods).

Article 17.6. Restrictions to Safeguard the Balance-of-Payments

1. Where a Party is in serious balance-of-payments and external financial difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods, cross border trade in services and investments, and on payments and transfers related to cross border trade in services and investments.

2. The Parties shall endeavour to avoid the application of the restrictive measures referred to in paragraph 1 of this Article. Any restrictive measures adopted or maintained under this Article shall be non-discriminatory, avoid unnecessary damage to the commercial, economic, and financial interests of the other Party, be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves, and not go beyond what is necessary to remedy the balance-of- payments and external financial situation. They shall also be in accordance with the conditions established in the WTO Agreement and be consistent with the Articles of Agreement of the International Monetary Fund, as applicable.

3. Any Party maintaining or having adopted restrictive measures, or any changes thereto, shall promptly notify the other Party of them.

4. Where the restrictive measures referred to in paragraph 1 of this Article are adopted or maintained, consultations shall be held promptly by the Joint Committee. Such consultations shall assess the balance-of-payments situation of the Party concerned and the restrictive measures adopted or maintained under this Article, taking into account, inter alia, factors such as:

(a) the nature and extent of the balance-of-payments and external financial difficulties;

(b) the external economic and trading environment; or

(c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 1 and 2 of this Article. All findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance-of-payments shall be accepted, and conclusions shall be based on the assessment by the IMF of the balance-of-payments and external financial situation of the Party concerned.

Article 17.7. General Exceptions

1. Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis, for the purposes of:

(a) Chapter 2 (National Treatment and Market Access for Goods), Protocol 1 (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Co-operation), Chapter 3 (Trade Remedies), Chapter 4 (Sanitary and Phytosanitary Measures), Chapter 5 (Technical Barriers to Trade), Chapter 6 (Customs Procedures and Trade Facilitation); and

(b) Chapter 9 (Electronic Commerce) and Annex 7-C (Financial Services), except to the extent that a provision of these Chapters applies to services or investment.

The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. Article XIV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis, for the purposes of:

(a) Chapter 7 (Trade in Services), Chapter 8 (Telecommunications) and Annex 7- C (Financial Services); and

(b) Chapter 9 (Electronic Commerce) to the extent that a provision of this Chapter applies to services.

The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal, or plant life or health.

Article 17.8. Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 17.9. Disclosure of Information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information, the disclosure of which would be in violation of its domestic law, impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. Unless otherwise provided in this Agreement, where a Party provides information to the other Party (or to the Joint Committee, sub-committees, working groups or any other bodies) in accordance with this Agreement and designates the information as confidential, the Party (or the Joint Committee, sub-committees, working groups or any other bodies) receiving the information shall maintain the confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without specific written permission of the Party providing the information except to the extent that it may be required to be disclosed in the context of judicial proceedings. Where the confidential information is required to be disclosed in the context of judicial proceedings, the Party who had received the information shall inform the Party that had provided the information of any such requirement to disclose as soon as possible and in any event prior to making the disclosure.

Article 17.10. Amendments

1. The Parties may agree, in writing, to amend this Agreement.

2. Amendments to this Agreement shall be approved by the Parties in accordance with their respective legal procedures, and amendments shall enter into force on the first day of the second month following the date on which the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, or on a date to be agreed upon by the Parties.

Article 17.11. Entry Into Force

1. This Agreement shall be approved by the Parties in accordance with their respective legal procedures.

2. This Agreement shall enter into force on the first day of the second month following the date on which the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures for the entry into force of this Agreement.

Article 17.12. Duration

1. This Agreement shall be valid indefinitely.

2. Either Party may notify in writing the other Party of its intention to terminate this Agreement.

3. This Agreement shall be terminated one (1) year after the notification under paragraph 2 of this Article. This is without prejudice to specific provisions in this Agreement which qualify the effect of the termination, namely, Article 10.24 (Savings Clause).

4. Within thirty (30) days of delivery of a notification under paragraph 2 of this Article, either Party may request consultations regarding whether the termination of any provision of this Agreement should take effect at a later date than provided under paragraph 2 of this Article. Such consultations shall commence within thirty (30) days of a Party's delivery of such request.

Article 17.13. Annexes, Appendices, Side Letters and Protocols

The Annexes, Appendices, Side Letters and Protocols to this Agreement shall form an integral part thereof.

Article 17.14. Relations with other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.

2. In the event of any inconsistency between this Agreement and other agreements to which both Parties are party, the Parties shall immediately consult each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

3. Notwithstanding paragraph 2 of this Article, if this Agreement explicitly contains provisions dealing with such inconsistency as indicated in paragraph 2 of this Article, those provisions shall apply.

4. For the purposes of this Agreement, any reference to articles in the GATT 1994 or the GATS includes the interpretative notes, where applicable.

Article 17.15. Territorial Application

This Agreement shall apply:

(a) with respect to Sri Lanka, to its territory as defined in Article 1.3 (Definitions of General Application); and

(b) with respect to Singapore, to its territory as defined in Article 1.3 (Definitions of General Application).

Article 17.16. Contact Points

1. For the purposes of this Agreement, all communications or notifications to or by a Party shall be made through its contact point.

2. For the purposes of this Article, the contact points of the Parties are:

(a) for Sri Lanka, Secretary, Ministry of Development Strategies and International Trade , or its successor; and

(b) for Singapore, the Director of Emerging Markets Division, Ministry of Trade and Industry, or its successor.

3. Each Party shall notify the other Party of any changes in its contact point in due time.

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

Done at Colombo, Sri Lanka, in duplicate, this twenty-third day of January 2018.

For the Government of the Republic of Singapore: S Iswaran Minister for (Industry)

For the Government of the Democratic Socialist Republic of Sri Lanka: Malik Samarawickrama, Minister for Development Strategies and International Trade