China - EU Comprehensive Agreement on Investment (CAI)

Preamble

NOTING with satisfaction the continuous expansion of exchanges and cooperation between China and the EU since the establishment of diplomatic relations in 1975, notably through the EU-China Trade and Cooperation Agreement of 1985, and the establishment of the China-EU Comprehensive Strategic Partnership in 2003;

CONFIRMING the importance of the EU-China High Level Economic and Trade Dialogue started in 2007 as the strategic forum for all matters relating to the bilateral trade and investment relationship;

COMITTED to building their economic relationship based on openness, reciprocity and mutual benefit, ensuring non-discrimination, a level playing field, transparency, and a predictable and rule-based investment environment;

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

RECOGNIZING the right of the Parties to adopt and enforce measures to achieve legitimate public policy objectives;

REAFFIRMING their commitment to the Charter of the United Nations, signed in San Francisco on 26 June 1945, and having regard to the principles articulated in the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948;

DETERMINED to strengthen their economic, trade and investment relations in accordance with the objective of sustainable development, and to promote investment in a manner supporting high levels of environmental and labour rights' protection, including fighting against climate change and forced labour, taking into account the relevant international standards and agreements;

COMMITTED to encourage enterprises to respect corporate social responsibility or responsible business conduct;

RECOGNISING the importance of transparency in international investment to the benefit of all stakeholders;

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,

Section I. OBJECTIVES AND GENERAL DEFINITIONS

Article 1. Objectives

1. The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate to facilitate and develop trade and investment between the Parties, hereby lay down the necessary arrangements for the liberalisation of investment.

2. The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, the environment, including the fight against climate change, public morals, social security or consumer protection, privacy and data protection or the promotion and protection of cultural diversity.

Article 2. Definitions

For the purposes of this Agreement:

'**activities performed in the exercise of governmental authority**' means activities which are performed neither on a commercial basis nor in competition with one or more economic operators;

'**commercial considerations**' means price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of an enterprise, in the relevant business or industry, that are profit-based, and disciplined by market forces;

'**covered enterprise**' means an enterprise set up in the territory of a Party through establishment, as defined in this Article, by an investor of the other Party, and which is in existence as of the date of entry into force of this Agreement or made thereafter in accordance with applicable laws;

'**economic activities**' include activities of an industrial, commercial and professional character and activities of craftsmen, but do not include activities performed in the exercise of governmental authority;

'**establishment**' means the setting up, including the acquisition (1), of an enterprise in China or in the EU respectively with a view to establishing or maintaining lasting economic links;

'**existing**' means in effect on the date of entry into force of this Agreement;

'freely convertible currency' means a currency that can be freely exchanged against currencies that are widely traded in international foreign exchange markets and widely used in international transactions;

'freely usable currency' means a currency that is determined as freely usable by the International Monetary Fund under its Articles of Agreement.

'investor of a Party' means a Party, a natural person or an enterprise of a Party, other than a branch or a representative office, that seeks to make, is making, or has made an investment in the territory of the other Party;

Notwithstanding the preceding paragraph, shipping companies established outside the EU or China and controlled by nationals of a Member State of the EU or of China, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation, in that Member State or in China and fly the flag of a Member State or of China.

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

'**enterprise**' means any entity constituted or otherwise organised under the applicable laws, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, joint venture, sole proprietorship, association or similar organisation and a branch or representative office of an enterprise;

'**enterprise of a Party**' means:

(a) an enterprise constituted or otherwise organised under the laws of that Party, and engaged in substantive business operations (2) in the territory of that Party; or

(b) an enterprise that is constituted or otherwise organised under the laws of that Party and is directly or indirectly owned or controlled by a natural person of that Party or by an enterprise mentioned under (a);

'**government procurement**' means the process by which a procuring entity 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.

'**measure**' means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, requirement, practice or any other form of a measure by a Party (3);

'**measures by a Party**' or '**treatment by a Party**' means measures or treatment (4) 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.

'**natural person**' means:

(i) For the People's Republic of China, a natural person who is a national of the People's Republic of China as defined in the Nationality Law of the People's Republic of China; and

(ii) In the case of the EU, a natural person having the nationality of one of the Member States of the EU according to their respective legislation (5);

'**operation**' of an enterprise includes the conduct, management, maintenance, use, enjoyment, sale or other form of disposal of the enterprise;

'**services**' include any service in any sector except services supplied in the exercise of governmental authority;

'**subsidiary**' of an enterprise of a Party means an enterprise, other than a branch or a representative office, which is controlled by another enterprise of that Party.

'**TRIPS Agreement**' means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement.

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

'**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.

'**selling and marketing of air transport services**' means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

'computer reservation system (CRS) services' means services provided by computerized systems that contain information about air carriers' schedules, availability, fares and fare tules, through which reservations can be made or tickets may be issued.

'**Ground handling services**' means the supply at an airport, on a fee or contract basis, of the following: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fueling of an aircraft; aircraft servicing and cleaning; line maintenance; surface transport; flight operations, crew administration and flight planning. Ground handling services do not include self-handling; security; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems.

(1) The term "acquisition" shall be understood as including capital participation in an enterprise with a view to establishing or maintaining lasting economic links.

(2) In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

(3) For greater certainty, the Parties state their common understanding that the term "measures" includes failures to act.

(4) The Parties understand that the term "treatment" includes failures to act.

(5) The definition of natural person also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.

Section II. LIBERALISATION OF INVESTMENT

Article 1. Scope of Application

1. This Section applies to measures or treatment adopted or maintained by a Party affecting the establishment of an enterprise or the operation of a covered enterprise by an investor of the other Party in its territory. For the purpose of Article 3 [Performance Requirements], it applies with respect to the establishment and operation of all enterprises in the territory of the Party which adopts or maintains the measure or treatment.

2. This Section does not apply to:

(a) audio-visual services;

(b) air transport services and auxiliary air services other than:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation systems (CRS) services;

(iv) ground handling services;

(c) activities supplied in the exercise of governmental authority.

3. This [Section] does not apply to any measure of a Party with respect to government procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale.

4. Articles [National Treatment], [Most-Favored-Nation Treatment] and [Senior Management, Boards of Directors and Entry of Personnel] do not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees, and insurance.

Article 2. Market Access

1. In sectors or subsectors where market access commitments are undertaken and subject to the terms, limitations and conditions specified in [Annex], neither Party shall adopt or maintain with regard to market access through constitution, acquisition (1) or maintenance of an enterprise by an investor of a Party, either on the basis of its entire territory or on the basis of a regional subdivision measures that:

(a) impose limitations on:

(i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive rights or the requirement of an economic needs test;

(ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test (2);

(iv) the total number of natural persons that may be employed in a particular sector or subsector, or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.

(b) restrict or require a specific type of legal entity or joint venture through which an enterprise may carry out an economic activity.

(1) For the purposes of this Article, the term acquisition shall be understood as including capital participation in an enterprise with a view to establishing or maintaining lasting economic links.

(2) Subparagraphs 1(a) (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural product.

Article 3. Performance Requirements

1. Neither Party may, in connection with the establishment or the operation of all enterprises in its territory, impose or enforce any requirement or enforce any commitment or undertaking: (3)

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

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

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory (4),

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

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

(f) to transfers technology, a production process, or other proprietary knowledge to a natural person or an enterprise in its territory;

(g) to supply exclusively from the territory of the Party a good produced or a service provided by the enterprise to a specific regional or the world market;

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

(i) to achieve a given percentage or value of research and development in its territory; or

(j) to use or favour technology that is owned by or licensed to a natural person or an enterprise of the Party.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of all enterprises in its territory, on compliance with any requirement:

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

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from natural persons or enterprises in its territory;

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

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

(e) to use or favour technology that is owned by or licensed to a natural person or an enterprise of the Party; or

(f) to transfer (4bis) technology, a production process or other proprietary knowledge to a natural person or an enterprise in its territory.

3. Neither Party shall directly or indirectly require, force, pressure or otherwise interfere with the transfer or licensing of technology between natural persons and enterprises of a Party and those of the other Party. Such transfer or licencing of technology shall be based on market terms that are voluntary and reflect mutual agreement.

4. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.

5. Subparagraphs 1(f), 2(f) and 3 do not apply when:

(i) the requirement is imposed or enforced, or the commitment or undertaking is enforced by a court or administrative tribunal, or by a competition authority pursuant to the Parties' competition laws to prevent or remedy a restriction or a distortion of competition; or

(ii) a Party authorises the use of an intellectual property right in accordance with Article 31 or Article 31bis of the TRIPS Agreement, or adopts or maintains measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.

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

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

8. This Article is without prejudice to the obligations of a Party under the WTO Agreement.

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

"commitment or undertaking" for the purposes of paragraph 1.

(4) This sub-paragraph does not in itself impose obligations for either Party to allow the cross-border supply of services.

(4bis) For greater certainty, "to transfer" includes to license or to otherwise make available.

Article 3bis. Covered Entities

1. **Covered entity** means, at all levels of government, the following entities (5). (a) Enterprise in which a Party directly or indirectly,

i. owns more than 50 per cent of the share capital;

ii. controls, through ownership interests the exercise of more than 50 per cent of the voting rights;

iii. holds the power to appoint a majority of members of the board of directors or any other equivalent management body; or

iv. holds the power to control the decisions of the enterprise through any other ownership interest, including minority ownership;

(b) Enterprise in which a Party has the power to legally direct the actions or otherwise exercise an equivalent level of control in accordance with its laws and regulations;

(c) Any entity, public or private, including where relevant any subsidiary thereof, or a consortium, which in a relevant market in the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

(d) Two or a small number of enterprises, public or private, including where relevant any subsidiary thereof, designated by a Party, formally or in effect, as the only suppliers or purchasers of a particular good or service in a relevant market in the territory of that Party (6).

2. Scope

(a) Nothing in this Article shall be construed to prevent a Party from establishing or maintaining the covered entities.

(b) This Article does not apply to situations where the covered entities act as procuring entities of goods or services purchased for governmental purposes (7) and not with a view to commercial resale, or use in the supply of a good or service for commercial sale or resale.

(c) This Article does not apply to the activities in sectors or subsectors reserved pursuant to the non-conforming measures maintained by China as set out in Entries 1.21 to 1.26 of China's schedule in Annex I.

(d) Paragraph 3 (Non-discriminatory Treatment and Commercial Considerations) and Paragraph 4 (Transparency) shall not apply with respect to a covered entity if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of such covered entity was less than 200 million Special Drawing Rights.

(e) For greater certainty, this Article does not apply to the activities conducted in the exercise of governmental authority, including those for national defence or public security, pursuant to Article 1(2) (c) of this Sub-Section.

(f) For greater certainty, the Parties acknowledge that this Article does not apply to non- commercial activities conducted by covered entities to support the development of poverty areas or to deal with natural disasters.

3. Non-discriminatory Treatment and Commercial Considerations

(a) Each Party shall ensure that its covered entities when engaging in commercial activities (8):

(i) act in accordance with commercial considerations in their purchases or sales of goods or services in the territory of the Party, except to fulfil any terms of their public service mandate that are not inconsistent with subparagraph (a) ii and iii;

(ii) in their purchases of goods or services, accord to goods or services supplied by investors of the other Party and the

covered enterprises treatment no less favourable than they accord to like goods or like services supplied by investors and enterprises of the Party; and

(iii) in their sales of goods or services, accord to investors of the other Party and to the covered enterprises treatment no less favourable than they accord, in like situations, to investors and enterprises of the Party.

(b) Subparagraph (a) does not preclude a covered entity from:

(i) purchasing or selling goods or services on different terms or conditions, including those relating to price; or

(ii) refusing to purchase or sell goods or services, provided that such different terms or conditions or refusal is undertaken in accordance with commercial considerations.

(c) Subparagraph (a) does not apply to the extent that a covered entity of a Party makes purchases or sales of goods or services pursuant to a non-conforming measure that the Party adopts or maintains in accordance with Article X (Non-Conforming Measures), as set out in its Schedules to Annex II (reservations taken against a National Treatment or Most-Favoured Nation treatment obligation).

4. Transparency

(a) A Party which has reason to believe that its interests under this Article are being adversely affected by the commercial activities of a covered entity of the other Party, may request in written form that Party to supply information about the operations of such entity related to the carrying out of the provisions of this Article. Requests for such information shall indicate the enterprise, the products/services and markets concerned, and include an explanation of how the activities of such enterprise have or could have adversely affected the interests under this Article. Such information includes the following:

i. the percentage of shares and the percentage of voting rights that the Party and/or a covered entity of the Party cumulatively own or hold in the enterprise, as well as the ownership and the voting structure of that enterprise;

ii. a description of any special shares or special voting or other rights that a Party and/or a covered entity holds, where such rights differ from the rights attached to the general common shares of the enterprise;

iii. the organisational structure of the enterprise, the composition of its board of directors or of any other equivalent management body exercising control in such enterprise, and cross-holdings and other legal arrangements with covered entities where relevant for the assessment of the compliance with the provisions of this Article;

iv. annual revenue or total assets, or both;

v. any exemptions, immunities and equivalent measures applicable to the enterprise under the requested Party's laws and regulations;

vi. a description of which competent authority is responsible for exercising the government's ownership functions with respect to the enterprise and which government department is responsible to regulate its activities at issue; if applicable, a description of the reporting requirements imposed by those departments/competent authority and of the manner in which the latter may be involved in the appointment, dismissal and remuneration of executives and members of its board of directors or any other equivalent management body of the enterprise.

(b) Each Party shall endeavor to ensure that its covered entities respect international good practices of corporate governance and transparency.

(5) For greater certainty, the listing of such covered entity is for the purpose of defining the scope of application of this sub-section and does not presume its existence in either Party.

(6) For greater certainty, point (d) does not include enterprises to which a Party has granted an authorisation according to objective, transparent and impartial criteria.

(7) For greater certainty, purchases of the covered entities shall not be presumed to be for governmental purposes merely on the ground that the covered entity has carried them out according to the domestic procurement or bidding laws, or that the domestic laws qualify those purchases as such.

(8) For great certainty, it is understood that this does not apply to situations of trade in goods and to supply of services other than through establishment of an enterprise and operation of a covered investment.

Article 3ter. Impartiality, Non-discrimination and Independence of Regulatory Authority

1. Each Party shall ensure that any regulatory body (9) or any other body exercising a regulatory function that the Party establishes or maintains acts impartially in like circumstances with respect to all enterprises that it regulates, including the covered entities.

2. Each Party shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner (10), including on the covered entities.

3. Each Party shall ensure that any regulatory body or any other body exercising a regulatory function that the Party establishes or maintains is legally separate from and not accountable to any of the enterprises regulated by that body. (11)

(9) Both sides confirm the intention to cover regulators for air transport services.

(10) "Non-discriminatory treatment" means the better of National Treatment and Most Favored Nation Treatment.

(12) This paragraph shall not apply in sectors or subsectors in which foreign investment is prohibited according to the non-conforming measures as set out in Entry 9 (paragraph 1), 21, 22, 23, 24, 25 and 26 of China's schedule in Annex I.

Article 4. National Treatment

1. Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than the treatment it accords, in like situations (12), to its own investors and to their enterprises, with respect to establishment and operation in its territory.

2. For greater certainty, paragraphs 1 shall not be construed as preventing a Party from prescribing ordinary formalities, such as a requirement to provide authenticated documents or official translations, or information requirements for statistical purposes, in connection with the covered enterprise, provided that those requirements do not constitute a means to circumvent that Party's obligations pursuant to this Article.

(12) For greater certainty, whether the treatment is accorded in "like situations" requires a case-by-case, fact-based analysis.

Article 5. Most Favoured Nation Treatment

1. Each Party shall accord to investors of the other Party and to covered enterprises, treatment no less favourable than the treatment it accords, in like situations, to investors and their enterprises of any non-Party with respect to establishment and operation in its territory.

2. Substantive provisions in other international agreements concluded by a Party with a third country do not in themselves constitute treatment under this Article.

3. For greater certainty, the treatment referred to in paragraph 1 does not include investor- to-state and other dispute settlement procedures provided for in other international agreements.

Article 6. Senior Management and Boards of Directors

Neither Party may require that an enterprise of that Party that is a covered enterprise appoint to senior management or the board of directors positions natural persons of any particular nationality.

Article 6bis. Entry and Temporary Stay of Natural Persons for Business Purposes

1. This Article applies to measures of the Parties concerning the entry and temporary stay in their territories of business visitors for establishment purposes and intra-corporate- transferees in accordance with paragraph 4.

2. This Article 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.

3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons 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 (13) accruing to any Party under the terms of a specific commitment in this Article and its Annexes.

4. For the purpose of this Article:

a) "Business visitors for establishment purposes" mean natural persons working in a senior position who are responsible for setting up an enterprise. They do not offer or provide services or engage in any other economic activity than required for establishment purposes. They do not receive remuneration from a source located within the host Party.

b) "Intra-corporate transferees" mean natural persons who have been employed by a juridical person, or its branch or have been partners in it for at least one year and who are temporarily transferred to an enterprise that may be a subsidiary, branch or head company of the juridical person in the territory of the other Party (14). The natural person concerned must belong to one of the following categories:

Managers: Persons working in a senior position within a juridical person, who primarily direct the management of the enterprise, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including at least: directing the enterprise or a department or sub- division thereof; and supervising and controlling the work of other supervisory, professional or managerial employees; and having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions.

Specialists: Persons working within a juridical person who possess specialised knowledge essential to the enterprise's production, research equipment, techniques, processes, procedures or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the enterprise, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

5. The permissible length of stay shall be for a period of up to ninety days in any twelve month period for business visitors for establishment purposes, and up to three years for managers and specialists.

6. Subject to the relevant reservations specified in, for the EU Annex IV [reservations for business visitors for establishment purposes and intra-corporate transferees], and for China Schedule on Business Visitors for Establishment Purposes and Intra-Corporate Transferees:

a) A Party shall allow the entry and temporary stay of intra-corporate transferees and business visitors for establishment purposes.

b) A Party shall not maintain or adopt, either on the basis of a territorial subdivision or on the basis of its entire territory, limitations in the form of numerical quotas or economic needs tests on the total number of natural persons that, in a specific sector, are allowed entry as business visitors for establishment purposes or that an investor may employ as intra-corporate transferees in a specific sector in the form of numerical quotas or economic needs tests either on the basis of a territorial subdivision or on the basis of its entire territory.

c) Each Party shall accord to Intra-corporate Transferees and Business Visitors for Establishment Purposes of the other Party national treatment with regard to their temporary stay in its Territory. For the purpose of this article, national treatment provided in Article 17 of GATS shall apply, mutatis mutandis. (15)

7. For greater certainty, temporary entry granted in accordance with this Article [Entry and temporary stay of natural persons for business purposes] does not replace the qualification requirements needed to carry out a profession or activity according to the applicable laws and regulations in force in the territory of the granting Party, provided such requirements are not inconsistent with its obligations under this Agreement.

8. To the extent that the relevant measure affects the temporary stay of natural persons for business purposes, paragraph 6 does not apply to:

a) any existing non-conforming measure of a Party at the level of: a. for the European Union:

i. the European Union, if the measure is consistent with a reservation listed in Annex I;

ii. the central government of a Member State of the European Union, if the measure is consistent with a reservation listed in Annex I;

iii. a regional government of a Member State of the European Union, if the measure is consistent with a reservation listed in Annex I; or

iv. a local government, other than that referred to in subparagraph (c), if the measure is consistent with a reservation listed in Annex I; and

b. for China:

i. the central government, if the measure is consistent with a reservation listed in Annex I;

ii. a provincial government, if the measure is consistent with a reservation listed in Annex I; or

iii. a local government, if the measure is consistent with a reservation listed in Annex I;

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

c) a modification of any non-conforming measure referred to in subparagraphs (a) and (b) to the extent that it does not decrease the conformity of the measure with paragraph 6, as it existed immediately before the modification; or

d) any measure of a Party consistent with a reservation specified in Annex II.

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

(14) For greater certainty, managers and specialists may be required to demonstrate they possess the professional qualifications and experience needed in the enterprise to which they are transferred.

(15) For greater certainty, the Parties agree that this commitment applies to all sectors of economic activity covered by the scope of the liberalisation commitments of the Agreement.

Article 6ter. Transparency

1. Each Party shall make publicly available information on relevant measures that pertain to the entry and temporary stay of natural persons of the other Party, referred to in paragraph 1 of Article [6 bis].

2. The information referred to in paragraph 1 shall, to the extent possible, include inter alia the following information relevant to the entry and temporary stay of natural persons:

(a) entry conditions;

(b) an indicative list of documentation that may be required in order to verify the fulfilment of the conditions;

(c) indicative processing time;

(d) applicable fees;

(e) appeal procedures; and

(f) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

Article 7. Non-Conforming Measures and Exceptions

1. Article 3 (Performance Requirements), Article 4 (National Treatment), Article 5 (Most- Favoured-Nation Treatment) and Article 6 (Senior Management and Boards of Directors) do not apply to:

(i) for the European Union:

a. the European Union, if the measure is consistent with a reservation listed in Annex I;

b. the central government of a Member State of the European Union, if the measure is consistent with a reservation listed in Annex I;

c. a regional government of a Member State of the European Union, if the measure is consistent with a reservation listed in Annex I; or

d. a local government, other than that referred to in subparagraph (c), if the measure is consistent with a reservation listed in Annex I; and

(ii) for China:

a. the central government, if the measure is consistent with a reservation listed in Annex I;

b. a provincial government, if the measure is consistent with a reservation listed in Annex I; or

c. a local government, if the measure is consistent with a reservation listed in Annex I;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 3 (Performance Requirements), Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment) and Article 6 (Senior Management and Boards of Directors).

2. Article 3 (Performance Requirements), Article 4 (National Treatment), Article 5 (Most- Favoured-Nation Treatment) and Article 6 (Senior Management and Boards of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in Annex IL

3. A Party shall not adopt a measure after the date of entry into force of this Agreement and covered by its Schedule to Annex II that requires an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an enterprise existing at the time the measure becomes effective.

4. Articles 3 [National Treatment] and 4 [Most-Favoured-Nation Treatment] do not apply to any measure that constitutes an exception to, or a derogation from, Articles 3 or 4 of the TRIPS Agreement, as specifically provided in Articles 3 to 5 of that Agreement.

Section II. REGULATORY FRAMEWORK

Subsection 1. DOMESTIC REGULATION

Article 1. Scope and Definitions

1. The following disciplines apply to measures adopted or maintained by a Party relating to licencing requirements and procedures, qualification requirements and procedures (1) that affect:

a. Establishment of an enterprise;

b. Operation of a covered enterprise in the territory of one of the Parties.

2. The disciplines in this sub-section shall apply to sectors where a commitment is undertaken pursuant to Article [Market Access] and to the extent of the commitment undertaken. The disciplines shall not apply to the aspects that are not conforming with article [National treatment] set out in a Party's Schedule to Annex (I) [reservations for existing measures] [EU: and Annex XX [reservations specific to business visitors and intra-corporate transferees]] or to measures with respect to sectors, sub-sectors or activities as set out in a Party's Schedule to Annex (ID) [reservations for future measures].

3. These disciplines do not apply to applications for and extensions of visas, residence permits and work permits.

4. For the purposes of this Sub-section:

- "Licencing requirements" means substantive requirements, other than qualification requirements, with which a natural person or an enterprise is required to comply in order to obtain, amend or renew the authorisation to carry out the activities as defined in paragraph 1.

- "Licencing procedures" means administrative or procedural rules that a natural person or an enterprise, seeking authorisation to carry out the activities as defined in paragraph 1 including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licencing requirements.

-"Qualification requirements" means substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining, amending or renewing an authorisation to supply a service.

-"Qualification procedures" means administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements.

-"Competent authority" means any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities which takes a decision concerning the authorisation to make an investment.

(1) For greater certainty, the requirements and procedures referred to in this paragraph include those concerning categories of natural persons as defined in Article [6bis] of Sub-section 1 of Section II of this Agreement [Entry and temporary stay of natural persons for business purposes].

Article 2. Conditions for Licencing and Qualification

1. Each Party, with a view to precluding the competent authorities from exercising their power of assessment in an arbitrary manner, shall ensure that measures relating to licencing requirements and procedures, qualification requirements and procedures are based on the following criteria:

(a) clear;

(b) objective and transparent;

(c) pre-established, made public in advance and accessible.

2. An authorisation or a licence shall, subject to availability, be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation or licence have been met.

3. Where the number of licences available for a given activity is limited in the case of the scarcity of available natural resources or technical capacity, each Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

4. Subject to Paragraph 3 of Article 2, in establishing the rules for the selection procedure, each Party may take into account legitimate public policy objectives, including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

Article 3. Licencing and Qualification Procedures

1. Licencing and qualification procedures shall be clear, as simple as feasible, made public in advance and shall not unduly complicate or delay the making of an investment.

2. Any authorisation fees (2) charged by the competent authority from an applicant in connection with the establishment and acquisition of an enterprise, including those charged for the amendment or renewal of such authorisation, should be reasonable and commensurate with the administrative cost of the authorisation procedures in question.

3. Each party shall ensure that the procedures used by, and the decisions of, the competent authority in the licencing or authorisation process are impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and not accountable to any investor for which the licence or authorisation is required.

4. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. Each Party shall ensure that its competent authorities ascertain the completeness of applications without undue delay, and that they initiate the processing of the application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.

5. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Party shall endeavour to establish the normal

timeframe for processing of an application.

6. The competent authority shall, within a reasonable period of time after receipt of an application which it considers incomplete, inform the applicant, to the extent feasible identify the additional information required to complete the application, and provide the opportunity to correct deficiencies within a reasonable period of time.

7. Authenticated copies should be accepted, to the extent that domestic law permits, in place of original documents.

8. If an application is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. The applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision.

9. Each Party shall ensure that a licence or an authorisation, once granted, enters into effect without undue delay.

(2) Authorisation fees do not include payments for natural resources, auction, tendering or other non- discriminatory means of awarding concessions, or mandated contributions to universal service provision.

Subsection 2. TRANSPARENCY

Article 1. Disclosure of Information

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

Article 2. General Transparency Obligations

1. Each Party shall ensure that its laws, regulations, administrative guidelines, procedures, judicial decisions and administrative rulings of general application with respect to any matter covered by this Treaty are promptly published or otherwise made publicly available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. For the purposes of this Article, judicial decisions and administrative rulings of general application do not include decisions or rulings that apply only to a particular person without establishing a norm of conduct that is relevant beyond the facts of the specific case.

Article 3. Publication

(1) To the extent practicable in a manner consistent with its respective rules and procedures for adopting laws and regulations, each Party shall:

(a) publish laws and regulations referred to in Article 2 (1) that it proposes to adopt on an official website or in an official journal that is publicly accessible;

(b) provide an explanation of the objective of, and rationale for such laws and regulations;

(c) provide interested persons and the other Party a reasonable opportunity to comment on such proposed laws and regulations; and

(d) endeavour to take into account the comments received from interested persons with respect to such proposed laws and regulations.

(2) With respect to laws and regulations referred to in Article 2 (1) that are adopted, each Party shall:

(a) publish them on an official website or in an official journal that is publicly accessible; and

(b) ensure that there is reasonable time between publication and entry into force of the laws and regulations, except in duly justified cases based on the nature of the envisaged measure, urgency or other similar grounds.

Article 4. Contact Point and Provision of Information

1. In order to facilitate the effective implementation of this Agreement, upon its entry into force each Party shall designate a

contact point. The Parties shall notify their respective contact points within 3 months after the entry into force of this Agreement.

2. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from any investor of the other Party regarding any measure referred to in Article 2.1. Enquiries may be addressed through the contact points referred to in the preceding sub-paragraph. Any response under this sub-paragraph will be provided only for information purposes, unless otherwise foreseen in the Party's laws.

3. On request of the other Party, a Party shall, within a reasonable period of time, provide information and respond to questions pertaining to any measure referred to in Article 2 (1) that the requesting Party considers might affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement.

4. Any request or information under this paragraph shall be provided to the other Party through the relevant contact points.

5. Any information provided under this article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 5. Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures referred to in Article 2 (1), each Party shall ensure that in its administrative proceedings applying such measures to particular covered enterprises or investors of the other Party in specific cases:

1. to the extent permitted by the nature of the applicable proceeding, covered enterprises or investors of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which it is initiated, and a general description of any issues in controversy;

2. such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, including by, to the extent permitted by the nature of the applicable proceeding, being informed of the preliminary conclusions drawn against them in case of an alleged infringement, being permitted to set out all factual and legal arguments relevant to their defence, and by having the right to a legal representative of their choice during such proceedings; and

3. its procedures are in accordance with domestic law, including with respect to the protection of confidential business information or other information treated as confidential under the Party's laws that is obtained during administrative proceedings.

4. in the application of its rules on competition, including the control of mergers and acquisitions, each Party shall ensure that the prohibitions, penalties and or any other remedies provided for in these rules shall be imposed only following the adoption of a formal decision by the competent competition authority, a non-confidential version of which shall be published. Prior to the adoption of such a decision, the competition authority shall notify, in writing if so provided by domestic law, the addressee of its competition concerns or objections, including the facts and legal basis on which the proposed decision will be based. The address of the decision shall, prior to its adoption, be informed, to the extent provided for in the domestic law, of the evidence on which the decision will be based. Prior to the adoption of the final written decision, the addressee of the decision shall have the right to submit written comments to the competition authority in relation to the competition authority's competition concerns or objections. During such proceedings, the addressee of the decision shall have the right to a legal representative of its choice. The addressees shall have the right to appeal the final decisions of the competition authorities to a competent court of law.

A Party shall not require disclosure of confidential business information in authorisation and administrative proceedings, unless such information is necessary to show conformity with the administrative or regulatory requirements governing those proceedings. A Party shall protect the confidentiality of such information.

Article 6. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement including review of alleged substantive or procedural errors having occurred through the imposition of a sanction or remedy for violation of the Party's competition laws. 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:

(i) a reasonable opportunity to support or defend their respective positions, in line with the principles set out in article 5(2); and

(ii) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by the offices or authorities with respect to the administrative action at issue.

4. 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.

Article 7. Standards-Setting

1. Each Party shall allow enterprises that are covered enterprises of the other Party, to participate in the development of standards by its central government bodies, including related standardisation working groups and technical committees at all levels, on terms no less favourable than those it accords to its own enterprises, including its covered entities. The list of such standardisation working groups and technical committees, as well as their members, shall be made publicly available. This shall include publication of the setting up of standardisation working groups and technical committees.

Each Party shall make available to covered enterprises of the other Party, the requirements for application procedures to the standardisation bodies in a timely and transparent manner, including the conditions for access and requirements for each membership type. On the request, in writing, of covered enterprises of the other Party, relevant standardisation bodies shall inform such an applicant of the status of its application, without undue delay. If the competent authority requires additional information from such an applicant, it shall notify this applicant without undue delay.

2. Each Party shall recommend that local and non-governmental standardizing bodies in its territory allow enterprises that are covered enterprises of the other Party to participate in the development by those bodies of standards and related conformity assessment procedures, on terms no less favourable than those they accord to its own enterprises, including its covered entities.

Paragraphs 1 and 2 of this Article do not apply to:

i) sanitary and phytosanitary measures as defined in Annex A of the World Trade Organisation (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures; or

(ii) purchasing specifications prepared by a governmental body for its production or consumption requirements.

3. Paragraphs 1 and 2 of this Article do not apply to:

i) sanitary and phytosanitary measures as defined in Annex A of the World Trade Organisation (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures; or

(ii) purchasing specifications prepared by a governmental body for its production or consumption requirements.

4. For the purposes of paragraphs 1 and 2 of this Article, "central government body", "local government body", "non-governmental body", "standards" and "conformity assessment procedures" have the meanings assigned to those terms in Annex 1 of the WTO Agreement on Technical Barriers to Trade. Consistent with Annex 1, the two latter terms do not include standards or conformity assessment procedures for the supply of a service.

Article 8. Transparency of Subsidies

1. For the purposes of this Article, a subsidy shall be deemed to exist if the conditions set out in Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures (3)(ASCM) are fulfilled irrespective of whether it is granted to an enterprise operating in services or non-services sectors.

2. This Article applies to subsidies only if the subsidies are specific in accordance with Article 2 of the ASCM and to the extent they are related to economic activities (4).

3. This Article does not apply to:

(a) subsidies, the cumulative amounts or budgets of which are less than 450 000 Special Drawing Rights per beneficiary for a period of three consecutive years;

(b) subsidies granted to compensate the losses caused by natural disasters;

(c) subsidies related to fish and fish products and subsidies covered by Annex 1 of the WTO Agreement on Agriculture; and

(d) subsidies provided for audio-visual services and for the services set out in Entries 1.21 to 1.26 of China's schedule in Annex I.

4. The application of the rules in this Article must not obstruct the performance, in law or in fact, of a public service mandate, assigned to the enterprises in question in a transparent manner.

5. Each Party shall ensure transparency as regards subsidies to the following service sectors listed in [Annex X]. To this end, each Party shall promptly, and no later than on 31 December of the calendar year subsequent to the one in which the subsidy was granted, publish on a publicly accessible website (5) the objective, legal basis, form, amount or amount budgeted for, and recipient of any subsidy subject to this paragraph. The Parties shall begin to fulfil this obligation no later than two years after the entry into force of this Agreement.

6. If a Party considers that a subsidy (6) granted by the other Party has or could have a negative effect on its investment interests under this Agreement, the former Party may express its concern in written form to the other Party, indicating how the subsidy has or could have such negative effect, and request consultations on the matter. The Parties shall enter into consultations with a view to resolving the matter.

During the consultations, the requesting Party may seek additional information about the subsidy, such as the policy objective and/or purpose, the amount and any other information permitting an assessment of the negative effects of the subsidy in question on its investment interests under this Agreement. In order to facilitate the consultations, the requested Party shall provide information on the subsidy in question within no more than 90 days from the date of receipt of the request.

7. If the requesting Party, after the consultations have been held, considers that the subsidy concerned has or could have a significant negative effect on the requesting Party's investment interests under this Agreement, the requested Party shall use its best endeavours to find a solution with the requesting Party. Any solution must be considered feasible and acceptable by both Parties.

8. Nothing in this Article shall affect the rights and obligations of each Party under WTO Agreements, in particular, Article XV GATS, Article VI of GATT 1994, the ASCM Agreement and the WTO Agreement on Agriculture.

9. This Article is without prejudice to the Parties' positions and the possible outcome of future discussions in the WTO on subsidies. Depending on the progress and the possible outcome of those discussions at the WTO level, the Parties may adopt a decision by the relevant committee under this Agreement to update this article, including the definition of subsidy.

10. Paragraph 7 shall not be subject to Section X (State to State Dispute Settlement).

(3) For greater certainty, the ASCM in this Article refers to the Agreement on Subsidies and Countervailing Measures as in force on the date of signature of this Agreement.

(4) For the purposes of this Article, "economic activities" means activities with respect to offering goods or services in a market.

(5) For greater certainty, this obligation can be met by publishing on such website the weblinks to the information.

(6) For greater certainty, paragraphs 6 and 7 apply to subsidies granted to an enterprise operating in services or non-services sectors.

Subsection 3. FINANCIAL SERVICES

Article 1. Scope and Definitions

1. This Sub-section applies to measures adopted or maintained by a Party affecting the establishment of an enterprise or the operation of a covered enterprise by an investor of the other Party in its territory in order to supply financial services,

without prejudice to a Party's right to restrict the supply of a specific financial service pursuant to its commitments undertaken in Annex (1) (for the EU) and Annex I (for China) [reservations for existing measures], Annex (II) [reservations for future measures], and Annex (XX) (Schedule of Specific Market Access Commitments on Services).

2. For the purposes of paragraph (x) (definition of services/activities supplied in the exercise of governmental authority) of this Agreement, "services supplied in the exercise of governmental authority" means activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

3. For the purposes of this Sub-section and of Section II Liberalisation of Investment of this Agreement:

(a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:

A. Insurance and insurance-related services

1. direct insurance (including co-insurance):

(a) life;

(b) non-life;

2. reinsurance and retrocession;

3. insurance inter-mediation, such as brokerage and agency; and

4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

B. Banking and other financial services (excluding insurance):

1. acceptance of deposits and other repayable funds from the public;

2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

3. financial leasing;

4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques, bankers drafts and any other new means of payment; guarantees and commitments; trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

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

(b) foreign exchange;

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

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

(e) transferable securities;

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

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

8. money broking;

9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

11. provision and transfer of financial information, and financial data processing and related software;

12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) "financial service supplier" means any natural or juridical person of a Party that seeks to provide or provides financial services. The term âfinancial service supplierâ does not include a public entity.

(c) "public entity" means:

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

2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

(d) "new financial service" means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.

(e) self-regulatory organisation means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party.

Article 2. Prudential Carve-out

1. Notwithstanding any other provision of this Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons (7), 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.

2. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

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

(7) It is understood that the term "prudential reasons" also includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions.

Article 3. Effective and Transparent Regulation

1. Each Party shall make available to interested investors and covered enterprises its requirements for completing applications relating to the supply of financial services through commercial presence. On the request of an applicant in writing, the competent authority shall inform the applicant of the status of its application within a reasonable timeframe. If the competent authority requires additional information from the applicant, it shall notify the applicant without undue delay.

2. Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision and for the fight against tax evasion and avoidance in the financial services sector are implemented and applied in its territory. Such internationally agreed standards are, inter alia, those adopted by the G20, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS), in particular its "Core Principle for Effective Banking Supervision", the International Association of Insurance Supervisors (IAIS), in particular its "Insurance Core Principles", the International Organisation of Securities Commission (IOSCO), in particular its "Objectives and Principles of Securities Regulation", the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Article 4. New Financial Services

1. Each Party shall permit a financial service supplier of the other Party established in its territory to supply any new financial service that it would permit its own financial service suppliers to supply in accordance with its law in like situations, provided that the introduction of the new financial service does not require the adoption of a new law or amendment of an existing law.

2. Notwithstanding (Market Access), a Party may determine the institutional and legal form through which the service may be supplied and require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

3. Prior to permitting the supply of a new financial service, a Party may impose a non- discriminatory requirement to conduct a pilot project, during which the new financial service may be supplied by a limited number of suppliers on a trial basis for a limited period of time and in a certain area or region, in order to assess potential prudential risks. At the end of the trial pilot project period, the financial service supplier should be permitted to provide the new financial service throughout the territory of the Party, unless the Party decides that new legislative action is required or the provision of such services is not permitted for prudential reasons.

Article 5. Specific Exceptions

1. Nothing in this Agreement shall be construed to prevent a Party, including its public entities, from conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's national regulation, by financial service suppliers in competition with public entities or private institutions.

2. Nothing in this Agreement shall be construed to prevent a Party, including its public entities, from conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities except when those activities may be carried out, as provided by the Party's national regulation, by financial service suppliers in competition with public entities or private institutions.

Article 6. Self-regulatory Organisations

When a Party requires membership or participation in, or access to, any self-regulatory body, in order for financial service suppliers of the other Party established in its territory to supply financial services on an equal basis with financial service suppliers of the Party, or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations of Articles X (National Treatment and Most Favoured Nation Treatment).

Article 7. Clearing and Payment Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This article is not intended to confer access to the Party's lender of last resort facilities.

Annex. to Section III Subsection II. Article 8 Transparency of Subsidies

BUSINESS SERVICES

Professional Services (for the medical and dental services only those privately funded) Computer and Related Services

Research and Development Services except for research and development services in social science and humanities

Real Estate Services

Rental/Leasing Services without Operators

Other Business Services except for printing and publishing services

COMMUNICATION SERVICES

Courier services [*][* For greater certainty, this includes express delivery services other than for correspondence, including if provided by the national postal administration] Telecommunication services

CONSTRUCTION AND RELATED ENGINEERING SERVICES

General construction work for buildings

General construction work for civil engineering

Installation and assembly work

Building completion and finishing work

DISTRIBUTION SERVICES

Commission agents' services Wholesale trade services Retailing services Franchising

ENVIRONMENTAL SERVICES

Sewage services

Refuse disposal services Sanitation and similar services

FINANCIAL SERVICES [*] [* as defined in Article X (Scope and definitions) [Sub-section 3: Financial services]

All insurance and insurance-related services Banking and other financial services

HEALTH RELATED SERVICES (privately funded) Hospital services Other Human Health Services

TOURISM AND TRAVEL RELATED SERVICES Hotels and restaurants (incl. catering)

Travel agencies and tour operators' services

Tourist guides services

TRANSPORT SERVICES

Maritime Transport Services

Air Transport Services except for passenger and freight transportation services directly related to the exercise of traffic rights

Space Transport

Rail Transport Services except for passenger public transportation by rail and metro, passenger rail transport for remote areas and passenger rail transport for specific categories of passengers (students, people with disabilities, servicemen, etc.).

Road Transport Services except for urban and suburban passenger public transportation by bus Pipeline Transport

Services auxiliary to all modes of transport

Section IV. Investment and Sustainable Development

Subsection I. Context and Objectives

Article 1. Overarching Principles

1. The Parties recall the relevant international documents with regard to sustainable development in particular the Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the International Labour Organisation (ILO) Declaration on Social Justice for a Fair Globalisation of 2008 and the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want", the UN 2030 Agenda for Sustainable Development and its Sustainable Development Goals, and the 2019 ILO Centenary Declaration for the Future of Work and reaffirm their commitment to promote the development of investment in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations, and to ensure that this objective is integrated and reflected in their investment relationship.

2. The Parties are committed to pursue sustainable development, and recognize that economic development, social development and environmental protection are interdependent and mutually reinforcing dimensions of sustainable development.

Article 2. Corporate Social Responsibility

1. The Parties recognise the important contribution of Corporate Social Responsibility or Responsible Business Conduct to strengthening investment's positive role in sustainable growth, and in this way contributing to the objectives of this Agreement.

2. Each Party agrees to promote responsible business practices, including by encouraging the voluntary uptake of relevant

practices by businesses, taking into account relevant internationally recognised guidelines and principles, such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the OECD Guidelines for Multinational Enterprises.

3. The Parties commit to exchanging information and, as appropriate, cooperating on promoting responsible business practices.

Article 3.

1. Each Party, in accordance with its domestic laws and [Transparency provisions], shall ensure that measures of general application, including implementing measures, on matters related to this [Section] are proposed and adopted in a transparent manner providing reasonable opportunities for the public, including non-state stakeholders, to submit their views.

2. The Parties shall hold regular discussions and exchanges of views on the elements of this [Section] in the Investment Committee. In this regard, the Parties shall seek views of their non-state stakeholders, in a balanced representation of interests across all three dimensions of sustainable development. Each Party shall receive written communication on matters related to this [Section] and refer the relevant ones for due consideration by the Investment Committee.

3. The Parties may facilitate the meetings of non-state stakeholders on matters related to this [Section] in accordance with domestic law.

Article 4. Review of Sustainability Impacts

The Parties recognise the importance of reviewing, monitoring and assessing the impact of the implementation of this Agreement on sustainable development through their respective processes and institutions.

Subsection 2. Investment and Environment

Article 1. Right to Regulate

The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish its own levels of domestic labour and environmental protection, and to adopt or modify its relevant laws and policies accordingly, consistently with its multilateral commitments in the fields of labour and environment.

Article 2. Levels of Protection

1. Each Party shall strive to ensure that its laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve those laws and policies and their underlying levels of protection.

2. The Parties recognise that it is inappropriate to encourage investment by weakening or reducing the levels of protection afforded in their domestic environmental laws.

3. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental laws as an encouragement for the establishment, acquisition or retention of an investment or an investor in its territory.

4. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental laws, as an encouragement for investment.

5. The Parties recognize that with respect to the enforcement of environmental laws, a Party is in compliance with paragraph 4 if a course of action or inaction results from a good faith decision regarding the allocation of resources in accordance with its priorities for enforcement of its environmental laws.

6. A Party shall not apply domestic environmental laws in a manner that would constitute a disguised restriction of investment or an unjustified discrimination between investors and investments of the Parties.

Article 3. Dialogue and Cooperation on Investment-related Environmental Issues

The Parties recognise the value of the United Nations Environment Assembly (UNEA) of the United Nations Environment Program (UNEP) and multilateral environmental agreements in tackling global and regional environmental challenges, and stress the need to enhance the mutual supportiveness between investment and environmental policies. In this context, the

Parties agree to dialogue and cooperate as appropriate on investment-related environmental issues of mutual interest arising under this Section in a manner complementary to their efforts under existing bilateral and multilateral mechanisms.

Article 4. Multilateral Environmental Agreements

Each Party is committed to effectively implement the multilateral environmental agreements to which it is a party. The Parties shall regularly exchange information on their respective situation and developments as regards ratifications and implementation of Multilateral Environmental Agreements or amendments to such agreements in a manner complementary to the exchanges under the multilateral mechanisms.

Article 5. Investment Favouring Green Growth

In accordance with their commitment to enhance the contribution of investment to the goal of sustainable development, including its environmental aspects, the Parties: a. shall facilitate and encourage investment in environmental goods and services, b. agree to co-operate by exchanging experiences and good practices related to environmental impact assessments in respect of investments which are likely to have significant impact on the environment.

Article 6. Investment and Climate Change

Recognising the importance of pursuing the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC) and the purpose and goals of the Paris Agreement adopted by the Conference of the Parties to the UNFCCC at its 21st session (the Paris Agreement) in order to combat climate change and its impacts and committed to enhance the contribution of investment to climate change mitigation and adaptation, each Party shall:

a. effectively implement the UNFCCC and the Paris Agreement adopted thereunder, including its commitments with regard to its Nationally Determined Contributions;

b. promote and facilitate investment of relevance for climate change mitigation and adaptation; including investment concerning climate friendly goods and services, such as renewable energy, low-carbon technologies and energy efficient products and services, and by adopting policy frameworks conducive to deployment of climate-friendly technologies;

c. cooperate with the other Party on investment-related aspects of climate change policies and measures bilaterally and in international fora, as appropriate.

Subsection 3. Investment and Labour

Article 1. Right to Regulate

The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish its own levels of domestic labour and environmental protection, and to adopt or modify its relevant laws and policies accordingly, consistently with its multilateral commitments in the fields of labour! and environment.

Article 2. Levels of Protection

1. Each Party shall strive to ensure that its laws and policies provide for and encourage high levels of labour protection and shall strive to continue to improve those laws and policies and their underlying levels of protection.

2. The Parties recognise that it is inappropriate to encourage investment by weakening or reducing the levels of protection afforded in domestic labour laws.

3. A Party shall not waive or derogate from, or offer to waive or derogate from, its labour laws as an encouragement for the establishment, acquisition, expansion or retention of an investment or an investor in its territory.

4. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its labour laws, as an encouragement for investment.

5. The Parties recognize that with respect to the enforcement of labour laws, a Party is in compliance with paragraph 4 if a course of action or inaction results from a good faith decision regarding the allocation of resources in accordance with its priorities for enforcement of its labour laws.

6. The Parties recognise that the violation of fundamental principles and rights at work cannot be invoked or otherwise used

as a legitimate comparative advantage and that labour standards cannot be used for protectionist purposes. A Party shall not apply domestic labour laws in a manner that would constitute a disguised restriction of investment or an unjustified discrimination between investors and investments of the Parties.

Article 3. Dialogue and Cooperation on Investment-related Labour Issues

The Parties agree to dialogue and cooperate as appropriate on investment-related labour issues of mutual interest arising under this Section in a manner complementary to the efforts under existing bilateral and multilateral mechanisms.

Article 4.

1. Each Party, in accordance with its obligations assumed as a member of the International Labor Organization ("ILO"), and its commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, shall respect, promote and realize, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of the fundamental ILO Conventions.

2. Each Party is, in accordance with the commitments of the members of the ILO and the 2019 ILO Centenary Declaration for the Future of Work, committed to effectively implement the ILO Conventions it has ratified and work towards the ratification of the ILO fundamental Conventions. In particular, in this regard, each Party shall make continued and sustained efforts on its own initiative to pursue ratification of the fundamental ILO Conventions No 29 and 105, if it has not yet ratified them. The Parties will also consider the ratification of the other Conventions that are classified as "up to date" by the ILO.

Article 5. Investment Favouring Decent Work

In accordance with their commitment to enhance the contribution of investment to the goal of sustainable development, including its labour aspects, the Parties agree to promote investment policies which further the objectives of the Decent Work Agenda, in accordance with the 2008 ILO Declaration on Social Justice for a Fair Globalisation, and the 2019 ILO Centenary Declaration for the Future of Work, including a human-centred approach to the future of work, adequate minimum wages, social protection and safety and health at work.

Subsection 4. Mechanism to Address Differences

Article 1. Consultations

1. In the event of disagreement on any matter covered under this Section, the Parties shall only have recourse to the procedures established under this Sub-section. Section X (State to State Dispute Settlement) does not apply to this Section.

2. In case of any disagreement referred to in paragraph 1, a Party may request consultations with the other Party by delivering a written request to the other Party.

3. The request for consultations shall set out the reasons for the request, including information that is specific and sufficient for consideration and response, the identification of the matter, and an indication of the legal basis of the request.

4. The Party to which the request for consultations is made shall enter into consultations with the requesting Party within 30 days after receipt of the request, or any longer period agreed by both Parties.

5. During consultations each Party shall provide sufficient factual information related to the matter, with a view to arriving at a mutually satisfactory resolution of the matter.

6. The Parties, by mutual agreement, may seek information from international organizations, such as the ILO or relevant multilateral environmental organizations in which both Parties participate.

7. The consultations, including the information disclosed and positions taken by the Parties during the consultations shall be confidential and are without prejudice to the rights of either Party in any further proceedings.

Article 2. Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a disagreement at any time. The Parties shall comply with a mutually agreed solution, and take the measures necessary to implement it.

Article 3. Panel of Experts

1. If the disagreement has not been satisfactorily resolved through consultations within 120 days, or a longer period agreed by both Parties, after the delivery of the request for consultations, a Party may request, by delivering a written request to the other Party, the establishment of a Panel of Experts to examine the matter.

2. The request shall indicate whether consultations were held, identify the specific measure at issue and briefly explain how that measure affects the application of the relevant provisions in the Sustainable Development Chapter and investment between the Parties in a manner sufficient to present the legal basis clearly. The Panel of Experts is deemed established when the request is delivered to the other Party.

3. The Panel of Experts shall be composed of three members. The Parties shall consult in order to reach an agreement on its composition.

4. If the Parties fail to reach an agreement on the composition of the Panel of Experts within 30 days of the delivery of the request for the establishment of a Panel of Experts, the chairperson shall be selected by lot from the sub-list of chairpersons established under paragraph 7 and each Party shall designate one expert from the sub-list of that Party established under paragraph 7 within 10 days. If a Party fails to designate an expert within that time period, the expert shall be selected by lot from the sub-list of that Party within 5 days.

5. Should any of the lists provided for in paragraph 7 not be established, the expert shall be selected by lot from the individuals formally proposed for that list, within the same time- period.

6. The date of composition of the Panel of Experts shall be the date on which all three selected experts have accepted their appointment. The date of composition of the Panel of Experts shall be made publicly available without delay.

7. At the latest within one year of entry into force of this agreement, the Investment Committee shall establish a list of individuals who are willing and able to serve as experts. The list shall be composed of three sub-lists. Each Party shall propose a sub-list and the third sub-list shall consist of individuals that are not nationals of either Party and who shall serve as chairperson to the Panel of Experts. Each sub-list shall include at least four individuals. Every three years, the list shall be reviewed if a Party so requests. The list may also be reviewed at any moment upon a duly justified request of a Party.

8. The list shall comprise individuals who shall have specialised knowledge of, or expertise in, international labour law or international environmental law, or relevant aspects of international trade or investment agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of any Party. They shall comply with the Code of Conduct, as set out in Annex X.

9. The Panel of Experts shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case.

10. Unless the Parties agree otherwise within 10 days from the date of the establishment of the Panel of Experts, the terms of reference of the Panel of Experts shall be: "To examine, in the light of the relevant provisions in the Sustainable Development Chapter, the matter referred to in the request for the establishment of the Panel of Experts, and to issue reports, in accordance with Article 4, making recommendations for the solution of the matter."

11. The Panel of Experts shall examine the matter in accordance with the Sustainable Development Chapter and interpret the provisions therein in accordance with customary rules on interpretation of public international law, as codified in the Vienna Convention of the Law of Treaties.(2)

12. The Panel of Experts, after consulting with the Parties, may decide any procedural question not covered by this sub-section in a way that is compatible with the provisions in this sub-section, including by considering similar questions in other parts of the Agreement.

13. At the request of the complaining Party or both Parties, the Panel of Experts may, after giving the Parties an opportunity to comment, suspend its work at any time for a period not to exceed 12 months. If a Party does not request the resumption of the Panel of Expert's work at the expiry of the suspension period, the authority of the Panel of Experts shall lapse.

14. On request of a Party, or at its own initiative, the Panel of Experts may seek any information, technical advice, or expert opinion it deems appropriateÂ®. Any such information, technical advice or expert opinion shall be disclosed to the Parties and the Parties may provide comments on it.

(2) For greater certainty, this is without prejudice to any consideration of the domestic law of the Party concerned, where relevant, as a matter of fact.

(3) Before seeking technical advice or an expert opinion the Panel of experts shall consult with the Parties.

Article 4. Reports and Follow-up Consultations

1. The Panel of Experts shall deliver an interim report to the Parties within 150 days after the date of composition of the panel.

2. Each Party may comment the interim report within 10 days of its delivery. A Party may comment on the other Party's comments within 10 days of the delivery of such comments.

3. The Panel of Experts shall issue the final report to the Parties no later than 180 days from the date of its composition. The final report shall set out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations.

4. The Panel of Experts shall make every effort to make its recommendations by consensus. If the Panel of Experts is unable to reach consensus, it shall decide by majority vote.

5. The deliberations of the Panel of Experts shall be confidential.

6. The final report of the Panel of Experts shall be made publicly available no later than 15 days after the issuance to the Parties, subject to the protection of confidential information.

7. The Parties shall consult within 30 days after the issuance of the final report of the Panel of Experts, and discuss measures to address the matter, based on the report. The agreed outcome shall be made publicly available, unless otherwise mutually decided. The Parties may receive views on the implementation of the measures through the mechanism referred to under [Article 3, Sub-section 1, Section IV].

Article 5. Transparency of the Proceedings

1. A party making a request for consultations or a request for the establishment of a Panel of Experts shall make that request publicly available without delay, subject to the protection of confidential information.

2. Each Party may make its submissions or statements to the Panel of Experts publicly available, subject to the protection of confidential information.

3. Any hearing of the Panel of Experts shall be open to the public unless otherwise provided, and subject to the conditions set out below.

4. Based upon the timetable determined by the Panel of Experts, after consulting with the Parties and the other members of the Panel of Experts, the chairperson of the Panel of Experts shall notify the Parties of the date, time and venue of the hearing. This information shall be made publicly available by the Party in which the hearing takes place, unless the hearing is closed to the public. Unless a Party disagrees, the Panel of Experts may decide not to convene a hearing.

5. The hearing shall be open to the public, unless the Parties decide that the hearing shall be partially or completely closed to the public. If the hearing is open to the public, the following conditions apply, unless the Parties agree otherwise:

(a) public viewing shall take place via simultaneous or delayed closed circuit television broadcasting in a separate viewing room at the venue of the hearing;

(b) registration for public viewing of the hearing shall be required and the Panel of Experts may decide on further logistical arrangements, in particular by limiting the number of places and allocating them on a first-come first-served basis; and

(c) no audio or video recording, photography, or webstreaming shall be permitted in the viewing room.

6. The openness of a hearing shall not affect the work of the Panel of Experts.

7. Notwithstanding paragraph 3, the Panel of Experts shall meet in closed session when the submission and arguments of a Party contain confidential information. The Parties shall maintain the confidentiality of the hearings where the hearings are held in closed session.

Article 6. Amicus Curiae Submissions

1. Unless the Parties agree otherwise within five days of the date of the establishment of the Panel of Experts, natural persons of a Party or legal persons established in the territory of a Party, who are independent from the governments of the Parties, may deliver unsolicited written submissions to the Panel of Experts, provided that they:

(a) are received by the Panel of Experts within 10 days after the panel was composed;

(b) are concise and in no case longer than 20 pages, including any annexes typed at double space;

(c) are directly relevant to a factual or a legal issue under consideration by the Panel of Experts;

(d) contain a description of the person making the submission, including for a natural person his or her nationality and for a legal person its place of establishment, the nature of its activities, its legal status, general objectives, the source of its financing, and any controlling entity;

(e) disclose any connection with a Party;

(f) specify the nature of the interest that the person has in the proceedings; and

(g) are drafted in the working language[s] chosen by the Parties.

2. The submissions shall be delivered to the Parties, who are allowed but not required to make comments.

3. The Panel of Experts shall annex to its report a list of all the persons having made an amicus curiae submissions that complied with the conditions set out in paragraph 1. The Panel of Experts shall not be obliged to address in its report the arguments made in such submissions.

4. The Panel of Experts shall ensure that the amicus curiae submissions do not disrupt the proceedings or unduly burden or unfairly prejudice either Party.

Section V. Dispute Settlement

Article 1. Objective

The objective of this Section is to establish an effective and efficient mechanism for avoiding and settling any disputes between the Parties within the scope of application of this Section with a view to arriving at, where possible, a mutually agreed solution.

Article 2. Scope of Application

This Section shall apply with respect to any dispute concerning the interpretation and application of the provisions of this Agreement (hereinafter referred to as "covered provisions"), except as otherwise provided.

Article 3. Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 2 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request delivered to the other Party. The request for consultations shall set out the reasons for the request, including the identification of the measure at issue and an indication of the legal basis for the complaint, specifying the provisions referred to in Article 2 considered applicable.

3. The Party to which the request for consultations is made shall reply to the request within 10 days after the date of its receipt. Consultations shall be held within 30 days after the date of receipt of the request, unless otherwise mutually agreed. Consultations shall be deemed concluded within 30 days after the date of receipt of the request, unless both Parties agree to continue consultations.

4. If the Party to which the request is made does not respond to the request for consultations within 10 days after its receipt, or if consultations are not held within the timeframes specified in paragraph 3, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that requested the consultations may proceed directly to request the establishment of an arbitration panel.

5. Consultations shall take place in the territory of the Party to which the request is made, unless the Parties agree otherwise.

6. During consultations each Party shall provide sufficient factual information, so as to allow a full examination of how the measure at issue could affect the operation and application of this Agreement.

7. The consultations, and in particular all information disclosed and positions taken by the Parties during consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

Article 4. Mediation

1. The Parties may at any time voluntarily agree to mediation with the aim to reach a mutually agreed solution regarding a measure alleged to adversely affect investment between the Parties. The mediation procedure may only be initiated by mutual agreement.

2. Upon initiation of the mediation procedure the Parties shall agree on the selection, tasks and powers of the mediator and on the rules governing the mediation procedure, including time-frame, termination and costs.

3. Unless the Parties agree otherwise, mediation proceedings shall be confidential. This concerns in particular positions taken and evidence obtained by the Parties during those proceedings and advice or proposed solutions by the mediator. However, any Party may disclose to the public that mediation is taking place. Mediation proceedings shall be without prejudice to the rights of either Party in any further or other proceedings.

4. The [Joint Committee] may at any time adopt rules on the initiation, conduct and termination of mediation and shall endeavour to adopt such rules within three years after the entry into force of this Agreement.

Article 5. Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution to a dispute under this Section, or to certain claims thereof, at any time.

2. If a mutually agreed solution is reached during consultations, claims relating to the matters covered by the mutually agreed solution may not be submitted to arbitration under this Section.

3. If a mutually agreed solution is reached during the arbitration panel procedure or the mediation procedure, the Parties shall jointly notify that solution to the chairperson of the arbitration panel or the mediator. Upon such notification, the arbitration panel procedure or the mediation procedure, or where applicable the part of the procedure with respect to the claims covered by the mutually agreed solution, shall be terminated.

4. The disputing Parties shall abide by and comply with a mutually agreed solution reached under this Article without delay and in good faith. They shall take the measures necessary, if applicable, to implement the mutually agreed solution within the agreed time period.

5. Any measure taken to implement the mutually agreed solution shall be notified to the other Party, no later than at the expiry of the agreed time period.

Article 6. Establishment of an Arbitration Panel

1. If the Parties fail to resolve a dispute through consultations as provided for in Article 3(4), the Party that sought consultations may request in writing the establishment of an arbitration panel.

2. The complaining Party shall deliver the request to the other Party. The request shall indicate whether consultations were held, identify the specific measure at issue and briefly explain how that measure constitutes a breach of the covered provisions in a manner sufficient to present the legal basis for the complaint clearly. The arbitration panel is deemed established when the request is delivered to the other Party.

Article 7. Composition of an Arbitration Panel

1. An arbitration panel shall be composed of three panellists.

2. Within 10 days of the delivery of the written request for the establishment of an arbitration panel, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.

3. If the Parties are unable to agree on the composition of the arbitration panel within the time period set out in paragraph 2, each Party may appoint a panellist from the sub-list of that Party established under Article 8 within 5 days from the expiry of the time period set out in paragraph 2. If a Party fails to appoint a panellist from its sub-list within that time period, the

complaining Party shall, within five days from the expiry of that time period, select by lot the panellist from the sub-list of that Party.

4. If the Parties are unable to agree on the chairperson of the arbitration panel within the time period set out in paragraph 2, the complaining Party shall, within five days of the expiry of that time period select by lot the chairperson of the arbitration panel from the sub-list of chairpersons established under Article 8.

5. The date of composition of the arbitration panel shall be the date on which all three selected panellists have accepted their appointment according to the Rules of Procedure. Each Party shall make the date of composition of the arbitration panel publicly available without delay.

6. Should any of the lists provided for in Article 8 (Lists of Panellists) not be established or not contain sufficient names at the time a panellist or chairperson is to be selected by lot pursuant to paragraphs 3 or 4, the selection by lot shall be done in accordance with Rule 9 of the Rules of Procedure within the same time period of five days.

Article 8. Lists of Panellists

1. The Investment Committee shall, no later than six months after the entry into force of this Agreement, establish a list of at least 12 individuals who are willing and able to serve as panellists. The list shall be composed of three sub-lists:

(a) one sub-list of individuals established on the basis of proposals by the European Union;

(b) one sub-list of individuals established on the basis of proposals by China;

(c) one sub-list of individuals that are not nationals of either Party and who shall serve as chairperson to the arbitration panel.

2. Each sub-list shall include at least four individuals. The Investment Committee shall ensure that the list is always maintained at this level.

3. Panellists shall have specialised knowledge and expertise in law and international trade or investment. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct annexed to this Agreement.

4. The Investment Committee may establish additional lists of individuals with knowledge and experience in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such additional lists shall be used to compose the panel in accordance with the procedure set out in Article 7 of this Section.

Article 9. Functions of the Arbitration Panel and Terms of Reference

1. The arbitration panel:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the covered provisions;

(b) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

2. Unless the Parties otherwise agree within 10 days from the date of the establishment of the arbitration panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of the Agreement invoked by the Parties, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 6, to make findings of facts and on the conformity of the measure(s) at issue with the covered provisions and to deliver a report in accordance with Article 12 [Decisions and Reports of the Arbitration Panel], including a recommendation, if relevant, to bring the measure into conformity with the Agreement."

3. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the arbitration panel as soon as it is composed.

Article 10. Suspension or Termination of Proceedings

1. At the request of the complaining party, the arbitration panel may, after giving the Parties an opportunity to comment,

suspend its work at any time for a period not to exceed 12 months. At the request of both Parties, the panel shall suspend its work at any time for a period not to exceed 12 months.

2. The arbitration panel shall resume its work before the end of the suspension period at the written request of both Parties. The arbitration panel shall resume its work at the end of the suspension period at the request of the complaining Party if the suspension was requested by the complaining Party, or at the request of either Party if the suspension was requested by both Parties. The requesting Party shall deliver a notification to the other Party accordingly. If a Party does not request the resumption of the arbitration panelâs work at the expiry of the suspension period, the authority of the arbitration panel shall lapse and the dispute settlement procedure shall be terminated. If the work of the arbitration panel is suspended, the relevant time periods under this Section shall be extended by the same period of time for which the work of the arbitration panel was suspended.

3. The Parties may agree to terminate the proceedings of an arbitration panel by notification to the arbitration panel.

Article 11. Applicable Law and Rules of Interpretation

1. The arbitration panel shall decide the issues in dispute in accordance with this Agreement and interpret the provision of this Agreement in accordance with customary tules on interpretation of public international law, as codified in the Vienna Convention of the Law of Treaties. (1)

2. For greater certainty, paragraph 1 is without prejudice to any consideration of the domestic law of the Party complained against where it is relevant to the claim as a matter of fact.

3. The panel reports cannot add to or diminish the rights and obligations of the Parties under this Agreement.

(1) The panel shall also take into account relevant interpretations in reports of WTO panels and the Appellate Body adopted by the WTO Dispute Settlement Body relating to substantially equivalent obligations.

Article 12. Decisions and Reports of the Arbitration Panel

1. The arbitration panel shall deliver an interim report to the Parties within 120 days after the date of composition of the panel. If the arbitration panel 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 deliver its interim report. The arbitration panel shall, under no circumstances, deliver its interim report later than 150 days after the date of composition of the panel.

2. Each Party may deliver to the arbitration panel a written request to review precise aspects of the interim report within 10 days of its delivery. A Party may comment on the other Party's request within six days of the delivery of the request.

3. The arbitration panel shall deliver its final report to the Parties within 150 days of the date of composition of the arbitration panel. If the arbitration panel 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 deliver its final report. The arbitration panel shall, under no circumstances, deliver its final report later than 180 days after the date of composition of the arbitration panel.

4. The final report shall include a discussion of any written request by the Parties on the interim report and clearly address the comments of the Parties. It shall set out the findings of facts, the applicability of the covered provisions and the basic rationale behind any findings and conclusions.

5. The arbitration panel shall make every effort to make its decisions by consensus. If the arbitration panel is unable to reach consensus, it shall decide by majority vote. In no case shall separate opinions of panellists be disclosed.

6. The report of the arbitration panel is final and has no binding force except between the Parties and in respect of the matter to which the report refers. Where an arbitration panel concludes that the Party complained against has acted inconsistently with the obligations of this Agreement, it shall recommend that the Party complained against bring the inconsistency into conformity with this Agreement. The decisions and reports of the arbitration panel shall be unconditionally accepted by the Parties. They shall not create any rights or obligations with respect to natural or legal persons.

7. Each Party shall make the final report and decisions of the arbitration panel pursuant to this Section publicly available no later than 15 days after their issuance to the Parties, subject to the protection of confidential information.

Article 13. Implementation of the Arbitration Panel's Report

1. Where the arbitration panel concludes that a Party has not complied with its obligations under this Agreement, the Party complained against shall take any measure necessary to promptly comply with the findings and conclusions in the final report in order to bring itself into compliance with the covered provisions.

2. The Party complained against shall, no later than 30 days after receipt of the final report, deliver a notification to the complaining Party of its intentions in respect of compliance, unless the Parties reach agreement on compensation or other mutually satisfactory solution.

Article 14. Reasonable Period of Time

1. If immediate compliance is not possible, the Party complained against shall, in the notification referred to in Article 13(2), set out the length of the reasonable period of time it will require for compliance, and the reasons for it. The Parties shall endeavour to agree on the reasonable period of time.

2. Where the Parties fail to agree on the reasonable period of time, either Party may, at the earliest 20 days after the receipt of the notification referred to in paragraph 1, request the original arbitration panel to determine the reasonable period of time.

3. The arbitration panel shall deliver its determination to the Parties within 30 days after the date of the receipt of the request.

. The Party complained against shall deliver a written notification of its progress in

complying with the final report to the complaining Party at least one month before the expiry of the reasonable period of time.

. The reasonable period of time normally should not exceed 15 months from the date of

issuance of the arbitration panelâs final report. The Parties may agree to extend the reasonable period of time.

4. The Party complained against shall deliver a written notification of its progress in complying with the final report to the complaining Party at least one month before the expiry of the reasonable period of time.

5. The reasonable period of time normally should not exceed 15 months from the date of issuance of the arbitration panel's final report. The Parties may agree to extend the reasonable period of time.

Article 15. Compliance Review

1. The Party complained against shall, no later than the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the final report.

2. Where there is disagreement as to the existence or consistency with the covered provisions of measures taken to comply with the final report, the complaining party may deliver a written request to the original arbitration panel to decide on the matter.

3. The arbitration panel shall deliver its report to the Parties within 50 days after the date of receipt of the request.

4. Articles 6, 7, 10, 11, 12.5, 12.6 and 12.7 shall apply, mutatis mutandis, to the procedure under this Article.

Article 16. Temporary Remedies

1. The Party complained against shall, on request by the complaining Party, enter into negotiations with the complaining Party, with a view to agreeing on a mutually acceptable compensation, if:

(a) the Party complained against delivers a notification to the complaining Party that it is not possible to comply with the final report; or

(b) the Party complained against fails to deliver a notification within the time-limit referred to in Article 13(2) or before the expiry of the reasonable period of time defined in accordance with Article 14; or

(c) the arbitration panel referred to in Article 15 finds that no measure taken to comply exists or that the measure taken to

comply is inconsistent with the covered provisions.

2. If the Parties fail to reach an agreement on compensation within 30 days after the expiry of the reasonable period of time or the delivery of the panel report referred to in Article 15(3), or if the complaining Party does not make a request pursuant to paragraph 1, the complaining Party may deliver a written notification to the Party complained against that it intends to suspend the application of concessions or other obligations (hereinafter referred to as "obligations") under the covered provisions. The notification shall specify the level and scope of the intended suspension of obligations.

3. The complaining Party may suspend the obligations 10 days after the date of delivery of the notification referred to in paragraph 2, unless the Party complained against made a request pursuant to paragraph 5.

4. The level of the suspension of obligations shall not exceed the level of the nullification or impairment caused by the violation. In considering what obligations to suspend:

(a) the complaining Party should first seek to suspend obligations in the same sector(s) as that affected by the measure that the arbitration panel has found to be inconsistent with the obligations under this Treaty; and

(b) if the complaining Party considers that it is not practicable or effective in inducing compliance to suspend obligations in the same sector(s), it may suspend obligations in other sectors.

5. If the Party complained against considers that the notified level of suspension of obligations exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original arbitration panel before the expiry of the 10 day period referred to in paragraph 3 to decide on the matter. If the arbitration panel cannot be established with its original members, it shall be composed in accordance with the procedures set out in Article 7. The arbitration panel shall deliver its decision to the Parties within 50 days from the date of the request, or if an arbitration panel cannot be established with its original members, from the date on which the last panellist is appointed. Obligations shall not be suspended until the arbitration panel has delivered its decision. The suspension of obligations shall be consistent with this decision.

6. The suspension of obligations or the compensation referred to in this Article shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 5;

(b) the Parties have agreed that the measure taken to comply brings the Party complained against into conformity with the covered provisions; or

(c) any measure taken to comply which the arbitration panel has found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into conformity with those provisions. (2)

(2) For greater certainty, in case of disagreement on whether the withdrawn or amended measure brings the Party complained against into conformity with the covered provisions, Article 17 (Review of any measure taken to comply after the adoption of temporary remedies) applies.

Article 17. Review of Any Measure Taken to Comply after the Adoption of Temporary Remedies

1. The Party complained against shall deliver a notification to the complaining Party of any measure it has taken to comply following the suspension of obligations or following the application of temporary compensation, as the case may be, together with a description of how the non-conformity has been removed.

2. If the complaining Party agrees that the notified measure brings the Party complained against into conformity with the covered provisions, it shall terminate the suspension of obligations promptly, and no later than 30 days after the delivery of the notification. In cases where compensation has been applied, the Party complained against is allowed to terminate the application of such compensation.

3. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the covered provisions within 30 days from the date of the delivery of the notification pursuant to paragraph 1, the complaining Party shall refer the matter to the original arbitration panel to decide on the matter.

4. The arbitration panel shall deliver its report within 50 days after the referral of the matter by the complaining Party pursuant to paragraph 3. If the arbitration panel concludes that the measure taken to comply is in conformity with the covered provisions, the complaining Party shall promptly, and no later than 30 days after the delivery of the report,

terminate the suspension of obligations and the party complained against is allowed to terminate any compensation. In case of partial compliance, the complaining Party shall adjust the level of suspension of obligations and the Party complained against may adjust the level of compensation in light of the arbitration panel report. The relevant procedures set out in Articles 16 and 17 apply mutatis mutandis.

Article 18. Rules of Procedure

Arbitration panel procedures shall be governed by this Section and the Annex on Rules of Procedure.

Article 19. Transparency

1. Transparency of submissions and statements in the proceedings is governed by rule 38 in the Annex on Rules of Procedure.

2. Any hearing of the panel shall be open to the public unless otherwise provided in the Annex on Rules of Procedure, and subject to the conditions set out therein.

3. Natural or legal persons established in a Party may submit amicus curiae briefs to the panel in accordance with the Annex on Rules of Procedure.

Article 20. Information and Technical Advice

1. On request of a Party, or at its own initiative, the arbitration panel may seek any information and technical advice it deems appropriate from any source, including from the Parties.

2. The arbitration panel also has the right to seek the opinion of experts, as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts.

3. Any information and technical advice obtained by the arbitration panel under this Article shall be disclosed to the Parties and the Parties may provide comments on that information.

Article 21. Choice of Forum

1. When a dispute arises regarding a particular measure in alleged breach of an obligation under this Agreement and a substantially equivalent obligation under another international agreement to which both Parties are party, including the WTO Agreement, the Party seeking redress shall select the forum in which to settle the dispute.

2. Once a Party has selected the forum, the forum selected shall be used to the exclusion of other fora, unless that forum fails to make findings for procedural or jurisdictional reasons.

3. For the purposes of this Article, a forum is deemed to be selected:

(a) for dispute settlement procedures under this Section by a Party's request for the establishment of an arbitration panel in accordance with Article 6;

(b) for dispute settlement procedures under the WTO Agreement by a Partyâs request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO;

(c) for dispute settlement procedures under any other agreement in accordance with the relevant provisions of that agreement.

4. Nothing in this Agreement shall preclude a Party from suspending obligations authorised by the Dispute Settlement Body of the WTO or under the dispute settlement procedures of another international agreement to which the disputing Parties are party. The WTO Agreement or any other international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations set outin the covered provisions pursuant to this Section.

Article 22. Time Periods

1. All time periods laid down in this Section shall be counted in calendar days from the day following the act to which they refer, unless otherwise specified.

2. Any time period referred to in this Section may be modified by mutual agreement of the Parties.

3. The arbitration panel may at any time propose to the Parties to modify any time period referred to in this Section, stating the reasons for the proposal.

4. Incase of urgency, the arbitration panel may, at the request of a Party, reduce the time periods referred to in this Section.

Article 23. Annexes

The [institutional body to be defined] may modify the Annexes X (Rules of Procedure) and XX (Code of Conduct for Panellists and Mediators).

Annex I. Rules of Procedure for State-to-State Dispute Settlement

I. Definitions

1. In Section [X] (State-to-State Dispute Settlement) and under these Rules of Procedure:

(a) "arbitration panel" means a panel established pursuant to Article 6 (Establishment of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement);

(b) "assistant" means an individual who, under the terms of appointment and under the direction and control of a panellist, conducts research or provides assistance to that panellist;

(c) "complaining Party" means any Party that requests the establishment of panel pursuant to Article 6 (Establishment of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement);

(d) "day" means a calendar day;

(e) "panellist" means a member of an arbitration panel;

(f) "Party complained against" means the Party that is alleged to be in violation of the covered provisions referred to in Article 2 (Scope of Application) of Section [X] (State-to-State Dispute Settlement);

(g) "representative of a Party" means an employee or an individual appointed by a Party who represents, advises or assists the Party for the purposes of a dispute under this Agreement.

II. Notifications

2. Any request, notice, written submission or other document, as applicable, of:

(a) the arbitration panel shall be sent to both Parties at the same time;

(b) a Party which is addressed to the arbitration panel shall be copied to the other Party at the same time; and

(c) a Party which is addressed to the other Party shall be copied to the arbitration panel at the same time.

3. Any notification referred to in rule 2 shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.

4. All notifications shall be addressed to [...] of China and to the Directorate-General for Trade of the Commission of the European Union, respectively.

5. Minor errors of a clerical nature in a request, notice, written submission or other document related to the arbitration panel proceedings may be corrected by the delivery of a new document clearly indicating the changes.

6. If the last day for delivery of a document falls on a non-working day of the institutions of the European Union or of the government of China, the time period for the delivery of the document shall end on the first following working day.

III. Appointment of Panellists

7. If pursuant to Article 7 (Composition of an Arbitration Panel) of Section [X] (State- to-State Dispute Settlement), a panellist is selected by lot, the complaining Party shall promptly inform the Party complained against of the date, time and venue of the lot. The Party complained against may, if it so chooses, be present during the lot. The lot shall be carried out with the Party or Parties that are present.

8. The complaining Party shall notify, in writing, each individual who has been selected to serve as a panellist of his or her

appointment. Each individual shall confirm his or her availability to both Parties no later than five days after the date of notification of the appointment.

9. For the purposes of Article 7(6) (Composition of an Arbitration Panel), the complaining Party shall select by lot the panellists or the chairperson:

(a) from the individuals who have been formally proposed by a Party for its particular sub-list, if that sub-list is not established;

(b) from the individuals who have been formally proposed by one or both Parties for the sub-list of chairpersons, if that sub-list is not established;

(c) from the individuals that remain on that particular sub-list, if a sub-list no longer contains at least four individuals.

IV. Organisational Meeting

10. Unless the Parties agree otherwise, they shall meet the arbitration panel within seven days of its composition in order to determine such matters as the Parties or the arbitration panel deem appropriate, including the timetable of the proceedings. Panellists and representatives of the Parties may take part in this meeting.

V. Written Submissions

11. The complaining Party shall deliver its written submission no later than 20 days after the date of the composition of the arbitration panel. The Party complained against shall deliver its written submission no later than 30 days after the date of delivery of the written submission of the complaining Party.

VI. Operation of the Arbitration Panel

12. The chairperson of the arbitration panel shall preside at all its meetings. The arbitration panel may delegate to the chairperson the authority to make administrative and procedural decisions.

13. Unless otherwise provided in Section [X] (State-to-State Dispute Settlement) or in these Rules of Procedure, the arbitration panel may conduct its activities by any means.

14. Only panellists may take part in the deliberations of the arbitration panel, but the arbitration panel may permit assistants to be present at its deliberations.

15. The drafting of any decision and report shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.

16. Where a procedural question arises that is not covered by Section [X] (State-to-State Dispute Settlement) and its Annexes, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

17. If the arbitration panel considers that there is a need to modify any of the time periods for the proceedings other than the time periods set out in Section [X] (State- to-State Dispute Settlement) or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the change or adjustment and of the time period or adjustment needed.

VII. Replacement

18. If a panellist is unable to participate in the proceedings, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 7 (Composition of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement).

19. If a Party considers that a panellist does not comply with the requirements of Annex XX (Code of Conduct for Panellists and Mediators) and for this reason should be replaced, that Party shall notify the other Party within 15 days of the date on which it obtained sufficient evidence of the panellist's alleged non-compliance.

20. The Parties shall consult within 15 days. They shall inform the panellist of its alleged non-compliance and may request the panellist to take steps to remedy the non-compliance. They may also, if they so agree, remove the panellist and select a new panellist in accordance with Article 7 (Composition of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement).

21. If the Parties fail to agree on the need to replace a panellist other than the chairperson of the arbitration panel, either Party may request that this matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If the chairperson of the panel finds that the panellist does not comply with the requirements of Annex XX (Code of Conduct for Panellists and Mediators), the new panellist shall be selected in accordance with Article 7 (Composition of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement).

22. If the Parties fail to agree on the need to replace the chairperson, either Party may request that this matter be referred to the two remaining panellists. The decision by the panellists on the need to replace the chairperson shall be final.

If the panellists finds that the chairperson does not comply with the requirements of Annex XX (Code of Conduct for Panellists and Mediators), the new chairperson shall be selected in accordance with Article 7 (Composition of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement).

23. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in rules 18 to 22.

VIII. Hearings

24. Based upon the timetable determined pursuant to rule 10, after consulting with the Parties and the other panellists, the chairperson of the arbitration panel shall notify the Parties of the date, time and venue of the hearing. This information shall be made publicly available by the Party in which the hearing takes place, unless the hearing is closed to the public. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.

25. The hearing shall be open to the public, unless the Parties decide that the hearing shall be partially or completely closed to the public. If the hearing is open to the public, the following conditions apply, unless the Parties agree otherwise:

(a) public viewing shall take place via simultaneous or delayed closed circuit television broadcasting in a separate viewing room at the venue of the hearing;

(b) registration for public viewing of the hearing shall be required and the arbitration panel may decide on further logistical arrangements, in particular by limiting the number of places and allocating them on a first-come first-served basis; and

(c) no audio or video recording, photography, or web-streaming shall be permitted in the viewing room.

26. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is China and in Beijing if the complaining Party is the European Union. The Party complained against shall be in charge of the logistical administration of the hearing and bear the expenses derived therefrom.

27. The arbitration panel may convene additional hearings if the Parties so agree.

28. All panellists shall be present during the entirety of the hearing.

29. Unless the Parties agree otherwise, the following persons may attend the hearing, irrespective of whether the hearing is open to the public or not:

(a) representatives of a Party; and

(b) assistants, interpreters, if necessary, and other persons whose presence is requested by the arbitration panel.

30. No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel and to the other Party a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives who will be attending the hearing.

31. In conducting the hearing, the arbitration panel shall ensure that the complaining Party and the Party complained against are afforded sufficient time to present their arguments.

32. The arbitration panel may direct questions to either Party at any time during the hearing.

33. The arbitration panel shall arrange for the audio-recording of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing.

34. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing no later than 20 days after the date of the hearing.

IX. Questions in Writing

35. The arbitration panel may at any time during the proceedings submit questions in writing to one or both Parties. Any questions submitted to one Party shall be copied to the other Party.

36. Each Party shall provide the other Party with a copy of its responses to the questions submitted by the arbitration panel. Each Party shall have an opportunity to provide comments in writing on the other Partyâs responses no later than five days after the delivery of such copy.

X. Transparency

37. A party making a request for consultations or a request for the establishment of an arbitration panel shall make that request publicly available without delay, subject to the protection of confidential information.

38. Each Party may make its submissions or statements to the arbitration panel publicly available, subject to the protection of confidential information.

XI. Confidentiality

39. Any information submitted by the other Party to the arbitration panel, which that other Party has designated as confidential shall be treated as confidential. Where a Party submits to the arbitration panel a written document which contains confidential information, it shall also, upon request of the other Party, provide, no later than 15 days after the submission, a non-confidential summary of the information contained in the submission that could be disclosed to the public.

40. Notwithstanding rule 25, the arbitration panel shall meet in closed session when the submission and arguments of a Party contain confidential information. The Parties shall maintain the confidentiality of the hearings where the hearings are held in closed session.

XII. *Ex parte* contacts

41. The arbitration panel shall not meet or communicate with a Party in the absence of the other Party.

42. A panellist shall not discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other panellists.

XIII. Amicus curiae submissions

43. Unless the Parties agree otherwise within five days of the date of the establishment of the panel, natural persons of a Party or legal persons established in the territory of a Party, who are independent from the governments of the Parties, may deliver unsolicited written submissions to the arbitration panel, provided that they:

(a) are received by the panel within 10 days after the panel was composed;

(b) are concise and in no case longer than 20 pages, including any annexes typed at double space;

(c) are directly relevant to a factual or a legal issue under consideration by the arbitration panel;

(d) contain a description of the person making the submission, including for a natural person his or her nationality and for a legal person its place of establishment, the nature of its activities, its legal status, general objectives, the source of its financing, and any controlling entity;

(e) disclose any connection with a Party;

(f) specify the nature of the interest that the person has in the arbitration proceedings; and

(g) are drafted in the languages chosen by the Parties in accordance with rules 48 and 49 of these Rules of Procedure.

44. The submissions shall be delivered to the Parties for their comments. Within 10 days of the delivery of the submissions the Parties may submit comments to the arbitration panel.

45. The arbitration panel shall annex to its report a list of all the persons having made an amicus curiae submissions that complied with rule 43. The arbitration panel shall not be obliged to address in its report the arguments made in such submissions.

46. The arbitration panel shall ensure that the amicus curiae submissions do not disrupt the proceedings or unduly burden or unfairly prejudice either Party.

XIV. Urgent cases

47. In cases of urgency as referred to in paragraph 4 of Article 22 (Time Periods) of Section [X] (State-to-State Dispute

Settlement), the arbitration panel, after consulting the Parties, shall adjust, as appropriate, the time periods referred to in these Rules of Procedure. The arbitration panel shall notify the Parties of those adjustments.

XV. Working Language, Translation and Interpretation

48. During the consultations referred to in Article 3 of Section [X] (State-to-State Dispute Settlement), and no later than the organisational meeting referred to in rule 10 of these Rules of Procedure, the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.

49. If the Parties are unable to agree on a common working language, the arbitration panel shall, after consulting the Parties, decide on the most appropriate working language, taking into account the languages both Parties are familiar with.

50. Panel reports and decisions shall be issued in the working language.

51. Any Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these Rules of Procedure.

52. Each Party shall bear the costs of the translation of its written submissions and interpretation of oral submissions into the working language, if any.

XVI. Costs

53. Each Party shall bear its own expenses derived from the participation in the arbitration panel or the mediation.

54. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the panellists and the mediator.

55. The remuneration and expenses to be paid to the panellists shall be in accordance with WTO standards. The total amount of the remuneration of an assistant or assistants of each panellist, if any, shall not exceed 50% of the remuneration of that panellist.

XVII. Other Procedures

56. The time periods laid down in these Rules of Procedure shall be adjusted in line with the special time periods provided for the issuance of a report or decision by the panel in the proceedings under Article 14 (Reasonable Period of Time), Article 15 (Compliance Review), Article 16 (Temporary Remedies) and Article 17 (Review of any Measure taken to comply after the Adoption of Temporary Remedies) of Section X (State-to-State Dispute Settlement).

Annex II. Code of Conduct for Members of Arbitral Tribunals and Mediators in state-to-state disputes

[ongoing discussions]

Section VI. Institutional and Final Provisions

Subsection 1. Institutional Provisions

Article 1. Investment Committee

1. The Parties hereby establish an Investment Committee. The Investment Committee shall be co-chaired by the co-chairs of the EU-China High-level Economic and Trade Dialogue (HED) established between the European Commission and the State Council of China at the level of Vice-Premier.

2. Unless otherwise agreed, the Investment Committee shall meet once a year as part of the HED.

3. The meetings of the Investment Committee shall be held on a date and with an agenda agreed in advance between the representatives of the Parties. The Parties shall ensure that the composition of their respective delegations to each meeting is adequate to the matters agreed for discussions.

4. The Investment Committee shall:

(i) ensure the proper functioning of this Agreement ;

(ii) supervise and facilitate the implementation and application of this Agreement, and further the general objectives thereof;

(iii) consider ways to further enhance investment relations between the Parties;

(iv) undertake the tasks conferred by this Agreement; and

(v) adopt the rules of procedure applicable to the Investment Committee and the Working Groups established in accordance with paragraph 5(vi).

5. The Investment Committee may:

(i) make recommendations to the Parties relevant for the implementation and proper functioning of this Agreement;

(ii) consider amendments to this Agreement or take decisions amending Annexes [XXX] (other than the schedules of commitments)] of this Agreement or other provisions in cases specifically provided for in this Agreement. Such decisions, in accordance with the respective internal legal procedures of the Parties, shall enter into force on the date determined in those decisions;

(ii) adopt binding interpretations of the provisions of this Agreement;

(iv) adopt mutually agreed solutions reached in a mediation procedure pursuant to Article X of [SSDS Chapter]; and

(v) adopt decisions to facilitate the conduct of the proceedings of the panel of experts; and

(vi) delegate responsibilities to the Working Group on Investment, and establish and delegate responsibilities to other bodies.

6. If a Party considers that there is an urgent and important matter pertaining to the implementation or application of the Agreement, the representative of that Party may request discussion between the co-chairs of the Working Group on Investment, to be held as a matter of urgency and no later than 30 days from the date of the request, with a view to find a mutually agreed solution. If such solution is not found, the Party may request that the matter be discussed between the co-chairs of the Investment Committee. The requested Party shall facilitate the organisation of such discussion as a matter of urgency.

Article 2. Decision-making

1. The Investment Committee may, for the purpose of attaining the objectives of this Agreement, take decisions in the cases provided by this Agreement. The Investment Committee may also make appropriate recommendations relevant for the implementation of this Agreement.

2. The decisions and recommendations shall be adopted by consensus between the Parties.

3. The decisions taken shall be binding on the Parties, which shall take the measures necessary to implement the decision taken.

Article 3. Working Group on Investment

1. The Parties hereby establish a Working Group on Investment, which shall be co-chaired by the Director General of the European Commission responsible for trade and investment matters and the designated Vice-Minister of the Ministry of Commerce, or their respective designees.

2. The Working Group on Investment shall meet once every six months, or as agreed by the Parties. The meeting shall alternate between China and the EU, unless otherwise agreed, or shall be held by any other appropriate means of communication.

3. The Working Group on Investment shall prepare the meetings of the Investment Committee and undertake the tasks conferred to it by the Investment Committee. The Working Group on Investment may discuss any matter relevant to the implementation or application of this Agreement.

Article 4. Working Group on Sustainable Development

1. The Parties hereby establish a Working Group on Sustainable Development (SD Working Group). The SD Working Group shall comprise of senior officials, or their delegates, from each Party. It shall meet once a year, unless otherwise agreed by the Parties, and report to the Investment Committee ahead of its meetings held in accordance with [ref to Article 1(2)].

2. The functions of the SD Working Group are to facilitate and monitor the effective implementation of the Sustainable

Development Section, and any other matter as the Parties may agree.

3. The SD Working Group shall adopt its rules of procedures at its first meeting no later than within 1 year from the entry into force of the Agreement.

Article 5. Information Exchange

1. A Party may request at any meeting, or prior to a meeting, information from the other Party regarding a matter relating to the implementation or application of this Agreement, which the requested Party shall provide within a reasonable period of time. When a Party submits information considered as confidential under its laws and regulations to the Investment Committee or any other bodies, the other Party shall treat that information as confidential.

2. To facilitate the work of the Investment Committee and of the Working Group on Investment each Party shall provide a reasonable opportunity for the other Party to comment on proposed laws and regulations implementing this Agreement or relevant to the implementation or application of this Agreement in a manner consistent with its respective tules and procedures for adopting laws and regulations and consider the concerns raised by the other Party.

Subsection 2. Final Provisions

Article 1. Dialogue

Recognising the importance of transparency, dialogue and openness, and in order to draw on a broad range of perspectives in the implementation of this Agreement, the Parties shall have a regular dialogue with non-state stakeholders in a balanced representation of economic, environmental and social interests.

Article 2. Amendments

1. This Agreement may be amended by agreement, in writing, between the Parties.

2. Such amendments shall enter into force on the thirtieth day, or on such later date as may be agreed by the Parties, following the date on which the Parties notify each other in writing through diplomatic channels of the fulfilment of their internal legal procedures.

Article 3. Negotiations on Investment Protection and Investment Dispute Settlement

The Parties agree to continue, on the basis of the progress already made, their negotiations with a view to negotiate an agreement on investment protection and investment dispute settlement. In such negotiations the Parties shall work towards:

a) state of the art provisions in the field of investment protection;

b) state of the art provisions in the field of investment dispute settlement, taking into account progress on structural reform of investment dispute settlement in the context of the United Nations Commission for International Trade Law (UNCITRAL).

The Parties shall endeavour to complete such negotiations within 2 years of the signature of the present agreement.

Article 4. General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment liberalisation, nothing in Section II Sub-section 1 (Liberalisation of investment), Section II (Regulatory Framework), Article [Current Account] and Article [Capital Movements] shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public morals or to maintain public order (1);

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

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

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

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

(iii) safety.

2. For the purpose of Section II Sub-section 1 (Liberalisation of Investment) and Section I (Regulatory Framework), EU GATT 1994 Article XX is incorporated into and made part of this Agreement, mutatis mutandis.

3. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with the provisions of the aforementioned Sections:

(a) the measures referred to in point (b) of paragraph 1 of this Article and GATT 1994 Article XX (b) include environmental measures, which are necessary to protect human, animal or plant life or health;

(b) GATT 1994 Article XX (g) applies to measures relating to the conservation of living and non-living exhaustible natural resources; and

(c) measures taken to implement multilateral environmental agreements can fall under points (a) or (b) of this paragraph.

(1) 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.

Article 5. Current Account

Each Party shall allow, in a currency, which is freely convertible currency and freely usable currency, and in accordance with the provisions of the Articles of the Agreement of the International Monetary Fund, as applicable, any payments and transfers with respect to transactions on the current account of the balance of payments that fall within the scope of this Agreement.

Article 6. Capital Movements

Each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital (2) for the purpose of liberalisation of investment as provided for in Section [Investment Liberalisation].

(2) For greater certainty, such free movement of capital will be allowed in a currency, which is freely convertible currency and freely usable currency, without restriction or delay, and at the prevailing market rate of exchange applicable on the date of transfer to the currency to be transferred.

Article 7. Measures Affecting Capital Movements, Payments or Transfers

1. The provisions of Articles X [Capital movements] and X [Current Account] shall not be construed as preventing a Party from applying its laws and regulations relating to:

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

(b) issuing, trading or dealing in securities, or futures, options and other financial instruments;

(c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses, deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

(f) social security, public retirement or compulsory savings schemes.

2. The laws and regulations referred to in paragraph 1 shall not be applied in an arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

Article 8. Temporary Safeguard Measures with Regard to Capital Movements, Payments or Transfers

In exceptional circumstances of serious difficulties for the operation of monetary and exchange rate policy, in the case of China, or for the operation of the economic and monetary union, in the case of the European Union, or threat thereof, safeguard measures that are strictly necessary may be taken by the concerned Party with regard to capital movements, payments or transfers for a period not exceeding six months.

Article 9. Restrictions In Case of Balance of Payments and External Financial Difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers. (3)

2. The measures referred to in paragraph 1 shall:

(a) be consistent with the Articles of the Agreement of the IMF, as applicable;

(b) not exceed those necessary to deal with the circumstances described in paragraph 1;

(c) be temporary and phased out progressively as the situation specified in paragraph 1 improves;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(e) be non-discriminatory compared to third countries in like situations.

3. In the case of liberalisation of investment, each Party may adopt restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with Article XII of the General Agreement on Trade in Services (GATS).

4. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 shall promptly notify them to the other Party.

5. If restrictions are adopted or maintained under this Article, the Parties shall promptly hold consultations in the Investment Committee unless consultations are held in other fora. The consultations shall assess the balance-of- payments or external financial difficulty that led to the respective measures, taking into account, inter alia, such factors as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; and

(c) alternative corrective measures which may be available.

6. The consultations pursuant to paragraph 5 shall address the compliance of any restrictive measures with paragraphs 1 and 2. All relevant findings of statistical or factual nature presented by the IMF, where available, shall be accepted and conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

(3) For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

Article 10. 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 considers contrary to its essential security interests; or

(b) to prevent a Party from taking an action which it considers necessary for the protection of its essential security interests:

(i) connected to the production of or traffic in arms, ammunition and implements of war and to such production, traffic and transactions in other goods and materials, services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 11. Taxation

1. Nothing in this Agreement shall affect the rights and obligations of either Party, under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention shall prevail to the extent of the inconsistency.

2. Article 5 (Most-favoured nation treatment) shall not apply to any advantage, treatment, preference, or privilege accorded by a Party pursuant to any existing or future tax convention.

3. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining any taxation measure that distinguishes taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

4. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining any taxation measure aimed at preventing the avoidance or evasion of taxes pursuant to its tax laws or tax conventions.

5. Nothing in this Agreement shall apply to existing taxation measures of a Party inconsistent with Article [National Treatment], provided that such measures are consistent with that Party's obligations under GATS, GATT and TRIMs.

For the purpose of this Article:

(a) "residence" means residence for tax purposes;

(b) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation that either the Member States, the EU or China are party to.

Article 12. Fulfilment of Obligations

Each Party shall take any general or specific measures required to fulfil its obligations under this Agreement, including its observance by central, regional or local governments and authorities, as well as non-governmental bodies in the exercise of governmental powers delegated to them by such governments and authorities. They shall see to it that the objectives set out in this Agreement are attained.

Article 13. Accession of a New Member State to the European Union

1. The Investment Committee shall be informed of any request made by a third State to become a member of the European Union.

2. During the negotiations between the European Union and the applicant State, the European Union shall provide China with any relevant information. The European Union shall notify China of any accession to the European Union.

3. In the framework of the Investment Committee, and sufficiently in advance of the date of accession of a third State to the European Union, the Parties shall examine any effects of such accession on this Agreement. The Investment Committee shall decide on any necessary adjustment or transition measures which shall be approved in accordance with each Partyâs internal legal procedures.

Article 14. Rights and Obligations Under this Agreement

Nothing in this Agreement shall be construed as conferring rights or imposing obligations that may be directly invoked before the Partiesâ courts or tribunals.

Article 15. Relation with other Agreements

1. Previous agreements between the Member States of the European Union and/or the European Community and/or the European Union and China are not superseded or terminated by this Agreement.

2. The present Agreement shall be an integral part of the overall bilateral relations as governed by the Trade and Economic

Cooperation Agreement or a future Framework Agreement.

3. The Parties agree that nothing in this Agreement requires them to act in a manner inconsistent with their obligations under the WTO Agreement.

Article 16. Territorial Application

EU-China investment negotiations 22-01-2021 Without prejudice

This Agreement applies, on the one hand, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties and, on the other hand, with regard to the People's Republic of China, to the entire customs territory of China.

Article 17. Annexes

The Annexes to this Agreement shall form an integral part thereof.

Article 18. Entry Into Force

1. This Agreement shall be approved by the Parties in accordance with their own procedures.

2. This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify each other that their respective applicable legal requirements and procedures for entry into force of this Agreement have been completed, or on such other date as the Parties may agree.

3. Notifications shall be sent to the Secretary-General of the Council of the European Union and to the Ministry of Foreign Affairs of China, or its successor.

Article 19. Duration

This Agreement shall be valid indefinitely.

1. Either Party may notify in writing the other Party of its intention to terminate this Agreement.

2. The termination shall take effect six months after the notification under paragraph 2.

Article 20. Authentic Texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Chinese languages, each of these texts being equally authentic. In case of any divergence of interpretation, the text of the language in which this Agreement was negotiated shall prevail.